

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 June 2020

**Public Authority:** London Borough of Croydon  
**Address:** Bernard Weatherill House  
8 Mint Walk  
Croydon  
CR0 1EA

### Decision (including any steps ordered)

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1. The complainant submitted two requests to the London Borough of Croydon (the Council) seeking information about whether two named organisations had received funding to delivery Prevent training and programmes. The Council refused to confirm or deny whether it held information falling within the scope of the requests on the basis of section 24(2) (national security) of FOIA.
2. The Commissioner has concluded that the Council is entitled to rely on section 24(2) of FOIA to refuse to confirm or deny whether it holds any information falling within the scope of either request and that in all the circumstances of the case the public interest favours maintaining this exemption for each request.
3. No steps are required.

### Request and response

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4. The complaint submitted the following request to the Council on 23 July 2019:

*'I would like to request the following information about the Empowering Minds Consultancy LTD.*

1. *Will Empowering Minds Consultancy LTD receive funding for their 'Empowering Mothers against grooming and radicalisation' project for 2019/20 financial year?*

*2. If so, how much funding will Empowering Minds Consultancy LTD receive for their 'Empowering Mothers against grooming and radicalisation' project for 2019/20?*

*3. How many cohorts will the Empowering Minds Consultancy be delivering in 2019/20 as part of their 'Empowering Mothers against grooming and radicalisation' project?*

*4. Which areas in Rotherham [sic] will Empowering Minds Consultancy be delivering in 2019/20 as part of their 'Empowering Mothers against grooming and radicalisation' project?*

*5. What are the projected outcomes of the 'Empowering Mothers against grooming and radicalisation'?*

*6. Can you provide us with the course materials that are being used to deliver the 'Empowering Mothers against grooming and radicalisation' project?*

*Sections (Section 24 (1) and 31 (1) (a) Section 38(1) (b) Section 43 Section 24 (1) and 31 (1) (a) citing commercial interests, national security and personal safety for refusal to answer an FOI are not applicable in the case of this request. Empowering Minds Ltd and Sofia Mahmood have appeared in press openly discussing Prevent and the programme 'Empowering mothers against radicalisation.' They have also disclosed they are Home Office-funded.'*

5. She then submitted the following request on 6 August 2019:

*'I would like to request the following information about Aurety Limited.*

*1. Will Aurety Limited receive funding for their 'Mothers Safeguarding champions' programme for 2019/20 financial year?*

*2. If so, how much funding will Aurety Limited receive for their Mothers Safeguarding champions' programme for 2019/20?*

*3. How many cohorts will the Aurety Limited be delivering in 2019/20 as part of their 'Mothers Safeguarding champions' programme?*

*4. Which areas in Croydon will Aurety Limited be delivering in 2019/20 as part of their 'Mothers Safeguarding champions' programme?*

*5. What are the projected outcomes of the 'Mothers Safeguarding champions' programme?*

*6. Are Tell Mama or Faith Matters delivery partners of the programme or involved in anyway and if so, how?*

*7. To provide us with the course materials that are being used to deliver the 'Mothers Safeguarding champions' programme?*

*Sections (Section 24 (1) and 31 (1) (a) Section 38(1) (b) Section 43 Section 24 (1) and 31 (1) (a) citing commercial interests, national security and personal safety for refusal to answer an FOI are not applicable in the case of this request. Aurety Ltd and Javeria Coleridge have appeared in press openly discussing Prevent and the programme 'Mothers Safeguarding champions' programme. They have also disclosed they are Home Office-funded.'*

6. The Council responded to both requests on 12 September 2019 and refused to confirm or deny whether it held any information falling within the scope of the requests on the basis of section 24(2) (national security) of FOIA.
7. She contacted the Council on 12 September 2019 and asked it to review this decision.
8. The Council informed her of the outcome of the internal review on 13 October 2019. The review upheld the application of section 24(2) to both requests.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 18 October 2019 about the Council's handling of her requests. She disputed the Council's reliance on section 24(2) of FOIA as a basis to refuse her requests and argued that the public interest favoured disclosure of the requested information.
10. In relation to these complaints it is important to note that the right of access provided by FOIA is set out in section 1(1) and is separated into two parts. Section 1(1)(a) gives an applicant the right to know whether a public authority holds the information that has been requested. Section 1(1)(b) gives an applicant the right to be provided with the requested information, if it is held. Both rights are subject to the application of exemptions.
11. As explained above, the Council is seeking to rely on section 24(2) to neither confirm nor deny (NCND) whether it holds information falling within the scope of the two requests. Therefore, this notice only considers whether the Council is entitled, on the basis of this exemption, to refuse to confirm or deny whether it holds the requested information.

The Commissioner has not considered whether the requested information – if held – should be disclosed.

