

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 9 November 2010

Public Authority: Commissioner of the Metropolitan Police Service
Address: New Scotland Yard
Broadway
London
SW1H 0BG

Summary

The complainant requested information about the Channel project, which is a counter-terrorism project that aims to intervene and assist individuals who are at risk of becoming involved in violent extremism. The public authority refused the request and cited a number of exemptions, including that provided by section 31(1)(a) (prejudice to the prevention or detection of crime) of the Freedom of Information Act. The Commissioner finds that this exemption was applied correctly and so the public authority is not required to disclose the requested information. However, the Commissioner also finds that the public authority failed to comply with sections 10(1) and 17(1) of the Act in that it did not respond to the request within twenty working days of receipt.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant made the following information requests on 19 November 2009:

“(i) The number of referrals made to the Channel Project for vulnerable individuals at risk of violent extremism since its inception, per month they were referred to the Project;

(ii) the number of referrals who were

(a) under 16 years old; and

(b) under 12 years old at the time they were referred to the Channel project;

(iii) how many referrals were recorded by the police as being of Muslim persons and how many of non-Muslim persons;

(iv) how many referrals were found to have been genuinely at risk of becoming violent extremists and on what grounds such findings were made;

(v) with which other government agencies has information collected through the Channel Project been shared;

(vi) what evaluation of the outcomes of the programme has been undertaken.”

3. The public authority responded to this request on 25 January 2010, outside 20 working days from receipt of the request. In response to requests (i) to (iv) the public authority refused the requests, citing the exemptions provided by sections 24(1) (national security), 31(1)(a) (prejudice to the prevention or detection of crime) and 31(1)(b) (prejudice to the apprehension or prosecution of offenders). Request (v) was also refused, with the public authority citing the exemption provided by section 21(1) (information accessible by other means). In response to request (vi) the public authority stated that it held no information falling within the scope of the request.
4. The complainant responded to this on 28 January 2010 and requested an internal review in relation to the refusal of requests (i) to (iv) under sections 24(1), 31(1)(a) and 31(1)(b). The public authority responded with the outcome of the internal review on 2 March 2010. The conclusion of this review was that the refusal of these requests was upheld, although no reasoning was given for this outcome.

The Investigation

Scope of the case

5. The complainant contacted the Commissioner on 22 April 2010. The complainant indicated at this stage that he wished the Commissioner to consider whether the public authority had applied the exemptions cited correctly. It was later clarified that the scope of this case would cover only requests (i) to (iv) as only these requests had been specified when the complainant requested that the public authority carry out an internal review.

Chronology

6. The Commissioner contacted the public authority on 12 July 2010 and asked that it respond with explanations as to why it believed that the exemptions cited were engaged and why the balance of the public interest was believed to favour the maintenance of those exemptions. The public authority was also asked to supply to the Commissioner's Office a copy of the information withheld from the complainant.
7. The public authority responded substantively to this on 27 August 2010. The public authority provided a copy of the information withheld from the complainant, and other general information with the intention of illustrating the type of information that would fall within the scope of request (iv). The public authority at this stage also stated that it now wished to cite the exemptions provided by sections 38(1)(a) and (b) (endangerment to health and safety) and 40(2) (personal information) in addition to the exemptions cited previously. The public authority provided further explanations in relation to all of the exemptions that it was now citing.

Background

8. The public authority provided the following description of the Channel project:

"The Channel programme has been developed to provide support to people at risk of being drawn into violent extremism and forms part of the Prevent strand of CONTEST, the UK Government's strategy for countering terrorism.

Established in April 2007, Channel builds on existing partnerships between local authorities, the police, statutory providers (such as the education sector, social services, children's and youth services and offender management services) and the local community to:

- *identify individuals at risk of being drawn in to violent extremism;*
- *assess the nature and extent of that risk; and*
- *develop the most appropriate support for the individuals concerned.*

Channel provides an effective mechanism to support individuals vulnerable to being drawn into violent extremism before criminality occurs."

