

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 May 2020

Public Authority: Leeds City Council
Address: Civic Hall
Calverley Street
Leeds
LS1 1UR

Decision (including any steps ordered)

1. The complainant has requested information about the 'Empowering mothers against grooming and radicalisation project' funded by Leeds City Council. The Council provided some information falling within the scope of the request but refused the remainder, citing section 24(1) - safeguarding of national security and 31(1)a - prevention and detection of crime, of the FOIA
2. The Commissioner's decision is that Leeds City Council is entitled to rely on section 24(1) to withhold the information, and therefore she did not need consider the application of section 31(1)a. She also finds that the Council breached section 1(1)a of the FOIA by failing to notify the complainant that it did not hold some of the requested information.

Request and response

3. On 21 June 2019 the complainant wrote to Leeds City Council and requested information in the following terms:

I would like to request the following information about the Empowering Minds Consultancy LTD.

- 1. Will Empowering Minds Consultancy LTD receive funding for their 'Empowering Mothers against grooming and radicalisation' project for 2019/20 financial year?*
 - 2. If so, how much funding will Empowering Minds Consultancy LTD receive for their 'Empowering Mothers against grooming and radicalisation' project for 2019/20?*
 - 3. How many cohorts will the Empowering Minds Consultancy be delivering in 2019/20 as part of their 'Empowering Mothers against grooming and radicalisation' project?*
 - 4. Which areas in Leeds will Empowering Minds Consultancy be delivering in 2019/20 as part of their 'Empowering Mothers against grooming and radicalisation' project?*
 - 5. What are the projected outcomes of the 'Empowering Mothers against grooming and radicalisation'?*
 - 6. Can you provide us with the course materials that are being used to deliver the 'Empowering Mothers against grooming and radicalisation' project?*
4. On 19 July the Council responded. It provided some information within the scope of the request but refused to provide the remainder, citing section 24(1) – national security – for questions 2,3 and 4; and section 43(2) – commercial interest – for question 6, of the FOIA
5. The complainant requested an internal review on 13 September 2019. The Council sent the outcome of its internal review on 11 October 2019, where it upheld its original position.

Scope of the case

6. The complainant contacted the Commissioner on 29 October 2019 to complain about the way her request for information had been handled. She considers that it is in the public interest to have a degree of transparency regarding the Prevent agenda, and that withholding the information highlights a lack of transparency, which include an inability

of the work of prevent to effectively engage communities. For context, the Prevent Strategy (or agenda) forms part of the government's four strand counter-terrorism strategy (known as CONTEST) and aims to prevent ideological radicalisation and extremism.

7. During the course of the investigation the Council retracted its reliance on section 43(2) – commercial interests for question 6. It informed the Commissioner that having reviewed all the information in relation to the request, it stated it did not hold the information relating to course materials. It also disclosed the information for question 4 – areas of delivery. It continued to apply section 24(1) to question 2 & 3, and also added section 31(1)a – prevention or detection crime.
8. The Commissioner considers the scope of the case to be whether the Council is entitled to rely on section 24(1) and 31(1)a to withhold the information for questions 2 & 3, and whether it has complied with section 1(1)a of the FOIA by notifying the complainant if it holds information in response to question 6.

Reasons for decision

Section 24(1)

9. Section 24(1) provides an exemption from the duty to disclose information where this is reasonably required for the purposes of safeguarding national security. If the information falls within the exemption, it is then subject to the public interest test.
10. The FOIA does not provide a definition of national security, but based on previous tribunals¹, the Commissioner considers it to mean the security of the United Kingdom and its people. It includes matters such as the protection of democracy and the legal and constitutional systems of the state; military defence; and co-operation with other states in combatting terrorism.
11. The Commissioner interprets "required" as used in section 24 to mean "reasonably necessary". The exemption will therefore be engaged if it is reasonably necessary for the purpose of safeguarding national security for the requested information to be withheld. The Commissioner has

¹ *Norman Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045 4 April 2007); *Secretary of State for the Home Department v Rehman* [2001] UKHL 47.

issued guidance on the application of section 24², and in practical terms this means that *'it is not sufficient for the information sought simply to relate to national security; there must be a clear basis for arguing that disclosure would have an adverse effect on national security before the exemption is engaged'*. However, the effect does not have to be direct, or immediate.

12. The Council's primary argument for relying on section 24(1) is based on its belief that providing information about funding for the 'Empowering Mothers Project' would enable individuals to gauge the level of the project in Leeds. As funding is matched to the risk of radicalisation, this information could be used by extremists to assess the threat of projects to prevent grooming and radicalisation and target their own efforts more effectively. This would undermine the impact of the training and wider Prevent programme, jeopardising the security of UK citizens through increased risk of attack or other extremist activities. The Council takes note of the fact that other Councils have released information, and that this could be used, along with other available information, to build an 'intelligence picture' of the highest risk areas in the UK. Again, this could support extremists in the targeting of their own activities, thereby undermining Prevent work and increasing the chances of young people becoming radicalised.
13. The Council also considers that disclosing the number of cohorts would provide a strong indicator of funding, as it would be reasonable to assume that larger cohorts require more money. It therefore believes that disclosing the information would also enable extremists to gauge the extent of the risk of radicalisation and grooming in Leeds and use this information to shape its own activities to undermine anti-terrorist work.
14. The Commissioner accepts the Council's arguments that information about funding and the number of cohorts, either individually or together, could be used to used by extremists to assess the risk of radicalisation of young people in Leeds, especially if combined with other information to build a comparative picture with other areas of the UK. This could aid them in their attempts to thwart activities as part of the Prevent agenda, jeopardising its effectiveness and thereby undermining the safeguarding of national security.