## Reasons for decision

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### Section 24 – national security

12. Section 24(2) provides an exemption from the duty to confirm or deny where this is required for the purpose of safeguarding national security.
13. FOIA does not define the term national security. However in *Norman Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045 4 April 2007) the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords' observations as follows:
  - 'national security' means the security of the United Kingdom and its people;
  - the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
  - the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
  - action against a foreign state may be capable indirectly of affecting the security of the UK; and,
  - reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.
14. The approach that the Commissioner takes to the term 'required' as it is used in this exemption is that this means 'reasonably necessary'. In effect this means that there has to be a risk of harm to national security for the exemption to be relied upon, but there is no need for a public authority to prove that there is a specific, direct or imminent threat.
15. Therefore, section 24(2) is engaged if the exemption from the duty to confirm or deny is reasonably necessary for the purpose of safeguarding national security. The Commissioner considers that section 24(2) should be interpreted so that it is only necessary for a public authority to show either a confirmation or a denial of whether requested information is held would be likely to harm national security.

### The Council's position

16. The Council's rationale for relying on section 24(2) focused on the consequences that complying with section 1(1)(a) of FOIA would have on the Prevent programme. The Council emphasised that there is a serious terrorist threat to the United Kingdom and Prevent is one of the four strands of the government's CONTEST Counter Terrorism Strategy. The Council argued that weakening the effectiveness of projects, delivered under the Prevent programme, which were designed to protect vulnerable Croydon citizens from becoming terrorists increases the risk that radicalisation and support for terrorism goes unchallenged, which would have an adverse impact on the UK citizens' and national security.
17. In support of this argument the Council explained that its policy is to NCND whether an organisation works with the Prevent programme if it had not officially confirmed that they work with external providers. The Council emphasised that Prevent local delivery is dependent on civil society organisations (CSOs) to reach at risk communities and help prevent vulnerable individuals from being radicalised - becoming terrorists or supporting terrorism. It explained that due to the controversial nature of the programme CSOs may be concerned about reputational damage, both generally and within the vulnerable communities they are trying to engage with, if they are publicly linked with Prevent. Therefore, there is a significant risk that fear of having their identity unilaterally disclosed via a FOI request would make some project providers less willing to work with Prevent. The Council argued that this would force it to draw from a smaller pool of providers and the lack of choice means that the Council may be forced to contract substandard projects due to limited alternatives. The Council explained that adopting a NCND approach to such requests mitigates this risk as it reassures providers which want to keep their involvement with Prevent secret that their identities will not be disclosed via FOI. Therefore, the Council will NCND even when the provider is officially linked with Prevent in other council areas across the country.
18. In response to the complainant's arguments, which are detailed below, the Council explained that its Prevent team will only disclose that it is working with external organisations to a restricted audience, and on a need-to-know basis. This is not disclosed publicly. Furthermore, in terms of any advertising or promotion, the Prevent team will either inform the participants directly or communicate to a restricted audience about the opportunity to collaborate on a project. Finally, the Council explained that it did not publish details of supplier payments regarding such information as the requirement to publish is based on the Ministry of Housing, Communities and Local Government transparency code. The Council explained that the code states that information does not have to be published if it '*would otherwise fall within one of the exemptions from disclosure under the Freedom of Information Act 2000*'.

The complainant's position

19. The complainant argued that confirming whether or not the requested information was held would not undermine the delivery of the Prevent programme and in turn harm national security.
20. In support of this position she pointed to the information already in the public domain about the two companies covered by her request noting they had both appeared in the press discussing work they had undertaken involving Prevent.
21. She also emphasised that information regarding organisations delivering Prevent programmes was available in the public domain, predominantly through the advertising of the programme but also after delivery through council supplier payments reports.

### The Commissioner's position

22. The Commissioner accepts that Prevent has attracted some controversy and she also acknowledges that it encompasses a range of different activities some more sensitive and thus understandably requiring greater anonymity than others. In light of the controversial nature of Prevent, and taking into account the submissions provided to her by the Council, the Commissioner is persuaded that if the Council complied with section 1(1)(a) of FOIA in relation to these requests this could result in *some* CSOs being unwilling – or at least less willing – to offer to undertake the delivery of such programmes in the future. Moreover, she also accepts the premise of the Council's argument that its ability to deliver Prevent programmes would be undermined by such an outcome.
23. In reaching this conclusion the Commissioner acknowledges that there is some information in the public domain about the work the two organisations do in relation to Prevent. Empowering Minds website specifically confirms that they are involved in delivering Prevent training and there are some limited press articles about Autrey which imply that it has also delivered such training. However, it is the Commissioner's understanding that neither organisation has confirmed whether or not they have been working in the London borough of Croydon. Therefore, by complying with section 1(1)(a) the Council would be revealing information about these organisations that it has not previously been in the public domain. That is to say, whilst the CSOs in question have been linked to Prevent training they have not confirmed that they have actually delivered such training in Croydon (if indeed that is the case). Consequently the Commissioner is satisfied that compliance with section 1(1)(a) would still be likely, despite the information already in the public domain, to put off other CSOs from offering Prevent training if they considered that their involvement with a particular local authority would be revealed in response to a FOI request.