Analysis

Exemptions

Section 31

9. The public authority initially cited sections 31(1)(a) and (b). These sections are set out in full in the attached legal annex, as are all other sections of the Act referred to in this Notice. In its correspondence with the Commissioner, the public authority referred only to section 31(1)(a) and so the Commissioner has focused on this exemption. This section provides an exemption in relation to information the disclosure of which would, or would be likely to, prejudice the prevention or detection of crime. Consideration of this exemption is a two-stage process; first, prejudice relevant to the exemption must be at least likely to result through disclosure and, secondly, this exemption is qualified by the public interest. This means that the information should be disclosed if the public interest in the maintenance of this exemption does not outweigh the public interest in disclosure.
10. Covering first whether the exemption is engaged as a result of prejudice relevant to section 31(1)(a) being at least likely to occur, the Commissioner has undertaken a three-stage test here. First, he has considered whether the outcome of disclosure predicted by the public authority is relevant to the prejudice described in the exemption cited. Secondly, he has considered whether there is a causal relationship between disclosure of the requested information and this prejudice.

Thirdly, he has considered what level of likelihood there is of this prejudice resulting through disclosure.

11. Turning to whether the arguments advanced by the public authority are relevant to the exemptions cited, the requirement here is for the arguments to concern prejudice to the prevention or detection of crime (31(1)(a)). If the public authority was arguing that a different type of prejudice would occur through disclosure - that disclosure would harm its commercial interests for example - this argument would not be relevant to the exemptions it has cited and so these exemptions would not be engaged on the basis of this argument.
12. The public authority has advanced two main arguments. First, it has suggested that disclosure of the information in question would be likely to lead to the identification of individuals involved in the Channel project, both those referred to this project as they are believed to be vulnerable to becoming involved in extremism, and those who participate in this project with the intention of discouraging others from involvement in extremism. The public authority believes that identification could lead to reprisal attacks on those individuals due to the controversial nature of the Channel project.
13. The second argument does not rely on the notion that disclosure of the information in question would lead to the identification of individuals. Instead, it relates to how disclosure would be likely to alter perceptions of the level of confidentiality afforded to those who participate in the Channel project. The public authority states that those who volunteer to assist the Channel project expect their involvement to be confidential. It has gone on to state that disclosure would be likely to create a perception that this confidentiality has been eroded and that this would be likely to reduce levels of engagement with the Channel project. In turn, this would be likely to harm the chances of the Channel project being successful.
14. The Commissioner has focused on the second argument. As to whether the nature of the prejudice argued by the public authority is relevant to section 31(1)(a), in summary the public authority is arguing that disclosure would be likely to jeopardise the Channel project. As covered in the Background section above, the aim of the Channel project is to prevent individuals from becoming involved in violent extremism. Clearly, involvement in violent extremism would be a crime, meaning that prejudice to the Channel project would relate to the prevention of crime. The Commissioner accepts, therefore, that the nature of the prejudice predicted by the public authority is relevant to section 31(1)(a).

15. As to whether there is a causal relationship between disclosure of the information in question and the prejudice predicted by the public authority, the issue here is whether the prejudice predicted by the public authority would or would be likely to come about as a result of disclosure of the information requested. If the public authority had not linked this prejudice to disclosure of the information, or had argued that this prejudice would come about through some means other than disclosure of this information, this would not be a valid argument in favour of the exemptions being engaged. In this case, the Commissioner believes that the causal relationship between disclosure and the prejudice predicted by the public authority is clear; the public authority argues that disclosure would be likely to lead to a perception on the part of those who participate in the Channel project that the confidential nature of their participation may be compromised.
16. Moving to whether the likelihood of the prejudice predicted by the public authority meets the test of real and significant, the argument of the public authority relies on the controversy surrounding the Channel project. The public authority believes that this means that those who volunteer to assist the Channel project do so on the understanding that their involvement will remain confidential. Given the controversy, the public authority believes that it will be difficult to secure engagement with the Channel project if disclosure here leads to the perception that this confidentiality has been eroded.
17. The public authority has specified that it believes that prejudice *would be likely* to result, rather than that it *would* result. The test that the Commissioner applies when considering whether prejudice would be likely to result is that the probability of this must be real and significant, rather than hypothetical or remote. This is in line with the approach taken by the Information Tribunal in the case *John Connor Press Associates Limited v the Information Commissioner* (EA/2005/0005) in which it stated:

“Likely connotes a degree of probability that there is a very significant and weighty chance of prejudice to the identified public interests. The degree of risk must be such that there ‘may very well’ be prejudice to those interests, even if the risk falls short of being more probable than not.” (paragraph 15)
18. In assessing the likelihood of prejudice, the Commissioner has considered two factors; first what evidence there is of controversy relating to the Channel project and, secondly, whether it is reasonable to conclude that disclosure of the information in question here would lead to a perception that the confidentiality of Channel volunteers had been eroded. The Commissioner would note at this point that it is not

essential to this argument that disclosure would lead to identification of individuals and so he has reserved judgment on this point when considering this argument.

