

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 October 2023

**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 about a named hotel he believes is being used to house asylum seekers. The Home Office would neither confirm nor deny whether it holds most of the information, citing section 38(2) (Health and safety) of FOIA. It also denied holding information about the financial accounts of a named company.
2. The Commissioner's decision is that the Home Office was entitled to rely on section 38(2) to neither confirm nor deny whether it holds the bulk of the requested information. He also finds that, on the balance of probabilities, the Home Office does not hold information about the finances of a named company. However, it breached section 1(1)(b) of FOIA by failing to respond to all parts of the request.
3. No steps are required as a result of this decision.

#### Request and response

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4. On 10 March 2023, the complainant wrote to the Home Office and requested information in the following terms:

"I would now ask the following questions under the Freedom of Information Act that I raised on 21.2.2023 and that the Leader of Broxbourne Council cannot answer:

- 1) How many Asylum Seeker will there be at [hotel name redacted]?
- 2) Where do these Asylum Seekers come from?
- 3) What is their Sex & Ages?
- 4) Have they ALL been vetted?
- 5) Will there be any restrictions on their movements?
- 6) Will their movements be monitored?
- 7) The Borough of Broxbourne Statement-States: That no council funds will be used for the accommodation of the asylum seekers at the hotel and this will include food all of this will be paid for by the Home Office.

Can you confirm who is paying for GP Services + Health Services + NHS Services + Any Educational Needs + Any Interpreters (That may be needed) + Any other COST for any other Services? All of which will have an adverse impact on our local economy and public services?

- 8) Additional questions:
  - A) Are any of these Asylum Seekers Illegal Asylum Seekers?
  - B) Will the number of Asylum [sic] Seekers at [hotel name redacted] be restricted to 300? If not how many will there be?
  - C) Is it the intention of the Home Office putting any more Asylum Seekers in Broxbourne? If yes how many will there be, where and when?
  - D) It appears that the Borough of Broxbourne have had no input into the Asylum Seekers being housed in [hotel name redacted], will the Home Office be taking FULL Responsibility for any & all problems that may arise by the asylum seekers?
  - E) As you are aware there has been much published criticism of the profiteering by individuals and companies in providing PPE during Covid 19.

I have read the Companies House details of your contractor Clearsprings Ready Homes Ltd, I have attached a copy of my summary of their turnover/profit after tax/ Employees / Wages & Salaries from 2013 to 2022. Can you confirm if this company has been vetted and if you can explain how & why the Turnover for 2021 was £163,323,359 was [sic] increased to a Turnover for 2022 to £501,822,664 and how & Why the Profit after Tax in 2021 was £4,419,841 and how & why it increased to £28,012,427."

5. The Home Office responded to the request on 5 April 2023. It would neither confirm nor deny that it held the information requested at points (1) - (7) and (8)(a - d), citing section 38(2) of FOIA. For point (8)(e) of the request, it said that it did not hold information on the finances of Clearsprings Ready Homes Ltd.
6. Following an internal review, which it provided on 11 May 2023, the Home Office maintained this position. However, it did provide links to some information in the public domain on asylum accommodation providers, and other, general information about the management of asylum seekers in the UK.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 3 July 2023 to complain about the way his request for information had been handled.
8. The analysis below considers whether the Home Office was entitled to rely on section 38(2) of FOIA to neither confirm nor deny holding the information requested in parts (1) - (7) and (8)(a - d) of the request.
9. The Commissioner has also considered whether, on the balance of probabilities, the Home Office holds the information described in part 8(e) of the request.

### **Reasons for decision**

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#### **Neither confirm nor deny ('NCND')**

10. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in their request. This is commonly known as "the duty to confirm or deny". However, there are exemptions to this duty, whereby a public authority may NCND whether it holds the requested information.
11. Section 38(2) of FOIA excludes a public authority from complying with the duty to confirm or deny, where doing so has the potential to endanger the health or safety of any individual.
12. The issue for the Commissioner to consider is whether the Home Office was entitled to NCND, by virtue of section 38(2), whether it holds the information described in parts (1) - (7) and (8)(a - d) of the request. Put simply, he must decide whether confirming or denying that the Home Office holds the information described has the potential to

endanger the health or safety of any individual. Whether or not the material that has been requested (if it exists) is suitable for disclosure is a different matter, and not one that is considered in this decision notice.

13. The Commissioner does not know whether the Home Office does, or does not, hold the requested information. He does not consider it necessary to know this in order to reach a decision on the application of section 38(2) in this case.

### **Section 38 - Health and safety**

14. Section 38(1) of FOIA states:

“Information is exempt information if its disclosure under this Act would, or would be likely to –

- a) endanger the physical or mental health of any individual, or
- b) endanger the safety of any individual.”

15. As set out above, section 38(2) provides an exemption from the duty to confirm or deny, where doing so would, or would be likely to, result in the effects mentioned in section 38(1).

16. The Commissioner’s guidance on section 38<sup>1</sup> states that the degree of endangerment envisaged, and whether it is significant enough to engage the exemption, must be considered. The guidance includes examples of the types of information that might pose a risk to an individual’s health and safety if disclosed (or if confirmation or denial is given, as in this case). The list includes the following:

“any plans or policies relating to the accommodation of individuals, or groups of individuals where disclosure could lead to them being threatened or harassed (eg asylum seekers, ex-offenders)”.

17. In reaching his decision in this case, the Commissioner has considered the arguments put forward by the Home Office in its response to the request and the internal review outcome. He is also aware that he has previously issued several decision notices which have considered the impact of revealing information about asylum seeker accommodation. In particular, he has taken into account his findings in decision notices IC-

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<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/section-38-health-and-safety/>

208394-G6M7<sup>2</sup>, IC-199652-L3V2<sup>3</sup> and IC-155600-D0J5<sup>4</sup>, where information which would have revealed whether asylum seekers were (or were to be) housed at particular locations, was requested. He upheld the Home Office's reliance on section 38(2) of FOIA to issue an NCND response in those instances.

18. Whilst previous decision notices are not binding on the Commissioner, and he must consider each case on its individual merits, the Commissioner has had regard to these decision notices as he accepts that the issues at stake in this case are very similar.
19. The Home Office has not specified, in this case, the level of endangerment it envisages as a result of confirming/denying (ie that endangerment 'would' occur, or that it 'would be likely to' occur). However, in the aforementioned cases, the Home Office argued that where confirming or denying would reveal whether or not asylum seekers were housed at a particular location, this 'would' endanger individuals, and the Commissioner accepted its arguments on that point. As the same concerns are under consideration here, the Commissioner is satisfied that the higher threshold of 'would endanger' is also met in this case.
20. In IC-208394-G6M7, the Commissioner heard arguments from the Home Office that the housing of asylum seekers, and immigration generally, "is a highly contentious issue which elicits strong views". It argued that some asylum seekers have been, and continue to be, targeted for abuse and intimidation.
21. In support of its position, the Home Office provided evidence that public speculation about asylum accommodation has led to the targeting of properties by individuals opposed to asylum seekers being housed there. It argued that there is clearly a real, evidenced, risk to the physical and mental health and safety of individuals in these types of accommodation, if their location is publicised.
22. As shown by the wording of the request in this case, the complainant believes that the named hotel is being, or is to be, used to accommodate asylum seekers. The Home Office argued in IC-208394-

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<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4025570/ic-208394-g6m7.pdf>

<sup>3</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024963/ic-199652-l3v2.pdf>

<sup>4</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022389/ic-155600-d0j5.pdf>

G6M7 that while it is often publicly speculated that particular properties are used to provide accommodation for asylum seekers, 'speculation' is not the same thing as the provision of an official confirmation, or denial, from the Home Office. The Commissioner is satisfied that the same argument applies in the current case.

