

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 April 2024

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

Decision (including any steps ordered)

1. The complainant has requested a number of completed High Profile Incident forms. The Home Office refused the request under section 31(1)(c), section 31(1)(g) and section 40(2).
2. The Commissioner's decision is that the Home Office is entitled to rely on section 31(1)(c) of FOIA to refuse to disclose the withheld information.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 27 February 2023, the complainant wrote to the Home Office and requested information in the following terms:

"I'm seeking:

Copies of completed High Profile Incident forms in relation to the following references:

- 2258
- 2457

- 2616
 - 2630
 - 2640
 - 2642
 - 2689
 - 2695
 - 2700
 - 2706"
5. The Home Office responded on 24 April 2023 withholding the requested information citing section 31(1)(e) of the FOIA.
 6. The Home Office conducted an internal review on 6 June 2023 maintaining its original position and also citing section 31(1)(c) and section 40(2) of the FOIA.
 7. During the Commissioner's investigation the Home Office withdrew its application of section 31(1)(e) and stated that it was also applying section 31(1)(g) by virtue of 31(2)(a),(b) and (e) of the FOIA to the withheld information. This was in addition to its reliance on sections 31(1)(c) and 40(2) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 13 June 2023 to complain about the way his request for information had been handled.
9. The Commissioner has considered whether the Home Office is entitled to rely on section 31(1)(c), section 31(1)(g) and section 40(2) of FOIA as its basis for refusing the requested information.

Reasons for decision

Section 31(1)(c) – law enforcement

10. Section 31 of FOIA states:

“(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(c) the administration of justice...”

11. The Commissioner’s guidance¹ on section 31(1)(c) states that the “administration of justice” can refer to a wide variety of judicial bodies and in addition to criminal and civil courts the exemption would also cover coroner’s courts or tribunals.
12. The Home Office explained that the original High Profile Notices (HPN or HPN’s) contain information relating to open cases, where a death is still being investigated and any disclosure would be likely to cause prejudice and damage by hampering open investigations being undertaken by police, health authorities and/or the coroner.
13. The Home Office explained that if a service provider found a dead body and the Home Office recorded the time the body was found in the HPN, that information could be called on later in the event there was a dispute about timing and that it would not want to jeopardise the investigation by having disclosed information publicly in response a request made under FOIA.
14. First, the Commissioner is satisfied that the harm the Home Office envisions relates to the applicable interest within section 31(1)(c) i.e. the administration of justice which includes criminal proceedings.
15. To demonstrate that this exemption (or indeed any other prejudice based exemption) is engaged, it is not sufficient for a public authority to merely assert that prejudice would occur. It must demonstrate how and why that prejudice would (or would be likely to) occur. In particular, it must be able to draw a causal link between disclosure of the withheld information and the claimed prejudice.
16. The Home Office has not discussed in as much detail as the Commissioner might favour how likely it is that the prejudice it envisions will happen – whether it considers that the envisioned prejudice would happen or would be likely to happen. In the absence of any reasoning for the prejudice being more likely to happen than not, the Commissioner will accept that the envisioned prejudice would be likely

¹ [Sections 31\(1\)\(a\) – \(f\): criminal and civil law | ICO](#)

to happen i.e. that there is a real and significant risk of the prejudice occurring.

17. The Home Office has stated that the information contained in the HPN could be relevant and useful to an external investigation and that it could reasonably be expected to provide such information to the police, coroner's courts and tribunals. It argued that any disclosures that would interfere with the efficiency and effectiveness as well as the ability to conduct proceedings fairly would cause prejudice.
18. With respect to the outcome of disclosure predicted by the Home Office, the Commissioner's view is that the lower level of 'would be likely to occur' has been demonstrated.
19. The Commissioner also accepts that there is a clear causal link between the disclosure of the withheld information and the ability to effectively investigate the death of an asylum seeker. This is because the withheld information would provide insight into the specific situations which would be the focus of an investigation.
20. The Commissioner has been provided with copies of the withheld information and is satisfied that the Home Office has demonstrated a causal link between the requested information and the applicable interests relied on, and that disclosure is capable of having a detrimental impact on law enforcement, specifically the administration of justice. With respect to the outcome of disclosure predicted by the Home Office, having considered the arguments put forward by the Home Office, the Commissioner finds section 31(1)(c) is engaged.

Public interest test

21. Section 31 is a qualified exemption. The Commissioner must now consider whether, in all the circumstances of the case, the public interest in maintaining the exemption at sections 31(1)(c) of FOIA outweighs the public interest in disclosing the information requested by the complainant.

Public interest in disclosure

22. The Home Office acknowledged that there will be a public interest in disclosing the information to ensure there is full transparency in the Home Office's approach to accommodating asylum seekers.
23. The Home Office also acknowledged that disclosure of this information would also enable the public to have confidence in the Home Office's approach to the welfare of the asylum seekers and that where any deaths arise in asylum accommodation, that these are properly recorded and investigated.

Public interest in favour of maintaining the exemption

24. The Home Office has confirmed that much of the information contained with the HPN's relate to live police investigations where it is suspected that criminal activity has taken place or where the incident does not involve criminal activity, may be the subject of current or future legal or regulatory investigation such as an inquest.
25. In the Commissioner's view, the fact that there remains live investigations into the deaths of the asylum seekers means the public interest in maintaining the exemption is stronger than the public interest in disclosure. A safe space is needed to allow law enforcement bodies to consider all necessary material away from external interference, commentary and distraction. Clearly, the ongoing investigation could be readily undermined by premature disclosure and this is, of itself, contrary to the public interest.
26. Furthermore, disclosure of these logs would add little to the wider public understanding of asylum in the UK, given the significant information which is already available in the public domain, be that Parliamentary debates, Ministerial statements or other information published by the Home Office.
27. The Commissioner has therefore concluded that the Home Office is entitled to rely on section 31(1)(c) as its basis for withholding the requested information and finds that the public interest in maintaining the exemption outweighs the public interest in disclosure.
28. In the light of the Commissioner's conclusion on section 31, he has not gone on to consider the application of section 31(1)(g) and section 40(2).

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.

Robyn Seery
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF