

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 January 2022

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested information about the Independent Review of Serious and Organised Crime. The Home Office disclosed some information but it refused to disclose a copy of the review report, on the grounds that it was exempt under section 23(1) (Information supplied by, or relating to, bodies dealing with security matters) of the FOIA. It also argued that section 31 (Law enforcement) applied. In the event that section 23(1) did not apply, it said that section 24 (National security) applied.
2. The Commissioner's decision is that the Home Office was entitled to rely on section 23 to refuse the request.
3. The Commissioner requires no steps as a result of this decision.

Background

4. In 2019, Sir Craig Mackey QPM was appointed to lead an independent review of the powers, capabilities and funding needed to tackle serious and organised crime.
5. A report of his findings was presented to the Minister for Security on 27 February 2020.

6. An executive summary of the report was published on 16 March 2021 on the GOV.UK website¹. The full version of the report has not been published.

Request and response

7. On 8 September 2020, the complainant wrote to the Home Office and requested information in the following terms:

"Last October the Home Office commissioned a report into the future of tackling serious and organised crime

- <https://www.gov.uk/government/news/new-review-will-enhance-response-to-serious-and-organised-crime#:~:text=Serious%20and%20organised%20criminals%20exploit,ruining1>)

1) Please tell me how much this review has cost so far.

2) I just watched a talk by [the Chair of the National Police Chief's Council] at the Police Superintendents' annual (online) conference - <https://supersconference.co.uk/home#agenda> in which he mentioned this report - he said it was "completed in February but could not be published due to Covid" - please provide me with a copy of the completed but unpublished report.

3) Please explain why the coronavirus pandemic meant that this report could not be published.

4) Please provide a date of when this report is expected to be published or if it is not to be published please say why."

8. The Home Office responded on 28 September 2020. It provided explanations for points 1), 3) and 4) of the request. For point 2), it said that it held the requested information but that it was exempt from disclosure under section 24 (National security) of the FOIA.
9. On 28 September 2020, the complainant requested an internal review of the Home Office's decision to rely on section 24 to withhold the report. He argued that the exemption had been applied in a 'blanket fashion' to the report and that it should be possible to redact any information which

¹ <https://www.gov.uk/government/publications/independent-review-of-serious-and-organised-crime>

touched on national security from it, as he believed its main focus was organised crime.

10. The Home Office provided the outcome of the internal review on 10 November 2020. It upheld its decision to apply section 24 of the FOIA to withhold the report.

Scope of the case

11. The complainant contacted the Commissioner on 9 February 2021 to complain about the way his request for information had been handled. He disagreed with the Home Office's decision to apply section 24 to withhold the report. He believed the report was unlikely to contain much information which was genuinely exempt under section 24 because the types of crimes it was concerned with would not have significant national security implications.
12. During the Commissioner's investigation, the Home Office revised its position. It informed him that the report was exempt under section 23(1) of the FOIA. In the event that the Commissioner disagreed, it said section 24 should instead be considered. It said that the report was also exempt under section 31 of the FOIA.
13. Following the combined cases of the *Home Office v Information Commissioner* (GIA/2098/2010) and *DEFRA v Information Commissioner* (GIA/1694/2010) in the Upper Tribunal, a public authority is able to claim a new exemption, either before the Commissioner or the First-tier Tribunal, and both must consider any such new claims.
14. The complainant was notified of the Home Office's revised position and he made submissions against its application of section 23. When doing so, he asked the Commissioner to obtain from the Home Office and publish, in this decision notice, annex C to the Executive Summary, which the published Executive Summary mentioned, but did not reproduce. The Commissioner considers that this does not fall within the scope of the information specified in the request and he has not considered it further in this notice.
15. As it is an absolute exemption, the Commissioner will consider the Home Office's application of section 23(1) of the FOIA to withhold the information requested at part 2) of the request (the unpublished report). In the event that it is not engaged, he will then consider the other exemptions it cited.

Reasons for decision

Section 23 - Information supplied by, or relating to, bodies dealing with security matters

16. Section 23(1) of the FOIA states:

“Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)”.

17. To successfully engage the exemption at section 23(1), a public authority need only demonstrate one of the following:

- that the information was supplied by any of the named security bodies, either directly or indirectly; or
- that the information relates to any of the named security bodies.

18. The ‘named security bodies’ are listed at section 23(3)² of the FOIA.

19. If the requested information falls within either of the above classes, it is absolutely exempt from disclosure under the FOIA. There is no requirement for the public authority to demonstrate that disclosure would result in harm and the exemption is not subject to the public interest test.

20. Although engaging the exemption only requires that information be supplied by, *or* relate to, a named security body, the Home Office explained that the report is composed of information both supplied by, *and* relating to, one or more named security bodies and that this information is embedded throughout the report, meaning that the report could not be disclosed with redactions.

21. The Home Office identified the named security body/bodies in question to the Commissioner and explained why the information was both supplied by, and related to, the body/bodies in question. Consequently, the Home Office said that the report was exempt from disclosure under section 23(1), in its entirety.

22. On being notified that the Home Office had revised its position to apply section 23(1), the complainant made submissions against its application.

² <https://www.legislation.gov.uk/ukpga/2000/36/section/23>

It was his understanding, drawn from the published terms of reference and the Executive Summary, that there would have been limited contributions from named security bodies and that the report instead contained significant contributions from, and relating to, bodies which were not named security bodies. He argued that information concerning them and their contributions would not engage section 23(1):

"I would hope you reach a revised view in the decision notice that much of the report that looked at information provide by the wealth of non security bodies that took part in the review, as evidenced above, and which it relates to cab [sic] be released."

The Commissioner's decision

23. When the Commissioner investigates complaints about the application of section 23(1), he needs to be satisfied that the information was in fact supplied by a security body or relates to such a body. The term '*relates to*' is interpreted widely and includes any information concerning or linked to the activities of a security body. However, the Commissioner expects public authorities to consider whether the withheld information could be disaggregated in order to separate any information that is too remotely connected to a security body and which may be suitable for disclosure.
24. The Commissioner has viewed the withheld information. The report identifies the challenges that serious and organised crime poses to the UK, and it makes a series of recommendations designed to reduce it, and the harm it causes. These recommendations are summarised in the Executive Summary which is publicly available.
25. The Commissioner has considered the Home Office's submissions, which he cannot summarise in this notice without disclosing information which is, itself, exempt. He has also considered the content of the report, and the complainant's submissions. While he understands the point the complainant makes, the exemption at section 23 will be engaged if the withheld information was supplied by, or it relates to, any named security body, regardless of whether it also contains information supplied by, or relating to, bodies which aren't listed in section 23(3) of the FOIA.
26. In this case, the Commissioner is satisfied that the withheld information was both supplied by, *and* it relates to, one or more of the security bodies listed in section 23(3) of the FOIA, in its entirety. The Home Office's submissions on why the report as a whole *relates to* the work of one or more named security bodies are particularly strong. Contrary to what the complainant believes, the connection between the information and the named security body/bodies is not a remote one and it would

not be possible to separate out and disclose information which is not caught by the exemption.

27. Consequently, the Commissioner is satisfied that the Home Office was entitled to rely on section 23(1) of the FOIA to withhold the report in its entirety.
28. As the Commissioner is satisfied that section 23 applies to the report in its entirety, it has not been necessary to consider the application of the other exemptions cited by the Home Office.

Right of appeal

29. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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

Samantha Bracegirdle
Senior Case Officer
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Wycliffe House
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