23. The Commissioner is also mindful of the Home Office's stance in IC-208394-G6M7, where it argued that it must maintain an appropriate and consistent position on not identifying whether named accommodation is used to house asylum seekers. This is in keeping with his guidance on the use of NCND<sup>5</sup>. He recognises that it is important that a public authority uses NCND responses consistently, as not doing so could undermine its effectiveness for concealing whether or not information is held in other cases.
24. As the giving of confirmation or denial would effectively reveal whether the hotel specified in the request is being used to house asylum seekers, and in light of the dangers associated with disclosing such information, the Commissioner accepts that the exemption from the duty to confirm or deny provided by section 38(2) of FOIA is engaged.

### **The public interest test**

25. Section 38 is subject to the public interest test, as set out in section 2 of FOIA. This means that although section 38 is engaged, confirmation or denial must still be provided unless, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in confirming or denying that information is held.

### **Public interest arguments in favour of confirming or denying whether information is held**

26. The complainant believes that the subject of his request is a matter of public interest. He has concerns about the costs and impact on public services of housing asylum seekers in the area.
27. The Home Office recognises that, if held, there is a public interest in confirming/denying to ensure full transparency in the Home Office's approach to accommodating and supporting asylum seekers. It said that

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<sup>5</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/when-to-refuse-to-confirm-or-deny-holding-information/#consistent>

confirmation or denial would also foster public confidence in the Home Office's management of asylum seekers.

### **Public interest arguments in favour of maintaining the exemption**

28. In favour of maintaining the exemption, the Home Office told the complainant the following:

"If held, there is a public interest in government departments being able to accommodate asylum seekers by representing their best interests. Anything that would undermine this is not in the public interest.

To disclose the addresses and facilities used to accommodate asylum seekers would weaken the Home Office's stance on protecting the health and safety of individuals as it could lead them to being exposed to threats and harassment. One of the main provisions under this exemption refers to any plans or policies relating to the accommodation of individuals, or groups of individuals, where disclosure could lead them to being threatened or harassed."

### **The balance of the public interest**

29. The Commissioner will invariably place significant weight on protecting individuals from risk to their physical and mental wellbeing and their safety. Where disclosing information (by way of confirmation or denial) would have safety implications for individuals, this will only be justified when a compelling reason can be provided to support the decision.
30. Clearly, in situations where disclosure would lead to endangerment to health or safety, there is a public interest in avoiding that outcome. There is no suggestion that the complainant has requested the information so as to cause harm. However, in reaching a decision in this case, the Commissioner must take into account the fact that confirmation or denial under FOIA is effectively an unlimited disclosure of information to the wider public, without conditions.
31. In the internal review, the Home Office said that it has a duty of care and responsibility to provide safety and protection to asylum seekers, wherever they are housed. The Commissioner notes that in the case considered under reference IC-208394-G6M7, the Home Office referred to this duty and the considerable public interest in not exposing vulnerable individuals to threats of harassment, intimidation and/or physical violence. It contended that disclosing information, by way of confirmation or denial, would undermine its duty of care and would not be in the public interest.

32. In the case under consideration here, in weighing up the risks to the health or safety of an individual or group, against the public interest in disclosure (by way of confirmation or denial), the Commissioner has given greatest weight to those factors which he considers support the maintenance of the exemption.
33. In the Commissioner's view, there is a very clear and significant public interest in avoiding endangerment to the health or safety of any individual. While the Commissioner appreciates the public interest in access to information about the accommodation arrangements for asylum seekers, in his view this is outweighed by the need to protect against unwarranted endangerment to any individual's health and safety.
34. Taking all the above into account, the Commissioner's decision is that the Home Office was entitled to rely on section 38(2) of FOIA to NCND holding the information requested at parts (1) - (7) and (8)(a - d) of the request.

