

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 1 February 2018

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

#### **Decision (including any steps ordered)**

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1. The complainant requested details of a radio drama produced during the period 2007 to 2009, which he understood to have an anti-extremism message. The Home Office refused to provide any of the requested information, initially citing the exemptions in sections 24(1), national security, and 43(2), commercial interests. It maintained that the public interest for both exemptions favoured withholding the requested information. It later dropped its reliance on section 43(2) and cited section 38(1), health and safety, for parts of the requested information, whilst maintaining that section 24(1) applies to the information requested in its entirety.
2. The Commissioner's decision is that the Home Office was entitled to rely on section 24(1) to refuse to disclose the requested information.
3. The Commissioner requires no steps to be taken.

#### **Background**

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4. 'Prevent' is a key part of the Government's counter-terrorism strategy (CONTEST). Its aim is to reduce the threat to the United Kingdom ('UK') from terrorism by stopping people from becoming terrorists or supporting terrorism. The radio drama referenced by this request was a key part of that.

## Request and response

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5. On 28 December 2016 the complainant wrote to the Home Office and requested information in the following terms:

*"I understand a radio drama was produced that had an anti-extremism message and was overseen by RICU [Research Information and Communications Unit]. This happened during the period of 2007-09. I would like documents concerning the production of this drama that include the following:*

- Writer's brief.*
- Any scripts and storyline for the projects.*
- Website and other counter-terrorism resources that writers were expected to access as background research for the project.*
- Strategy documents concerning the distribution and broadcast of the project.*
- A list of cast, crew and writers employed on the project that would have been added to the program anyway when it was broadcast.*
- Recordings of the completed programmes."*

6. After considering the associated public interest tests, the Home Office provided its full response on 1 February 2017. This explained that the Home Office held some information concerning the production of a radio drama but did not hold the precise information requested.
7. The Home Office considered that the information that was held was exempt from disclosure on the basis of the FOIA exemptions contained in sections 24(1), national security, and 43(2), commercial interests. It maintained that the public interest for both exemptions favoured withholding the requested information.
8. The complainant requested an internal review on 2 February 2017. The Home Office did not respond until 14 June 2017; providing a more detailed explanation, it maintained its original position and explained that the information requested fell under section 24 as it related to the Prevent programme.

## Scope of the case

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9. The complainant contacted the Commissioner on 20 March 2017 to complain about the way his request for information had been handled. His initial complaint concerned the lack of an internal review.
10. Following the Commissioner's intervention, the Home Office completed an internal review on 14 June 2017; the complainant remained dissatisfied with the Home Office's refusal to provide the requested information and complained further to the Commissioner.
11. The complainant highlighted a previous complaint of his about the Home Office (*FS50610847*), for which a decision notice was not issued as the complaint was informally resolved. This concerned a film which was produced for 'Prevent'; this film was screened in workshops for youth and social workers who may work with predominately Muslim clients.
12. In that case, some of the previously withheld information was subsequently disclosed with redactions under a number of exemptions, including section 24(1), ostensibly as the training material had been superseded by another version. In reaching her decision in the case under consideration in this notice, the Commissioner has reviewed the earlier complaint in *FS50610847* but must consider each complaint on its individual merits.
13. The Commissioner began her investigation by writing to the Home Office on 4 July 2017. Having requested an extension in order to provide its investigation response, the Home Office contacted the Commissioner on 15 August 2017 to advise that it had located some further information potentially in scope of the request, and would need some more time to review it.
14. Having reviewed the additional information it had located, and following a further delay, the Home Office provided its investigation response to the Commissioner on 29 September 2017. Whilst it still wished to rely on section 24(1) in respect of all the requested information, it advised it no longer wished to rely on section 43(2). At this point, it also cited section 38(1), health and safety for parts of the withheld information.
15. If, having revisited its handling of a request during the Commissioner's investigation, a public authority cites a new exemption it has not previously relied upon, then it has the responsibility of providing the Commissioner with its further submissions and also of informing the complainant why it considers that the new exemption applies.
16. In this case, the Commissioner asked the Home Office to inform the complainant about its reliance on section 38 of FOIA; however, despite several reminders it did not do so until 8 November 2017.

17. In addition, there was a lack of clarity in relation to the way the withheld information was submitted, which the Commissioner had to query, causing a further delay in this case.
18. The Home Office also advised that it considered two documents it held not to be in scope of the request. Having reviewed that information herself, the Commissioner considers it likely that it does fall in scope because it relates to the radio drama in question.
19. With regard to this complaint, the Commissioner has first considered whether the Home Office was correct to rely on section 24(1) to withhold all the requested information in scope of the request. She will also consider whether the two documents considered by the Home Office to be out of scope, but which she considers are in scope, can be withheld under section 24(1).

