

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

### **Decision notice**

**Date:** 24 November 2022

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

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

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1. The complainant has requested information relating to payments made to a third party.
2. The Home Office refused to confirm or deny whether the requested information was held, citing section 24(2) (national security), section 31(3) (law enforcement) and section 43(3) (commercial interests).
3. The Commissioner's decision is that the Home Office is entitled to rely upon section 24(2) to refuse to confirm or deny whether the requested information is held.
4. The Commissioner does not require the public authority to take any steps.

## Request and response

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5. On 3 May 2022, the complainant wrote to the Home Office ('HO') and requested the following information:  
  
"Under the Freedom of information Act would you provide the following information relating payments made to [Redacted] for a period of 5 years from 1st May 2017  
  
Confirm if payments have been to [Redacted]  
  
The number of payments made to [Redacted]  
  
The total amount paid."  
  
6. The HO responded on 24 June 2022. It refused to confirm or deny whether the requested information was held, citing section 24(2) (national security), section 31(3) (law enforcement) and section 43(3) (commercial interests).  
  
7. The complainant requested an internal review on 27 June 2022.  
  
8. The HO provided the outcome of the internal review on 26 July 2022, upholding its previous position.

## Reasons for decision

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9. The Commissioner has previously dealt with a similar case, FS50870302<sup>1</sup>. In that case, the Home Office also applied section 24(2).
10. Section 24(1) of FOIA states that information is exempt if it is required for the purpose of national security.
11. Section 24(2) states that a public authority may refuse to confirm or deny whether it holds information (whether it holds it or not) if providing that confirmation or denial would, in itself, reveal information that is exempt under section 24(1).

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<sup>1</sup> [FS50870302 \(ico.org.uk\)](https://ico.org.uk/casework/cases/FS50870302)

12. National security means the security of the United Kingdom and its people. FS50870302 includes a detailed analysis on the application of section 24(2). The Commissioner doesn't deem it necessary to replicate that analysis here.
13. In order to provide the information the complainant has requested, the Home Office needs to either confirm or deny that it holds the relevant recorded information. In other words, the Home Office has to either confirm or deny that it has approached, or employed, the organisation named in the request.
14. The Commissioner notes that the organisation in question is known for its spyware software.
15. The Home Office is concerned that providing this confirmation or denial has the potential to provide extremists or terrorists with a more detailed insight into national security matters, which may be exploited.
16. Disclosure under FOIA is disclosure to the world at large. The Commissioner's guidance on section 24 states 'terrorists can be highly motivated and may go to great lengths to gather intelligence. This means there may be grounds for withholding seemingly harmless information on the basis that it may assist terrorists when pieced together with other information they may obtain.'
17. If a public authority is likely to receive numerous similar requests, it needs to make sure that it is consistently refusing to confirm or deny whether the information is held. If, for example, the Home Office was inconsistent in its handling of such requests, a pattern would develop which effectively signposts which organisations, in which fields, the Home Office is engaging with. Therefore, the Home Office's refusal to confirm or deny that the requested information is held should not be taken as evidence that the information is or is not held.
18. With this in mind the Commissioner considers that the exemption is engaged, and therefore, he has gone onto consider the public interest test.
19. On the one hand, confirmation or denial would provide transparency about the types of organisations the Home Office employs. On the other hand, the information is required for national security.
20. Whilst the public may be interested to know if the Home Office has utilised this particular spyware software, the Commissioner doesn't consider the public interest in confirmation or denial outweighs the need to protect national security. Confirming or denying whether the HO has used this software would disclose information into the public domain

that might be attractive to those who wish to compromise national security.

21. Since the Commissioner accepts that the HO is entitled to rely upon section 24(2) to refuse to confirm or deny that it holds the requested information, he doesn't need to go on to consider the applications of the other exemptions.

**Other matters**

22. The complainant is concerned that 'it is widely known that numerous governments have made substantial payments to [Redacted] already.' However, the Commissioner does not equate information that might have been reported, or speculated upon, for journalistic purposes with disclosure of official recorded information, held by a public authority, under FOIA.

## Right of appeal

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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: 0203 936 8963

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)

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

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