

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 January 2022

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

Decision (including any steps ordered)

1. The complainant requested the total cost of expenditure on protecting the Royal Family for the financial years 2017/18, 2018/19 and 2019/20. The Home Office relied on the section 24(2) (National security) and section 38(2) (Health and safety) FOIA exemptions to neither confirm nor deny holding the requested information.
2. During the Information Commissioner's investigation, the Home Office confirmed that relevant information was held, but withheld it relying on the section 24(1) and 38(1) FOIA exemptions.
3. The Commissioner's decision is that the Home Office should have confirmed holding information within the scope of the request from the outset but had acted correctly in engaging the section 24(1) FOIA exemption. He further decided that the balance of the public interest favoured maintaining the exemption.
4. The Commissioner did not require the Home Office to take any steps to comply with the legislation.

Request and response

5. On 7 October 2020, the complainant wrote to the Home Office (HO) and requested information in the following terms:

"I am a reporter at [name redacted] newspaper. I am writing to request information under the Freedom of Information Act 2000. In order to assist you I am outlining my request as specifically as possible. Please may I be provided with

1) The total cost of expenditure on protection for the Royal Family for the financial years 2017/18, 2018/19 and 2019/20. I anticipate that this information may be held by the Royalty and VIP Executive Committee (RAVEC), as detailed here: <https://www.gov.uk/government/publications/the-terms-of-reference-of-the-royal-and-vip-executive-committee-ravec> I look forward to receiving your response within 20 days."

6. On 27 October 2020 HO replied citing the section 24(2) (National Security) and 38(2) (Health and Safety) FOIA exemptions to neither confirm nor deny (NCND) holding the requested information.
7. Following an internal review the Home Office wrote to the complainant on 21 December 2020 maintaining the decision to NCND holding the requested information.

Scope of the case

8. The complainant contacted the Commissioner on 11 January 2021 to complain about the way his request for information had been handled.
9. The Commissioner investigated the HO reliance on the section 24(2) and 38(2) FOIA exemptions to neither confirm nor deny (NCND) holding the requested information.
10. During the Commissioner's investigation HO accepted, in the light of representations and evidence from the complainant, that information already in the public domain was such that it was not rational for HO to maintain NCND.
11. On 12 December 2021 HO told the Commissioner that information within the scope of the request was held but withheld it relying on the section 24(1) and section 38(1) FOIA exemptions. The Commissioner has therefore investigated the application of those exemptions by HO.
12. The Commissioner did not consider it necessary to view the withheld information or be told its quantum for the purpose of his investigation. He did consider representations submitted by parties. Some representations from HO were provided in confidence.

Reasons for decision

Section 24 – National security

13. Section 24(1) FOIA states:

"Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security."

14. 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 then 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 (UK) 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.

15. The Commissioner's interpretation of 'required' within section 24(1) FOIA followed the approach in the European Court of Human Rights which decided that interference to human rights can be justified where it is necessary in a democratic society for safeguarding national security. 'Necessary' in this context is taken to mean something less than absolutely essential but more than simply being useful or desirable. 'Required' in this context is therefore 'reasonably necessary'. It is not sufficient for the information sought simply to relate to national security; there must be a clear basis for believing that disclosure would have an adverse effect on national security before the exemption is engaged.

16. It is not necessary to show that disclosing the information would lead to an immediate threat to the UK, the exemption can also be engaged to prevent a disclosure that would have adverse consequences. Safeguarding national security includes protecting potential targets of

attack even if there is no current evidence that an attack is imminent or being planned.

The complainant's view

17. On 21 December 2021 the complainant told the Commissioner that none of the HO arguments even attempted to demonstrate how disclosing the total cost figure, without supporting detail, would be likely to harm national security, directly or even indirectly. Making a total cost figure publicly available did not automatically mean that it would be harmful, or of material use to someone intending harm. The complainant stressed that he was not seeking budgetary details only the aggregate total.
18. The complainant added that the requested total cost information was routinely published by some other countries with what he regarded as a seemingly equivalent, or even greater, level of risk. He said that the published information about the budget for the United States Department for Homeland Security included the Secret Service total expenditure along with a detailed breakdown which included expenditure on presidential security, and other types of outlay such as vehicles, weapons, etc.
19. The complainant added that he believed that diary information about some future movements of the Royal Family was routinely disclosed. He found it 'ridiculous' that information about their future locations was considered harmless, but that the aggregate cost to the taxpayer of their security was not. He said that there was a public interest in proper and responsible disclosure of the costs to the UK taxpayer of security. The circumstances of HO did not differ substantially from those facing other countries nor was the requested information more harmful than other information already routinely made public.