24. Furthermore, the Commissioner has previously considered a number of related complaints submitted to her by the complainant regarding other London boroughs. The complainant has submitted the same requests to these councils who also refused to confirm or deny whether they held the requested information on the basis of section 24(2) of FOIA.
25. As part of her investigation of those complaints these councils, in addition to advancing the arguments set out above, also argued that complying with section 1(1)(a) in relation to this request would allow for a geographical 'threat map' to be built up.<sup>1</sup> That is to say the release of local area data such as that which had been requested could, when obtained for other areas within London and or nationally, also build up a wider picture of where such programmes are most active or not active. In turn this would allow someone with the intention to do harm to identify either weaknesses in areas where there is little Prevent programme running, or conversely areas where a high level of Prevent work may indicate a high level of residents who may be targeted.
26. As the Commissioner explained in her previous decision notices, she considers such concerns about a geographical threat map being potentially created to be a valid one. Moreover, she considers it one that is equally applicable to the requests which are the subject of this decision notice. In the Commissioner's view complying with section 1(1)(a) in response to one request may not be particularly harmful in terms of undermining the delivery of Prevent in Croydon. However, the Commissioner accepts that there is a risk that through a series of FOI requests a motivated individual with malicious intent could build up a detailed picture across London, or more broadly, across the UK, of where dedicated Prevent training has been delivered by particular CSOs. Furthermore, the Commissioner accepts that such a process could undermine the effectiveness of the Prevent programme in the ways identified in her previous decision notices.<sup>2</sup> In reaching this conclusion she acknowledges that the threats to the UK from terrorism are clearly real.
27. With regard to whether refusing to comply with section 1(1)(a) is *necessary* in order to protect national security, the Commissioner has concluded that it is. She has reached this finding given the cumulative effect of fewer CSOs being willing to deliver Prevent programmes *and* the risk of a geographical threat map being created if the Council

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<sup>1</sup> See decision notice [FS50882456](#), paragraph 34.

<sup>2</sup> See again paragraph 34 of decision notice [FS50882456](#).

complied with these requests and confirmed whether or not it held the requested information.

28. In addition to these factors, in reaching this conclusion the Commissioner has also taken into account the importance of NCND provisions being applied consistently in order for them to be effective. That is to say there are situations where a public authority will need to use the neither confirm nor deny response consistently over a series of separate requests, regardless of whether it holds the requested information. Otherwise, if the same (or same type of) requests were made on several occasions, a changing response could reveal whether information was held. The Commissioner considers that such concerns apply in this case.
29. Finally, in reaching this conclusion the Commissioner has taken into account the complainant's submissions summarised at paragraphs 19 to 21. However, as the Council explained any publicity around its Prevent courses would be limited and not equivalent to disclosure under FOIA. Furthermore, the Commissioner notes that the Council has explained that it would not include details any such payments in its transparency disclosures.
30. The Commissioner has therefore concluded that section 24(2) is engaged.

*Public interest test*

31. Section 24(2) is a qualified exemption. Therefore, the Commissioner is required to consider whether, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in confirming whether the Council holds the requested information.
32. The complainant argued that there was a clear public interest in the disclosure of the requested information as it provides assurance that the Prevent agenda and contracts that are awarded are appropriate and effective.
33. The Council argued that it was clearly against the public interest to jeopardise the delivery of any counter-terrorism strategy, and, as a result jeopardise the national security of the UK and its citizens. It was therefore of the view that public interest favoured maintaining the exemption contained at section 24(2) of FOIA.
34. The Commissioner agrees that there is a clear public interest in local authorities being open and transparent about how they are deliver training within their area given the role that Prevent plays in UK's CONTEST strategy. Furthermore, the Commissioner acknowledges that in light of the arguably controversial nature of Prevent, the importance



of such transparency should not be underestimated. However, the Commissioner agrees with the Council that there is a very strong public interest in ensuring that the national security of the UK is not compromised. Given the risks that complying with section 1(1)(a) in respect of these requests presents to the delivery of Prevent, not just in Croydon, but more broadly, she has therefore concluded that the public interest favours maintaining the exemption contained at section 24(2) of FOIA.

## Right of appeal

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

36. 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.

37. 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 .....**

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**