² https://ico.org.uk/media/for-organisations/documents/1174/safeguarding_national_security_section_24_foi.pdf

Public interest test

15. Section 24(2) is a qualified exemption. Therefore, the Commissioner is required to consider whether, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in confirming whether the Council holds the requested information.

The Complainant's View

16. The complainant does not consider that section 24(1) applies as the Director of Empowering Minds has spoken publicly about the programme and another Council has already disclosed the information to the same request. She also considers that the withheld information is available at the time of delivery, predominantly through advertising of the programme, but also after delivery through council supplier payments reports. She states that she is simply requesting transparency prior to delivery of these projects, which is in the public interest as it provides assurance that the Prevent agenda and contracts awarded are appropriate and effective.

The Council's View

17. The Council advocates promoting transparency and accountability in the public interest. It states that *'There is a general public interest in disclosure based around the fact that openness in Local Authorities increases public trust in, and engagement with, the Council. The public might be interested in efforts to safeguard vulnerable people in their area. Additionally disclosure could increase public confidence in the efforts taken by the Council and by specified authorities nationally to counter terrorism.'*
18. However, in this case, the Council takes seriously the risk of radicalisation and the threat this poses to young people and the safety of UK citizens. The Council has sought advice from the Home Office and the Council's Prevent Co-ordinator. It draws attention to section 26 of the Counter-Terrorism and Security Act 2015, which places a duty on it to prevent people being drawn in to terrorism. It considers that the funding supplied to an area for the Prevent strategy, in this case the Empowering Minds project, is matched to the risk of individuals in the area being radicalised. Revealing the amount spent on preventing radicalisation provides extremists with the extent to which individuals in the area risk being drawn into terrorism. Combined with other information already available or released through FOIA requests, extremists could build a picture of the highest risk areas to target their racialisation efforts. This would undermine the Prevent work and in turn, increase the risk of an attack and jeopardise the security of UK

citizens. It therefore believes that the public interest in maintaining the exemption outweighs the public interest in disclosure.

The Commissioner's View

19. The Commissioner agrees with both the complainant and the Council regarding the importance of transparency in terms of public funding, and more specifically regarding the Prevent work undertaken by the Council, given the contention surrounding Prevent within the CONTEST strategy. She is not, however, persuaded by the fact that because some or all of the information may be available after the programme has ended, it should therefore be disclosed as part of this request. The Commissioner has no idea how supplier information is, or would be presented by the Council, and if it would be exactly the same as requested here. Therefore, this is not an argument she can reasonably consider. The fact that the Director of Empowering Minds has spoken publicly about the project does not in itself provide information about levels of risk in specific areas.
20. The fact that other public authorities have responded to the same request and disclosed the information does not set a precedent for every public authority to do the same. Each request and response must be considered individually, and the risks identified by the Council in this case do not change simply because another Council has taken a different approach. The Commissioner accepts the real potential of extremists developing an 'intelligence picture' which identifies the risk of radicalisation, and information gradually disclosed by public authorities assisting extremists in gathering information to further their own strategies to undermine the Prevent work. A number of other Councils receiving the same request have refused to either confirm or deny it holds any of the information requested for this very reason, as confirmation or denial of the delivery of Empowering Mothers Project would facilitate the development of a 'threat map' in these cases the Commissioner has upheld the application of 24(2).
21. The Commissioner notes that the Council has decided to disclose the locations of the delivery of the programme. On first examination this may appear anomalous with the Council's position regarding funding and number of cohorts. However, on closer consideration, the locations of delivery may be chosen because they are *not* the highest risk areas, and may be due to other issues such as suitability of venue etc. Similarly, locations do not identify the number of cohorts being delivered. The Commissioner does not therefore consider the disclosure of locations to undermine its position regarding funding and number of cohorts.
22. The radicalisation of young people and the risks of young people being drawn in to terrorism are real and significant concerns for Leeds and the

country as a whole. Early detection and prevention is recognised as a key counter-terrorism strategy, of which Prevent plays a major part. The threat of a terrorist attack against the UK country then, and now, is substantial, meaning an attack is likely. The Commissioner agrees with the Council that in these circumstances, the importance of safeguarding national security is paramount and therefore the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

23. In light of this finding, the Commissioner has not gone on to consider the Council's application of section 31(1)a

Section 1

24. Section 1(1) of the FOIA states that:

*'Any person making a request for information to a public authority is entitled –
(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
(b) if that is the case, to have that information communicated to him.'*

25. When the Council responded to the request, it withheld the information to question 6 – course materials, under section 43(2) of the FOIA – commercial interests. It upheld this position in its review response.
26. During the course of the investigation, the Council revealed that it did not actually hold the course materials and had not notified the complainant of the same. She therefore finds that the Council breached section 1(1)a of the FOIA by failing to communicate that it does not hold the information about course materials.
27. The Commissioner has concerns about the procedural issues raised by the conduct of the Council in this regard. In practice, the Council applied an exemption, including an assessment of the public interest test, without even seeing the information it was supposedly withholding. It didn't just do this once, but twice, as it continued to maintain this position at review stage. This serves to undermine the credibility of the Council's FOIA practices, and the Commissioner should not need to remind the Council that it cannot apply an exemption to information it has not seen, and does not hold.

Right of appeal

28. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

29. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White

Head of Department

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF