

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 April 2023

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

Decision (including any steps ordered)

1. The complainant has requested information about 'mind control' projects from the Home Office. The Home Office would neither confirm nor deny holding any information, citing sections 23(5) (Information supplied by, or relating to, bodies dealing with security matters), 24(2) (National security) and 27(4) (International relations) of FOIA.
2. The Commissioner's decision is that the Home Office was entitled to rely on sections 23(5) and 24(2) to NCND holding the requested information. No steps are required.

Request and response

3. On 17 April 2022, the complainant wrote to the Home Office and requested the following information:
 - "1. Does the UK Government and/or the UK Intelligence Services and/or the NHS have any knowledge of the CIAs MK ULTRA or similar projects?
 2. Are the Home Office and/or the UK Intelligence Services and/or the NHS aware of any MK Ultra or other similar projects carried out in the UK.

4. Did the UK Government and/or UK Intelligence Services and/or the NHS conduct any research or carry out any activity in the UK involving human participant(s) covertly or with consent?"

(NB There was no part (3) to the request)

4. On 7 September 2022, the Home Office responded. It would NCND holding any information by virtue of sections 23(5), 24(2) and 27(4) of FOIA.

5. The complainant requested an internal review on 7 November 2022. When doing so she added:

"I have attempted to contact the Home Office in regards to an MI5 agent who has abused his position of power to physically and psychologically torture me with the use of MK ULTRA. The Home Office have not responded to my complaint around this and I believe they are complicit in the use of MK ULTRA on civilians without their knowledge or consent".

6. On 11 January 2023, the complainant chased a response to her request for an internal review. When doing so she made a further, related information request as follows:

"Please treat the below as a request for information under the Freedom of Information Act.

1. Whether the Home Office have any knowledge of the CIA's MK ULTRA or similar projects being carried out in the UK or elsewhere including worldwide and whether consent was obtained to carry out these activities.

2. Whether the Home Office have knowledge of military grade microwave weapons being used covertly on civilians in the UK".

7. The Home Office provided an internal review on 12 January 2023 in which it maintained its position. In light of her comments at paragraph 5 above, it advised: "If you believe you have been the victim of any crime, you can report this to the police".

Scope of the case

8. The complainant contacted the Commissioner on 13 January 2023 to complain about the way her request for information had been handled. She said:

"I have stated that there is a public interest concern. I believe [sic] the Home Office have knowledge of a clandestine programme

similar [sic] to MK Ultra where agents go on to torture innocent citizens remotely in their own home. I am a victim and they refuse to deny or admit to having knowledge of this programme. My request for internal review was ignored and only responded to this month. It did not clarify matters and was biased with their reasoning [sic]”.

9. It is not clear whether the Home Office responded to the information request made when the complainant chased an internal review, but she has not made any reference to this in her complaint to the Commissioner and so he has not considered it any further. In any event, as it relates to the same subject matter, the Commissioner considers it highly likely that the Home Office would apply the same exemptions as in this request.
10. The Commissioner has commented about the time taken to conduct an internal review in “Other matters”, at the end of this notice.
11. The Commissioner will consider the citing of exemptions below.

Reasons for decision

Neither confirm nor deny (“NCND”)

12. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request.
13. The decision to use an NCND response will not be affected by whether a public authority does, or does not, in fact hold the requested information. The starting point, and main focus for NCND in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.
14. A public authority will need to use the NCND response consistently, over a series of separate requests, regardless of whether or not it holds the requested information. This is to prevent refusing to confirm or deny being taken by requesters as an indication of whether or not information is in fact held.
15. The Home Office has taken the position of neither confirming nor denying whether it holds any of the requested information in its entirety, citing sections 23(5), 24(2) and 27(4) of FOIA. The issue that the Commissioner has to consider is not one of disclosure of any requested information that may be held, it is solely the issue of whether or not the Home Office is entitled to NCND whether it holds any information of the type requested by the complainant.

16. Put simply, in this case the Commissioner must consider whether or not the Home Office is entitled to NCND whether it holds any information about the alleged use of MK ULTRA and similar research in the UK.

