

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 December 2021

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

Decision (including any steps ordered)

1. The complainant has requested a copy of the Declaration of Intent between the UK and France, agreeing a coordinated approach to tackling migrant smuggling. The Home Office refused to disclose the information, citing sections 23(1) (Information supplied by, or relating to, bodies dealing with security matters), 27(1)(a) (International relations) and 31(1)(a) (Law enforcement) of the FOIA.
2. The Commissioner's decision is that the Home Office was entitled to rely on section 23(1) of the FOIA to withhold the information. However, in taking excessive time to conduct the internal review, he found that the Home Office did not act in accordance with the code at section 45 of the FOIA.
3. The Commissioner requires no steps as a result of this decision.

Background

4. The GOV.UK¹ website states that the Declaration of Intent was signed when the UK Home Secretary met her French counterpart on 12 July
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¹ <https://www.gov.uk/government/news/priti-patel-and-new-french-interior-minister-agree-action-on-channel-crossings>

2020. Both ministers expressed their commitment to put a stop to small boat crossings. The Declaration committed both countries to the creation of a joint intelligence cell, which works to deter and dismantle the organised criminal gangs facilitating these journeys.

Request and response

5. On 19 August 2020, the complainant wrote to the Home Office and requested information in the following terms:

"I am writing to make a freedom of information request for the following:

- A copy of the Declaration of Intent agreed between the UK and French governments, as announced on 12 July 2020.*
- Any other document(s) setting out the mandate and powers of the Franco-British Operational Research Unit to combat migrant smuggling, announced on the same day."*

6. The Home Office responded on 19 October 2020. It refused the first part of the request under sections 23(1) (Information supplied by, or relating to, bodies dealing with security matters), 27(1)(a) (International relations) and 31(1)(a) (Law enforcement) of the FOIA.
7. As regards the second part of the request, it said, *"the declaration is the only document which exists at present which sets out the mandate and powers of the Research Unit"*.
8. On 20 October 2020, the complainant requested an internal review of the decision to withhold the Declaration of Intent. He expressed the view that similar agreements had previously been made public by the Home Office, and that there appeared to be no compelling reason why this one should be withheld.
9. The Home Office provided the internal review on 26 February 2021, maintaining its application of the exemptions.

Scope of the case

10. The complainant initially contacted the Commissioner on 9 February 2021, to complain that the Home Office had not provided the outcome of the internal review. Following the Commissioner's intervention, on 19 February 2021 the Home Office provided the outcome of the internal review.

11. On 9 March 2021, the complainant again contacted the Commissioner to complain about the outcome of the internal review. He disagreed with the Home Office's decision to refuse his request for a copy of the Declaration of Intent. He did not query the response to the second part of his request, ie no information held, so this has not been further considered.
12. The Commissioner will consider the Home Office's application of section 23(1) of the FOIA first. In the event that that exemption is not engaged, he will consider the other exemptions it cited.

Reasons for decision

Section 23 - Information supplied by, or relating to, bodies dealing with security matters

13. Section 23(1) of the FOIA states:

"Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)".

14. To successfully engage the exemption at section 23(1), a public authority need only demonstrate one of the following:
 - that the information was supplied by any of the named security bodies, either directly or indirectly; or
 - that the information relates to any of the named security bodies.
15. The 'named security bodies' are listed at section 23(3)² of the FOIA.
16. If the requested information falls within either of the above classes, it is absolutely exempt from disclosure under the FOIA. There is no requirement for the public authority to demonstrate that disclosure would result in harm and the exemption is not subject to the public interest test.
17. The Home Office explained to the Commissioner that the Declaration of Intent sets out a coordinated approach to dealing with gangs facilitating illegal crossings and people smuggling, through the creation of a Franco-British Operational Research Unit (ORU).

² <https://www.legislation.gov.uk/ukpga/2000/36/section/23>

18. It said that the Declaration of Intent contains information which relates to the security bodies listed in section 23(3) of the FOIA. It identified the security body/bodies in question and explained why the information related to them. Consequently, the Home Office said that the information was exempt from disclosure under section 23(1), in its entirety.

The Commissioner's decision

19. The term '*relates to*' is interpreted widely and includes any information concerning or linked to the activities of a security body.
20. The Commissioner has viewed the withheld information, which contains information about the ORU. Having had regard to the Home Office's submissions, he is satisfied that the withheld information relates to the security bodies listed in section 23(3) of the FOIA, in its entirety.
21. Consequently, the Commissioner is satisfied that the Home Office was entitled to rely on section 23(1) of the FOIA to withhold the Declaration of Intent.
22. As set out in paragraph 16, if engaged, then the exemption at section 23 is absolute, and so there is no requirement to consider the points the complainant has raised regarding previous disclosures.
23. As the Commissioner is satisfied that section 23 applies to the Declaration of Intent in its entirety, it has not been necessary to consider the application of the other exemptions cited by the Home Office.

Other matters

24. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Internal review

25. There is no obligation under the FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one, the code of practice established under section 45 of the FOIA sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales.
26. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in

exceptional circumstances. In no case should the internal review exceed 40 working days.

27. The complainant asked for an internal review of his request on 20 October 2020 and the Home Office provided the outcome of the internal review on 26 February 2021, 90 working days later.
28. The Commissioner considers that in failing to conduct an internal review within the timescales set out above, the Home Office has not acted in accordance with the section 45 code.
29. The Commissioner uses intelligence gathered from individual cases to inform his insight and compliance function. This aligns with the goal in his draft "Openness by design"³ strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting systemic non-compliance, consistent with the approaches set out in his "Regulatory Action Policy"⁴.

³ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

⁴ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

30. 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

31. 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.
32. 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

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