## **Reasons for decision**

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20. The Home Office has confirmed it holds information that relates to all of the categories specified by the complainant except for 'recordings'. It advised that the radio drama it considered was referenced in the request was a twenty episode programme which was aired on Preston FM.

## **Section 24 – national security**

21. The Home Office has cited section 24(1) in respect of all the withheld information in this case. It considers the information to be exempt under section 24 because it relates to the Prevent programme. Section 24 provides an exemption from the duty to disclose where this is required for the purposes of national security. Consideration of this exemption involves two stages; first, the exemption must be engaged due to the requirements of national security. Secondly, this exemption is qualified by the public interest, which means that the information must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.
22. 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.
23. The Home Office believes that disclosure of the requested information would reveal information about organisations and individuals who were engaged in the delivery of activities to prevent terrorism, or were supporting them. This would undermine the effectiveness of the Home Office carrying out the Prevent Strategy and hence weaken and

prejudice the national security of the UK. There is a serious terrorist threat to the UK and disclosure of the information requested could put national security at risk by jeopardising or negating efforts to combat terrorism. The Home Office believes that disclosures about the radio drama would have an impact on the future effectiveness of such dramas to counter extremism, as any production companies the Home Office may currently be involved with would be discouraged from engaging if they thought that their involvement would be made public. This would have a detrimental impact upon the Prevent strategy.

24. The Home Office argued that although the drama aired a number of years ago, this does not diminish in any way the arguments for withholding the information. It said that disclosure of the information would reveal the 'operational blueprint' for projects of this nature, given that the Home Office's campaign processes are similar today to that of 10 years ago. More crucially, it would reveal the extent of the involvement of certain organisation(s).
25. The Home Office has argued that given the type of engagement required for 'Prevent', RICU work with a number of partners, including Civil Society Groups and Media Agencies, to deliver counter-narrative communication campaigns. RICU rely heavily on the partnerships it has with these groups to deliver messages which would otherwise not reach target audiences (who are unlikely to engage or listen to government). Release of this type of information carries a high risk that groups would not be willing to work with Prevent/RICU in future. Therefore, the Home Office contended that whilst the Government's involvement in such projects is acknowledged, and to an extent expected, it is the 'how' and the 'who' in terms of the model and cooperation from support groups and the community, which is sensitive in this case.
26. It highlighted that this position is supported by paragraph 11 of the Commissioner's guidance about section 24<sup>1</sup> which states:

*"It is not necessary to show that disclosing the information would lead to the direct or immediate threat to the UK. In a time of global terrorism our national security can depend on cooperating with others. This can involve protecting allies, cooperating with other countries in the fight against terrorism, as well as building relations with other prospective allies. This means that the exemption can be engaged to prevent a disclosure that would have adverse consequences for one of the partners even if*

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1174/safeguarding\\_national\\_security\\_section\\_24\\_foi.pdf](https://ico.org.uk/media/for-organisations/documents/1174/safeguarding_national_security_section_24_foi.pdf)

*disclosure would not result in a direct or immediate risk of attack on the UK or its citizens”.*

27. The Home Office argued that if disclosing the operational blueprint showing how specific parts of the Home Office work with others to prevent terrorism could potentially prejudice those efforts, *“then that is real risk which needs to be acknowledged.”*
28. The Commissioner has examined the Home Office’s reasons for considering that section 24 applies. The arguments it has provided concern disclosure being detrimental to the Prevent strategy, the aim of which is to prevent terrorism. As such, they are clearly relevant to national security, which is at the heart of section 24 of FOIA.
29. However, as set out at paragraph 22 above, section 24 of FOIA will only be engaged if exemption from disclosure is “reasonably necessary” for the purpose of safeguarding national security.
30. In any case where the possible release of counter-terrorist related recorded information is under consideration, the likelihood of those materials being exploited by extremist individuals and groups will be relevant. In this case, it is likely that there would be extremist individuals and groups that would seek to exploit the disclosure of the information in question, to the detriment of the Government’s counter-terrorist efforts.
31. A potential counter argument against withholding the requested information could be made that the radio drama was aired. However, airing of the drama would not reveal which counter-terrorism groups were involved, nor how they were involved. Further the Commissioner does not consider the drama being aired to be equivalent to its full and unrestricted disclosure into the public domain in response to this request made under the FOIA.
32. The Commissioner has considered whether it would be possible to disclose a redacted version of the requested information, rather than withholding it in its entirety. However, the Commissioner considers that redaction and a partial disclosure would not be practicable in this case. The nature of the information means that it would not be possible to redact part of the content whilst still addressing the concerns set out above.
33. Taking all the above into account, the Commissioner’s view is that in this case, exemption from the duty to disclose in relation to the information in question is reasonably required for the purposes of national security. She therefore considers that the exemption provided by section 24(1) of FOIA is engaged. She is also satisfied that the two

documents considered to be out of scope by the Home Office, but which she finds are in scope, also engage section 24(1).