19. On the issue of controversy relating to the Channel project, the Commissioner has taken into account media reports reflecting that there is controversy, an example of which is given here¹. In addition to this media coverage, the Commissioner also recognises that the nature and targets of the Channel project mean that it is likely to be regarded negatively by some within the groups in which it operates. He also would not dispute that there would be those within those groups who would hold this opinion sufficiently strongly that they would seek to take steps to disrupt the Channel project.
20. As to whether disclosure would be likely to create the perception that the level of confidentiality relating to participants in the Channel project had been eroded, the Commissioner accepts that the controversy relating to it means that participants are likely to be highly sensitive to any disclosure of information relating to it. This means that, whilst it may not be credible to argue that the numerical information requested by the complainant would lead to the identification of any individual, this sensitivity to disclosure means that the participants would still be perturbed by this disclosure. The Commissioner assumes that the public authority has hitherto maintained a high level of confidentiality for information relating to participation in the Channel project, meaning that this disclosure would be notable as the only example of disclosure relating to it, or at least one of few such examples. Disclosure in this case would, therefore, alter the prevailing situation of a high level of confidentiality for information about the Channel project. For these reasons, the Commissioner accepts that disclosure in this case would be likely to lead to the perception that the level of confidentiality relating to participation in the Channel project had been eroded.
21. Having found that the project is controversial and that disclosure would be likely to lead to the perception of an erosion in confidentiality, the Commissioner also accepts that disclosure would be likely to lead to a reduction in willingness to engage with the Channel project. He does not dispute that this would, in turn, cause a reduction in its effectiveness, and has already found that the purpose of the project relates to the prevention of crime. The overall conclusion of the Commissioner is that the likelihood of disclosure leading to prejudice to

¹ <http://www.guardian.co.uk/commentisfree/belief/2010/mar/30/islam-extremism-communities>

the prevention of crime is real and significant and so, therefore, the exemption provided by section 31(1)(a) is engaged.

The public interest

22. Having concluded that the exemption is engaged, it is necessary to go on to consider the balance of the public interest. In reaching a conclusion on the public interest here, the Commissioner has taken into account the public interest inherent in the exemption, that is the public interest in avoiding prejudice to the prevention of crime, which the Commissioner has concluded would be likely to result through disclosure. He has also taken into account the general public interest in favour of disclosure on the basis of improving the openness and transparency of the public authority, as well as those factors that apply in relation to the specific information in question, including the arguments advanced by the public authority and the complainant.
23. Turning first to those factors that favour disclosure, the controversial nature of the Channel project referred to earlier in this Notice is of relevance here. This controversy means that it is legitimate to argue that the public interest in information relating to Channel is heightened on the grounds that disclosure would increase public understanding about the Channel project and about the work undertaken by the public authority to implement it.
24. The arguments advanced by the complainant also relate to this point, with the complainant stating when requesting an internal review that the Channel project is of "*considerable public concern*". The complainant goes on to state correctly that disclosure would contribute towards encouraging public confidence in relation to the project. Disclosure in order to improve public understanding about and confidence in the Channel project is a valid public interest factor in favour of disclosure and one that, particularly given the controversy and concern associated with the project, carries significant weight.
25. Reference is made earlier in this Notice to the high level of confidentiality that the public authority maintains in relation to the Channel project. Whilst the Commissioner has accepted that disclosure in this case would be likely to prejudice the success of the project, this high level of confidentiality suggests that there was limited information publicly available about it at the time of the request. This means that the weight of any argument against disclosure on the grounds that the public interest is already satisfied by information previously made available would be reduced.