### **Section 1 – Information held**

35. As set out in paragraph 10, section 1(1)(a) of FOIA states that anyone making a request for information is entitled to be told whether a public authority holds the requested information. Section 1(1)(b) requires that if held, the information be communicated to the applicant (subject to certain non-disclosure exemptions).
36. The Home Office says that it does not hold the information described in part (8)(e) of the request. The complainant disputes this.
37. In such cases, the Commissioner will apply the normal civil standard of proof in determining the case and will decide, on the 'balance of probabilities', whether the requested information is held. In deciding where the balance of probabilities lies, the Commissioner will consider the evidence and arguments of both parties, together with any other information as to why it is likely, or unlikely, that information is held.
38. Part (8)(e) of the request asked:

"Can you confirm if this company has been vetted and if you can explain how & why the Turnover for 2021 was £163,323,359 was [sic] increased to a Turnover for 2022 to £501,822,664 and how & Why the Profit after Tax in 2021 was £4,419,841 and how & why it increased to £28,012,427."
39. The Home Office told the Commissioner:

"All of our suppliers are vetted at the point of procuring the contracts. Financial standing checks are carried out by our Commercial Financial



team with a Financial Standing Schedule implemented into all contracts. Due diligence questions are part of the evaluation and will be tailored to the specific procurement exercise."

40. This information should have been clearly communicated in the Home Office's response to the request, but it appears that this part of the request was not responded to.
41. As regards the remainder of the request, the complainant has not offered any evidence that the Home Office does hold information on the company's finances. Rather, drawing on his own experience of working in related areas, he appears to assume that such information would be held. He has explained that he has concerns about the suitability of the company to be working as a service provider for the Home Office, stating in his internal review request:

"I am greatly concerned about the increases in turnover and profit (Copy attached) by this company that I assume provides the housing of Asylum Seekers - I would strongly suggest that this needs Urgent investigations by the Home Office".

42. The issue for the Commissioner to consider is whether or not the information **is** held by the Home Office. It is not whether it **should be** held by the Home Office, or whether it should conduct an investigation about the suitability of a contractor. It is not the Commissioner's role to make a ruling on how a public authority deploys its resources, who it contracts with, or the strength of its reasons for holding some types of information but not others. On this point, the Commissioner is mindful of the comments made by the Information Tribunal in the case of Johnson / MoJ (EA2006/0085)<sup>6</sup>, that FOIA:

"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".

43. The Home Office has explained to the Commissioner that it does not hold information on the finances of the company. It said:

"Clearsprings Ready Homes (CRH) is not part of the Home Office. We cannot comment on why, a supplier has had an increase in turnover/profit. The Home Office is not the only source of income, as

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<sup>6</sup> <https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i90/Johnson.pdf>

CRH have contracts with other bodies. We therefore do not hold this information.

There is no business purpose as to why this information should be held by the Home Office, for the reasons explained above. Financial information relating to Clearsprings Ready Homes (CRH) is available in the public domain, e.g. Companies House hold account details relating to CRH.”

44. The Commissioner considers that this is a cogent explanation for why the Home Office says it does not hold the requested information. He acknowledges that the Home Office might have been provided with certain financial information at the point the company tendered for the contract, but the request asks specifically for an analytical explanation of why there was an increase in its profit and turnover between 2021 and 2022. It would be necessary to hold detailed information about the company’s accounts, including all its sources of income, to be able to answer that question (assuming such an analysis was already held in recorded form – FOIA does not require the creation of new information to answer a request).

### **The Commissioner’s decision**

45. By failing to communicate information regarding whether the company was vetted, the Home Office failed to comply with section 1(1)(b) of FOIA. As this has been rectified by the information provided in this decision notice, the Commissioner requires no steps.
46. However, the Commissioner is satisfied that, on the balance of probabilities, the Home Office does not hold the remaining information described in part (8)(e) of the request.

## Right of appeal

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47. 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)

48. 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.
49. 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**