The Home Office view

20. HO told the Commissioner that a budget for protecting the Royal Family was held but that it was necessary to withhold that information to safeguard national security and help to secure the health and safety of members of the Royal Family. HO added that HM The Queen was the only member of the Royal Family for whom protection arrangements were publicly acknowledged to exist.
21. HO said that the Royal Family consisted of many individuals, with HM The Queen as the Head of State. Members of the Royal Family and the work they undertook were an integral part of the UK's constitutional State and system of government. The Royal Family's activities were vital in bringing the Monarchy into direct and personal contact with all sections of society including the disadvantaged and marginalised.

22. HO added that the Royal Family were very much part of the UK's national life and represented the nation. For these reasons they, and the work that they undertook, were inextricably linked to matters connected with national security. A threat to the Royal Family, and to their ability to carry out this vital work were, by their very nature, threats to the sovereignty, safety, and security of the entire country meaning that the section 24(1) FOIA exemption was clearly engaged.
23. HO said that the requested information, if disclosed, would equip any 'motivated intruders' to use that information – in conjunction with other open source information – to take steps to undermine any security arrangements that might exist, and place members of the public as well as the Royal Family at increased risk. HO provided the Commissioner with several examples of known past terrorists and showed how they had often put much time and effort into researching and planning their attacks in great detail. These had been persons of ill intent who had gathered information from a wide range of sources – using the so called 'mosaic effect' - to build an holistic understanding of security arrangements.
24. HO added that media reporting and the general public interest in the activities of the Royal Family meant that significant amounts of information about them were already routinely available. This meant that a fragment of information which, seen in isolation, might appear to be no great consequence, such as a budgeted total expenditure on security for the Royal Family, if taken together with other information already in the public domain, could be used to infer information about the capability and focus of security agencies. Shifts in resources over time would allow a motivated intruder to build a picture of patterns of activity, which might include variations in levels of protection.
25. HO commented on the complainant's international comparisons, including that with the US Department for Homeland Security and Secret Service, that disclosure of the requested information would allow a motivated intruder - over a period of time - to discern or speculate who is and is not protected, and how much individual principals may cost to protect (ie because of fluctuations in the total cost per year). Any information which could help someone to build up a picture of who is, and is not, protected could be inferred from budgetary changes and so must be kept confidential. HO confirmed that the UK policy remained to neither release information on funding arrangements nor report the requested quantum to Parliament, as it formed part of the wider ranging Counter Terror Policing Grant.
26. HO concluded that safeguarding the public and protecting the main instruments of government, which included the Royal Family, were of overwhelming importance and therefore engaged the exemption and

determined the balance of the public interest. HO added that, national security and health and safety concerns, which were protected by the section 24(1) and section 38(1) FOIA exemptions respectively, were closely entwined.

The Commissioner's view

27. The Commissioner had regard for the complainant's representations. However on balance he is persuaded, from the evidence he has received from HO, that disclosure of the requested information would be of interest and of value to an individual or organisation intent on criminal or terrorist activity against members of the Royal Family. This, in turn, would threaten national security.
28. The Commissioner, during his investigation, has not seen current officially published information about future movements of members of the Royal Family beyond that contained in official news releases.
29. The Commissioner understood from HO evidence that HM The Queen is the only member of the Royal Family for whom the existence of public protection arrangements is publicly acknowledged. However membership of the Royal Family extends much further to others whose work, often in a wide range of social contexts, is also of national significance and therefore of direct and immediate relevance to national security.
30. The Commissioner noted the international comparison data put forward by the complainant but accepted the HO evidence that the UK context was not directly analogous.
31. The Commissioner also accepted that HO had provided persuasive evidence of past motivated intruders whose activities had posed a real and immediate threat to relevant individuals at times in the past. He accepted the HO concern that disclosing the requested information would add to the danger to members of the Royal Family from any other such individuals who would be likely to emerge in the future.
32. Weighing the evidence from the parties and from his own researches, the Commissioner decided that exemption from the duty to disclose the requested budgetary information is reasonably required to maintain national security. He therefore decided that the section 24(1) FOIA exemption is engaged.

