

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 June 2014

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

Decision (including any steps ordered)

1. The complainant requested information about the operation of Schedule 7 of the Terrorism Act 2000 at London Southend Airport. The Home Office stated that it did not hold this information.
2. Whilst the Commissioner is of the view that the Home Office could have handled the complainant's request better, his decision is that the Home Office stated correctly and in line with section 1(1)(a) of the FOIA that it did not hold the requested information.

Request and response

3. On 13 April 2014 the complainant wrote to the Home Office and requested information in the following terms:

"The below information is requested for London Southend Airport only.

i) How many 'Schedule 7' (of Terrorism Act 2000 as Amended) stops have been made in years 2012, 2013 and YTD 2014?

ii) For the above years, a yearly breakdown of the ethnicity of those stopped.

iii) For the figures in i), and where available, a breakdown of their religion.

iv) Of those stopped, how many were examined and the corresponding breakdowns as described in ii) & iii)".

4. The Home Office responded on 22 April 2014. It stated that it did not hold the requested information as *"Border Force officers do not stop or examine people under Schedule 7 of the Terrorism Act 2000."* The complainant was advised that such stops are carried out by the police and the Home Office suggested that the complainant should redirect his request to Essex Police.
5. The complainant responded on 24 April 2014 and requested an internal review as he did not accept that the Home Office did not hold the information he had requested. Whilst the Home Office responded on 8 May 2014, this response did not appear to be the outcome from a thorough internal review. Instead this response, which was from the same author as the initial response to the request, consisted only of a brief response to one of the points made by the requester when he asked for an internal review to be carried out. The Home Office later confirmed in correspondence with the ICO that it had failed to carry out an internal review.

Background

6. Schedule 7 of the Terrorism Act 2000 concerns the stopping, examination and searching of passengers at ports, airports and international rail terminals.

Scope of the case

7. The complainant contacted the Commissioner on 9 May 2014 to complain about the response to his information request. The complainant argued that the status of the Home Office as the lead government department in relation to the legislation referred to in his request indicated that it must hold the information he requested, as did its publication of statistics relating to Schedule 7 of the Terrorism Act 2000. He also raised the issue of the Home Office appearing to have failed to carry out an internal review.

Reasons for decision

Section 1

8. Section 1(1)(a) of the FOIA provides that a public authority is obliged to confirm or deny whether it holds information that has been requested. Clearly this means that a public authority is required to establish accurately whether it holds information that has been requested.
9. In this case the complainant alleges that the Home Office has stated incorrectly that it does not hold the information he requested, which would be a breach of section 1(1)(a). The task for the Commissioner here is to make a decision as to whether the Home Office was, on the balance of probabilities, correct and in compliance with section 1(1)(a) to state that it did not hold the information requested by the complainant. Making this decision on the basis of the balance of probabilities is in line with the approach taken by the First-tier Tribunal (Information Rights).
10. During the investigation of this case, the Home Office was asked to provide to the ICO an explanation of the searches that were carried out in response to the complainant's request, as well as any other reasons it had for concluding that it did not hold the requested information. The Home Office responded that its efforts to establish whether it held this information consisted of consulting with officials in the area most likely to hold this information to ascertain whether this information was gathered and held by the Home Office. No relevant information was located via this route.
11. Whilst it appears that the search carried out was perfunctory, the position of the Home Office relied more upon its explanation as to why it did not hold this information, even given its responsibilities in relation to the Terrorism Act 2000. It expanded on the point referred to in the response to the complainant about responsibility for actions under Schedule 7 of the Terrorism Act being delegated to the police. It stated that as a result of this, Border Force officers are not involved in stops carried out under Schedule 7 and so the Home Office does not have that level of daily involvement in this area, meaning that it does not record statistics to the level of detail requested by the complainant.
12. The complainant advanced two main arguments as to why he believed that the Home Office must hold the information he had requested. First the complainant referred to the Home Office having lead responsibility for that legislation. Secondly, he argued that the publication of statistics about the use of Schedule 7 by the Home Office must be based on it holding similar information to that he had requested.
13. On the first point, the Home Office did not dispute that Border Force officers, who are Home Office employees, have the legal authority to

take actions under Schedule 7. As covered above, however, it explained that those officers do not take those actions as responsibility to do so is referred to the police.

14. On the issue of the publication of statistics, it stated that those statistics are supplied to it by the Association of Chief Police Officers (ACPO), rather than being based on other information collected and held by the Home Office. It also stated that the statistics provided to it are national only; it is not provided with any localised breakdown.
15. Turning to the Commissioner's analysis of the representations made by the Home Office and by the complainant, he finds it understandable that the complainant would expect this information to be held by the Home Office. It has responsibility for that area of the law and does publish statistics about it. It has also acknowledged that Border Force officers do have the legal basis on which to stop people under Schedule 7.
16. However, the Commissioner notes the explanation from the Home Office that Border Force officers do not take actions under Schedule 7 as this responsibility has been delegated to the police. The Home Office has been consistent about this and the Commissioner is aware of no basis on which to question the response from the Home Office on that point. The Commissioner also accepts that this means it is less likely that the Home Office would hold very detailed localised information about the use of Schedule 7 than would have been the case had this responsibility not been referred to the police.
17. On the issue of the statistics, the Home Office has stated that national information is supplied to it by ACPO; it does not hold any localised breakdown. Having reviewed the information on Schedule 7 that is published by the Home Office, the Commissioner has verified that this is national information; it does not include any localised breakdown. The publication of those statistics is not, therefore, convincing evidence that the Home Office does hold the information requested by the complainant.
18. On the basis of the explanation from the Home Office and in the absence of any evidence that contradicts it, the conclusion of the Commissioner is that the balance of probabilities suggests that the Home Office did not hold the information requested by the complainant. It therefore complied with section 1(1)(a) of the FOIA when stating that this information was not held and is not required to take any action in relation to this request. The Commissioner does, however, have concerns over the handling of this request, which are set out below.

Other matters

19. Section 16 of the FOIA provides that a public authority is under a duty to provide advice and assistance to any person making a request to it. Whilst the Commissioner has found above that the Home Office was correct in stating that it did not hold the information requested by the complainant, he is of the view that it did not handle the request well and that it could have done more to meet its duty to provide advice and assistance.
20. The Commissioner is of the view that the Home Office could have been considerably clearer in its responses to the complainant on why it did not hold the requested information. The Commissioner can see no reason why the explanations provided to his office could not have been provided to the complainant directly. Had the Home Office done so, it may not have been necessary for the complainant to raise this case with the ICO. The Home Office should also have considered whether it would have been appropriate to refer the complainant to ACPO, as well as Essex Police.
21. Furthermore, as mentioned above, the Home Office failed to carry out an internal review despite the complainant asking for this specifically. The Commissioner can see no reason for that failure – the Home Office is well aware of the process of internal reviews – and again would note that this complaint might have been avoided had it taken the internal review request as an opportunity to provide a full explanation as to why it did not hold the requested information.
22. The Home Office must bear in mind its responsibility under section 16. It should ensure that it provides full explanations when responding to requests and carries out an internal review where it is requested to do so.

Right of appeal

23. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

24. 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.
25. 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

Jon Manners
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