26. Turning to those arguments that favour maintenance of the exemption, the Commissioner has considered what disclosure of the specific information in question here would add to the public interest. Whilst the approach of the Commissioner is that, where a public interest exists in information relating to a particular topic, this public interest will apply to all information relating to that topic, the weight that the public interest will carry in relation to specific information will vary according to the content of that information.
27. The majority of the information in question here is numerical. Given this, the view of the Commissioner is that, whilst this would provide an indication of the extent of the Channel project in the area covered by the public authority, it would provide little indication of how the project has been implemented or the success, or otherwise, it has met. Whilst the public interest in favour of disclosure covered above remains valid, the weight that this carries in relation to the specific information in question here is reduced due to the content of this information.
28. The arguments of the public authority concern prejudice to the prevention of crime and so are relevant here in the sense that the public interest in the maintenance of the exemption is an important factor to consider. As to the weight of this factor, the Channel project is part of the Government's counter-terrorism strategy. The Commissioner has already concluded that a project that aims to prevent terrorism would be likely to be prejudiced through disclosure of the requested information. Given this context, the Commissioner considers it clear that the public interest inherent in the exemption must be afforded significant weight as a factor in favour of maintenance of the exemption.
29. The Commissioner has recognised a factor of significant weight in favour of disclosure on the basis of the subject matter of the information in question; the Channel project is controversial and disclosure would provide for greater transparency and public understanding in relation to it. This is combined with the general public interest in improving the openness and transparency of the public authority. However, the Commissioner has also found that the content of the specific information in question, which is primarily numerical, would add little substance to public understanding about the project, reducing the weight of the aforementioned factor favouring disclosure. In addition to this, the Commissioner has afforded significant weight to the public interest in avoiding likely prejudice to the Channel project given the purpose of this project.
30. In relation to information that would provide more substantive insight into the Channel project than was the case with the information in

question here, the public interest in disclosing this may not have been outweighed by the significant public interest in avoiding prejudice, thereby requiring disclosure. However, given the content of the specific information in question here, the conclusion of the Commissioner is that the public interest in avoiding the likelihood of prejudice to the Channel project outweighs the public interest in disclosure.

Sections 24 and 40

31. Whilst the substantive decision is as set out above in relation to section 31(1)(a), brief comments on the exemptions provided by sections 24(1) and 40(2) are also included here.
32. In relation to section 24(1), the Commissioner's view is that it is likely that he would find that this exemption is engaged. As noted above, the Channel project relates to counter-terrorism efforts, which are clearly relevant to national security, the area covered by this exemption. The public authority advanced essentially the same grounds for this exemption being engaged as were advanced in relation to section 31(1)(a) and so the Commissioner's analysis of those arguments is likely to have been similar to that set out above.
33. In relation to section 40(2), the Commissioner's view is that it is likely that the information falling within the scope of request (iv) covering the grounds on which individuals had been judged to be at risk of becoming violent extremists would be personal data. The public authority provided to the Commissioner's office an indication of what information it holds that falls within the scope of this request and it is clear that this information would relate to individuals. It is also likely that, given the amount of detail recorded within this information, this could be linked to individuals.
34. However, the view of the Commissioner on the remaining parts of the request is that the information falling within the scope of these would not constitute personal data and so the exemption provided by section 40(2) could not be engaged in relation to this information. The information requested in these parts of the request is numerical, so it is not clear how any individual could be identifiable from this information. The arguments of the public authority on this point were not convincing. The public authority should be aware that its focus when considering citing section 40(2) should be upon whether the information in question constitutes the personal data of any individual. The predicted impact of disclosure should only be considered after the personal data question has been convincingly addressed.

Procedural Requirements

Sections 17 and 10

35. In failing to respond to the request with a refusal notice within twenty working days of receipt of the request, the public authority did not comply with the requirement of section 17(1). In failing to confirm that it held information falling within the scope of the request, within the 20 working day time limit, it breached section 10(1).

The Decision

36. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that it applied the exemption provided by section 31(1)(a) correctly. However, the Commissioner also finds that the public authority did not comply with the requirements of sections 10(1) and 17(1) by failing to respond to the request within twenty working days of receipt.

Other matters

37. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. As referred to above at paragraph 4, when giving the outcome to the internal review, the public authority gave no reasoning for concluding that the refusal of the request should be upheld. Paragraph 39 of the section 45 Code of Practice states the following:

"The complaints procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue."

38. The internal review response from the public authority did not reflect that a reconsideration of the request conforming to the description above took place. The Commissioner would advise the public authority that a response giving the outcome to an internal review should state the reasoning for why the initial refusal was upheld and should reflect that there has been a genuine reconsideration of the request.

Right of Appeal

39. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is sent.

Dated the 9th day of November 2010

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 10

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 17

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 24

Section 24(1) provides that –

“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.”

Section 31

Section 31(1) provides that –

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime”.

Section 40

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Section 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”