Public interest test

33. As section 24 FOIA is a qualified exemption, the Commissioner proceeded to consider whether or not the balance of the public interest favoured disclosing the information or maintaining the exemption.

34. In terms of the balance of the public interest in this case, the key issue is whether the public interest in safeguarding national security outweighs the public interest in disclosing the withheld information. The public interest in safeguarding national security carries considerable weight. In order for the public interest balance to favour disclosure of the requested information it is necessary for there to be public interest factors in favour of this of at least equal weight.

Public interest arguments in favour of disclosure

35. The complainant told the Commissioner that the public interest favoured proper and responsible disclosure of the costs to the taxpayer of security. In his representations he gave as an example what he described as public discussion about the cost to the taxpayer of security measures to protect the Duke and Duchess of Sussex following their decision to retire from public life in 2020. He did not accept that merely disclosing the HO budgetary total, which was all he had requested, would materially affect the security of members of the Royal Family in a way that was substantially different from the circumstances facing high profile public figures in other countries.
36. HO accepted that there was a strong interest among members of the public for financial and other information concerning the Royal Family. HO also accepted that there were good reasons to inform and educate the public, and provide reassurance, about its public expenditure.

Public interest in favour of maintaining the exemption

37. HO said that informing and educating the public about its expenditures should not come at the expense of jeopardising the safety of those who needed protection.
38. HO added that, while the figure for the total expenditure for protecting the Royal Family might appear harmless when seen in isolation, it would be useful 'intelligence' to a motivated intruder, who as past experience of past terrorist activities had shown, could then use this information as part of a 'mosaic effect' gathering of intelligence to gain understanding and insight into the protection arrangements in place around one or more individuals. This would potentially render any security measures in place around the Royal Family less effective and increase the risk of harm to both them and the wider UK public.
39. HO said that the then current national threat level had been set at 'SUBSTANTIAL' which meant that a terrorist attack was a strong possibility. HO added that there was a 'real world' risk that the one or more members of the Royal Family could be selected as the target for an attack. Disclosing the requested information would increase that risk.

40. HO decided, as regards the balance of the public interest, that while there were sound reasons for disclosure, safeguarding the public and protecting the constitutional systems of the state, which included safeguarding the Royal Family, was of overwhelming importance, and was best served by withholding the requested information.

Balance of the public interest

41. The Commissioner saw that the public interest inherent in maintaining the section 24 FOIA exemption relates to safeguarding UK national security. The exemption is concerned with the public interest of the UK and its citizens and is engaged. However, the balance of the public interest in maintaining the section 24 FOIA exemption is determined by the importance to the UK national security of disclosing or withholding the information.
42. The Commissioner considered all of the circumstances of this case, including the representations of the parties and his own guidance. He took into account the nature of the withheld information, but did not regard it as essential to his determination to know the quantum.
43. In determining the balance of the public interest, the Commissioner had regard for the weighty public interest in HO being open and transparent about its expenditure including, where possible, on security matters. He recognised that general information about the Royal Family was of interest to the public and widely reported by the media. He also considered the strong public interest inherent in maintaining national security as well as the specific factors that apply in relation to the withheld information.
44. The Commissioner noted HO evidence that the international security landscape is complex and unpredictable and that the UK has faced a sustained threat from terrorists and other extremists in the recent past. He considered that safeguarding national security is a matter of fundamental public interest; its weight can be matched only where there are also equally fundamental public interests in favour of disclosure.
45. The Commissioner acknowledged the significant public interest in disclosure to promote openness and transparency regarding the cost to HO of helping to keep the Royal Family safe. However, having considered all of the evidence before him, and taking into account the nature of the withheld information, the parties' submissions and his own guidance, the Commissioner did not consider that the public interest in disclosing the information was at least equal weight to the public interest as disclosure would, or would be likely to, be detrimental to national security.

46. The Commissioner therefore decided that HO had applied section 24(1) FOIA correctly in withholding the information and that the public interest in maintaining the exemption outweighed the public interest in disclosure.
47. In the light of the Commissioner's decision regarding section 24(1) FOIA, he did not go on to consider the section 38(1) FOIA exemption.

Right of appeal

48. 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

49. 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.
50. 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

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