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

17. Section 23(5) provides an exemption from the duty imposed by section 1(1)(a) to confirm or deny whether information is held if to do so would involve the disclosure of information, whether or not recorded, that relates to or was supplied by any of the security bodies listed in section 23(3). This is a class-based exemption, which means that if the confirmation or denial would have the result described in section 23(5), this exemption is engaged.
18. The argument from the Home Office on this exemption was that if the information specified in the request did exist, it is very likely that it would have come from, or be related to, section 23(3) bodies. Were it the case that absolute certainty of the connection with a section 23(3) body was required, this might mean that the possibility, however slim, of the Home Office holding relevant information that was not related to, or supplied by, a section 23(3) body, would undermine its reliance on section 23(5).
19. In the Tribunal case *The Commissioner of Police of the Metropolis vs Information Commissioner (EA/2010/0008)*, the argument was advanced that it was **highly likely** that any information held by the public authority that fell within the scope of the request would have been supplied to it by a section 23(3) body and, therefore, section 23(5) was engaged. The counterargument was made that only certainty as to the source of the information would be sufficient. The Tribunal rejected this counterargument and stated:

“[The evidence provided] clearly establishes the **probability** that the requested information, if held, came through a section 23 body.” (paragraph 20)
20. The approach of the Commissioner on this point is that he accepts the Tribunal view that the balance of probabilities is the correct test to apply. This means that for section 23(5) to be engaged, the evidence must suggest to a sufficient degree of likelihood (rather than certainty) that any information held that falls within the scope of the request would relate to, or have been supplied by, a body specified in section 23(3).
21. In this case, the Commissioner considers it clear that the subject matter of the request – research around MK ULTRA, or similar projects, between the Home Office and/or the UK Intelligence Services – is within the area of the work of bodies specified in section 23(3). He also accepts

that it is likely that, if the information described in the request did exist, it would necessarily have been supplied by, or relate to, security bodies.

22. The Commissioner accepts that, on the balance of probabilities, any information held by the Home Office falling within the scope of the complainant's request would relate to, or have been supplied by, a body or bodies listed in section 23(3). His conclusion is therefore that section 23(5) is engaged.
23. As this conclusion has been reached on section 23(5), it is not strictly necessary to go on to also consider any other exemptions. However, as the Home Office also relied on section 24(2), the Commissioner has gone on to consider that exemption.

Section 24 – National security

24. Section 24(2) provides an exemption from the duty to confirm or deny where this is required for the purpose of safeguarding national security. Consideration of this exemption is a two-stage process. First, the exemption must be engaged due to the requirement of national security. Secondly, this exemption is qualified by the public interest, which means that the confirmation or denial must be provided if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.
25. The Commissioner has already accepted when finding that section 23(5) is engaged that revealing whether or not information is held within the scope of the request would reveal information relating to the role of the security bodies. The Commissioner also accepts that disclosure that touches on the work of the security bodies would consequentially undermine national security. For that reason section 24(2) is also engaged as exemption from the duty to confirm or deny is required for the purposes of national security.
26. Turning to the balance of the public interest, the question here is whether the public interest in safeguarding national security is outweighed by the public interest in disclosure of the confirmation or denial. Clearly, the public interest in safeguarding national security carries very great weight. In order for the public interest to favour provision of the confirmation or denial, it will be necessary for there to be public interest factors in favour of this of at least equally significant weight.
27. The view of the Commissioner is that there is some valid public interest in confirmation or denial in response to this request. This would increase public knowledge of the work that the Home Office is involved in.
28. The Commissioner considers it to be clearly the case, however, that this public interest does not match the weight of the public interest in

safeguarding national security. This means that his conclusion is that the public interest in the maintenance of the exemption provided by section 24(2) outweighs the public interest in disclosure of the confirmation or denial.

29. In view of this finding and that above on section 23(5), the Home Office was not required to confirm or deny whether it held the information requested by the complainant.
30. In view of the findings above, Commissioner has not found it necessary to also consider the citing of section 27 of FOIA.

Other matters

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

Internal review

32. 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.
33. 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.
34. The complainant asked for an internal review of her request on 7 November 2022. The Home Office provided the outcome of the internal review on 12 January 2023, more than two months later.
35. 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. This delay will be logged for monitoring purposes.

Right of appeal

36. 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

37. 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.
38. 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

Carolyn Howes
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