*Balance of the public interest*

34. Section 24 is a qualified exemption and so it is nevertheless necessary to consider whether the public interest favours maintaining the exemption or disclosing the information.
35. In forming a conclusion on the balance of the public interest in this case, the Commissioner has taken into account the considerable public interest inherent in the maintenance of the particular exemption, as well as the specific factors that apply in relation to the requested information.

*Public interest arguments favouring disclosure*

36. The arguments considered in this decision notice surround the need to protect the requested information due to its subject matter. However, conversely, the Commissioner recognises that there is also a strong public interest in disclosure of the requested information because of its subject matter. The Commissioner's view is that any information that details the anti-terrorist efforts being made by the Government will be the subject of considerable public interest in order to improve knowledge, understanding and confidence in the work being undertaken by the Government in this vital area.
37. The Home Office recognises that there is a general public interest in transparency and openness in government. Such openness would increase public understanding and inform public debate. In the context of this request, it recognises that there is a legitimate interest in knowing where counter terrorism efforts are focused, and who the Home Office may have engaged with in order to implement and deliver Prevent and other counter terrorist objectives. Further, it would reveal whom the Home Office collaborated with during this particular campaign, which would show that the views of various groups had been taken into account and had supported this initiative. This would provide the public with reassurance that the drama was well balanced and had the support of stakeholders.

*Public interest arguments favouring maintaining the exemption*

38. In any situation where section 24(1) is found to be engaged, the Commissioner must recognise the public interest inherent in this exemption. Safeguarding national security is a matter of the most fundamental public interest; its weight can be matched only where there are also equally fundamental public interests in favour of disclosure of the requested information.

39. Disclosure of the requested information would reveal information about organisations and individuals who were engaged supporting activities to prevent terrorism. Disclosures about radio dramas would have an impact on the future effectiveness of such dramas to counter extremism, as any production companies the Home Office was currently involved with would be discouraged from engaging if they thought that the detail of their involvement would be made public and this would have a detrimental impact upon Prevent.
40. The Home Office has also argued that disclosure of the information in scope of the request would reduce the credibility of organisations involved in the production with their audience. Whilst the Commissioner does not regard this as a strictly section 24 public interest factor the Home Office has gone on to argue that this would discourage others from engaging and contributing towards the Home Office agenda. These factors would serve to undermine the effectiveness of the Home Office, and hence weaken and prejudice the national security of the UK. There is a serious terrorist threat to the United Kingdom and disclosure of the information requested could put national security at risk by jeopardising or negating the Government's efforts to prevent acts of terrorism and terrorist related crime.

*Balance of the public interest*

41. In this case the public interest in the maintenance of the exemption concerns preserving the ability of the Home Office (as a key player in the Prevent strategy) and the Government as a whole, to pursue their anti-terrorism strategies. The Commissioner finds the public interest in these efforts not being undermined or circumvented weighs overwhelmingly in favour of the maintenance of the exemption.
42. In conclusion, the Commissioner has recognised public interest of considerable weight in favour of disclosure given the subject matter of the requested information. She does not, however, consider that it matches the weight of the public interest in avoiding a disclosure that could be detrimental to national security. The finding of the Commissioner is, therefore, that the public interest in the maintenance of the exemption outweighs the public interest in disclosure and that the Home Office was not obliged to disclose the requested information.
43. As the Commissioner has determined that the Home Office was entitled to rely upon section 24 of FOIA to withhold the information in its entirety, she has not gone on to consider the other exemptions it cited.



## Other matters

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44. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As she has made clear in her '*Good Practice Guidance No 5*', the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 90 working days for an internal review to be completed, despite the publication of her guidance on the matter.
45. The Commissioner would remind the Home Office of the need to respond promptly to her investigation, and to notify complainants straightaway where it seeks to rely on a new exemption(s) not previously cited.

## Right of appeal

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46. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

47. 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.
48. 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 .....**

**Gerrard Tracey**  
**Principal Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**