

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 December 2018

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

Decision (including any steps ordered)

1. The complainant requested copies of a number of reports produced by the Extremism Analysis Unit. The Home Office refused this request, citing the exemption provided by section 35(1)(a) (formulation or development of government policy) of the FOIA.
2. The Commissioner's decision is that the Home Office cited section 35(1)(a) correctly and so it was not obliged to disclose the requested information.

Request and response

3. On 19 April 2017 the complainant wrote to the Home Office and requested information in the following terms:

"Under the Freedom of Information Act, please provide copies of the following reports by the Extremism Analysis Unit:

The Far and Extreme Right Wing in the UK

Islamist Political Participation

Update to Islamist Political Participation

Ideologies of the Far and Extreme Right

Extreme Right Wing Speaking Events

Sikh Marriage Disruptions"

4. After a delay, the Home Office responded on 26 May 2017. It stated that the requested information was held, but refused the request under the exemption provided by section 35(1)(a) (information relating to the formulation or development of government policy) of the FOIA.
5. The complainant responded on 31 May 2017 and requested an internal review. The Home Office responded with the outcome of the review on 1 August 2017. The conclusion of this was that the refusal of the request under section 35(1)(a) was upheld, although the Home Office did provide the dates of publication of the reports listed in the request, which the complainant had asked for when requesting an internal review.

Scope of the case

6. The complainant contacted the Commissioner on 2 August 2017 to complain about the refusal of his information request. The complainant disputed whether it was necessary to withhold the entirety of the requested reports and suggested that it should be possible to disclose at least some parts of the reports.
7. The Commissioner contacted the Home Office on 17 November 2017 for further explanation about the refusal of the request. The Home Office responded on 15 December 2017 with its reasoning and also stated that its position continued to be that it was necessary to withhold the reports in their entirety and that no disclosure of excerpts was possible.
8. The complainant argued that it should have been possible for the reports to be disclosed in redacted form. However, the Commissioner agrees with the Home Office that a part disclosure would not be practical in this case. The nature and content of the information mean that the reasoning as to whether section 35(1)(a) is engaged and on the balance of the public interest can only sensibly be applied in relation to the entirety of the withheld information, rather than considered separately for excerpts of it. The following analysis therefore covers the entire contents of the requested reports and does not address any part of these separately.

Reasons for decision

Section 35

9. Section 35(1)(a) of the FOIA provides an exemption for information that relates to the formulation or development of government policy. Consideration of this exemption involves two stages. First, the exemption must be engaged as the information in question falls within the class described in this section. 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.
10. As to whether this exemption is engaged, the question here is whether the information in question relates to the formulation or development of government policy. The reasoning from the Home Office was that the withheld information was produced to inform government policy on counter-extremism and hence relates to the formulation and development of government counter-extremism policy in the areas covered in the reports.
11. The Government's Counter-Extremism Strategy document describes the Extremism Analysis Unit (EAU) as having been established "*to support all government departments and the wider public sector to understand wider extremism issues so they can deal with extremists appropriately.*"¹
12. The withheld information consists of the reports by the EAU listed in the request. Having reviewed the withheld information, the Commissioner notes that they provide assessments of activity in the subject matter areas covered in the reports. The Home Office reasoning for the citing of section 35(1)(a) was that the reports were for the purpose of informing government policy on counter-extremism efforts in these areas. The Commissioner accepts that this reasoning is borne out by the role of the EAU and by the content of the withheld information and so concludes that the exemption provided by section 35(1)(a) of the FOIA is engaged.
13. Having found that the exemption is engaged, the next step is to consider the balance of the public interest. Section 35(1)(a) is a qualified exemption, so that, even though the exemption is engaged, the

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470088/51859_Cm9148_Accessible.pdf

information must nevertheless be disclosed if the public interest in maintaining the exemption does not outweigh that in disclosure. In forming a conclusion on the public interest balance in this case, the Commissioner has taken into account the general public interest in the transparency and openness of the Home Office, as well as factors that apply in relation to the specific information in question.

14. Covering first arguments in favour of maintenance of the exemption, when considering the balance of the public interest in relation to section 35(1)(a) the Commissioner will generally always consider it relevant to take into account the public interest in preserving a degree of confidentiality in the policy making process. This is due to the possibility of harm to the quality of that process if those involved were not confident that their contributions would remain confidential where appropriate.
15. The Commissioner recognises that the argument concerning the preservation of a safe space within which to carry out the policy making process is, in general, valid on the grounds that this will assist in the open discussion of all policy options, including any that may be considered politically unpalatable. However, the weight that this argument carries in each case will vary, depending on the circumstances.
16. In this case the Commissioner takes into account that the information in question relates to counter-extremism; a highly sensitive and controversial area of government policy making. The Commissioner recognises that there is a very strong public interest in the preservation of a safe space in which to carry out policy making on counter-extremism related matters. This is in order that policy consideration can be fully uninhibited and deliver the best outcomes in this vitally important area.
17. The age of the information in question and the stage reached in the policy formulation process is relevant when considering safe space. The reports in question were published between approximately one to two years prior to the date of the request. It could be argued that the age of this information indicates that the policy formulation process relating to these will have been complete by the time of the request and so the preservation of the safe space was no longer necessary. The Commissioner, however, recognises that policy formulation in relation to these matters is an ongoing process and accepts that the reports were still relevant to that process at the time of the request. Whilst this does not mean that there is an indefinite requirement for this safe space, the Commissioner accepts that there remained a public interest in preserving that space at the time of the request. Preserving the safe

space for this policy formulation process is a valid and weighty factor in favour of maintenance of the exemption in this case.

18. As to the specific content of the reports, these give a detailed analysis of activity in each of the areas covered. The Commissioner accepts that this content is of great sensitivity, particularly in terms of how individuals involved in the activities are likely to react to this content, and how others who object to those activities may react. The relevance of this to the interest that section 35(1)(a) is intended to protect – effective government policy making – is that the Commissioner also accepts that for assessments by the EAU to effectively inform the policy making process, which she considers is in the public interest, they must be full and frank. The Commissioner further recognises that the preservation of the safe space for this work will assist in ensuring that these assessments continue to be full and frank and counts this as a public interest factor in favour of maintenance of the exemption.
19. However, that the information in question relates to policy making in the area of counter-extremism can also be cited as a public interest argument in favour of disclosure of the information. There is a strong and legitimate public interest in disclosure of information relating to counter-extremism efforts in order to enhance public knowledge and understanding of the work of government in this area. This weighs in favour of disclosure of the information in question in this case.
20. In conclusion, the Commissioner has recognised that there is a strong public interest in disclosure of the information in question owing to its subject matter. She has also, however, recognised that there is weighty public interest in the Home Office being able to carry out this policy making process effectively, which may be disrupted if the safe space for carrying out that process is not maintained. The view of the Commissioner is that the public interest in avoiding that disruption tips the balance in favour of maintenance of the exemption for the time being. Her decision is, therefore, that at the date of the request the public interest in the maintenance of the exemption outweighed the public interest in disclosure. The Home Office was not, therefore, obliged to disclose the requested information.

Other matters

21. The delay in responding to the complainant's information request has been recorded separately. The issue of delayed responses by the Home Office may be revisited should evidence from other cases suggest that this is necessary.

Right of appeal

22. 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

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

23. 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.
24. 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

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