

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 May 2020

Public Authority: London Borough of Lambeth
Address: Town Hall
Brixton Hill
London
SW2 1RL

Decision (including any steps ordered)

1. The complainant submitted four requests to the London Borough of Lambeth (the Council) seeking information about whether two named organisations had received funding to deliver Prevent training and programmes. The Council refused to confirm or deny whether it held information falling within the scope of the requests on the basis of sections 24(2) (national security), 31(3) (law enforcement) and 43(3) (commercial interests) of FOIA.
2. The Commissioner has concluded that the Council is entitled to rely on section 24(2) of FOIA to refuse to confirm or deny whether it holds any information falling within the scope of each of the requests and that in all the circumstances of the case the public interest favours maintaining the exemption in each case.
3. No steps are required.

Request and response

Case reference FS50882456

4. The complainant submitted the following request to the Council on 23 July 2019:

'I would like to request the following information about the Empowering Minds Consultancy LTD.

1. Will Empowering Minds Consultancy LTD receive funding for their 'Empowering Mothers against grooming and radicalisation' project for 2019/20 financial year?

2. If so, how much funding will Empowering Minds Consultancy LTD receive for their 'Empowering Mothers against grooming and radicalisation' project for 2019/20?

3. How many cohorts will the Empowering Minds Consultancy be delivering in 2019/20 as part of their 'Empowering Mothers against grooming and radicalisation' project?

4. Which areas in Lambeth will Empowering Minds Consultancy be delivering in 2019/20 as part of their 'Empowering Mothers against grooming and radicalisation' project?

5. What are the projected outcomes of the 'Empowering Mothers against grooming and radicalisation'?

6. Can you provide us with the course materials that are being used to deliver the 'Empowering Mothers against grooming and radicalisation' project?

Sections (Section 24 (1) and 31 (1) (a) Section 38(1) (b) Section 43 Section 24 (1) and 31 (1) (a) citing commercial interests, national security and personal safety for refusal to answer an FOI are not applicable in the case of this request. Empowering Minds Ltd and [name redacted] have appeared in press openly discussing Prevent and the programme 'Empowering mothers against radicalisation.' They have also disclosed they are Home Office-funded.'

5. The Council responded on 20 August 2019, under its reference number IR289890, and refused to confirm or deny whether it held any information falling within the scope of the request on the basis of sections 24(2) (national security), 31(3) (law enforcement) and 43(3) (commercial interests) of FOIA.

6. The complainant contacted the Council on 11 September 2019 and asked it to conduct an internal review of this decision.
7. The Council informed her of the outcome of the review on 9 October 2019. It upheld the various exemptions cited in the refusal notice.

Case reference FS50884291

8. The complainant submitted the following request to the Council on 6 August 2019:

'I would like to request the following information about Aurety Limited.

1. Will Aurety Limited receive funding for their 'Mothers Safeguarding champions' programme for 2019/20 financial year?

2. If so, how much funding will Aurety Limited receive for their Mothers Safeguarding champions' programme for 2019/20?

3. How many cohorts will the Aurety Limited be delivering in 2019/20 as part of their 'Mothers Safeguarding champions' programme?

4. Which areas in Lambeth will Aurety Limited be delivering in 2019/20 as part of their 'Mothers Safeguarding champions' programme?

5. What are the projected outcomes of the 'Mothers Safeguarding champions' programme?

6. Are Tell Mama or Faith Matters delivery partners of the programme or involved in anyway and if so, how?

7. To provide us with the course materials that are being used to deliver the 'Mothers Safeguarding champions' programme?

Sections (Section 24 (1) and 31 (1) (a) Section 38(1) (b) Section 43 Section 24 (1) and 31 (1) (a) citing commercial interests, national security and personal safety for refusal to answer an FOI are not applicable in the case of this request. Aurety Ltd and [name redacted] have appeared in press openly discussing Prevent and the programme 'Mothers Safeguarding champions' programme. They have also disclosed they are Home Office-funded.'

9. The Council responded on 29 August 2019, under its reference number IR291680, and refused to confirm or deny whether it held any information falling within the scope of the request on the basis of section 31(3) of FOIA.

10. The complainant contacted the Council on 12 September 2019 and asked it to review this decision.
11. The Council informed her of the outcome of the internal review on 9 October 2019. The review upheld the application of section 31(3).

Case reference FS50900363

12. The complainant submitted the following request to the Council on 23 September 2019:

'I would like to request the following information about Aurety Limited:

1. Has the council carried out any due diligence on Aurety? If so, can you detail the rationale of the due diligence, what has been carried out, the dates and by which department?

2. How many council meetings have any representatives of Aurety been invited to/will be invited from 2017 to 2020? If so, please share dates and minutes of these.

3. How many council meetings have any representatives of Aurety attended from 2017 to present day? If so, please share dates and minutes of these.

4. Has Aurety contributed to any Community Safety Partnership meetings? If so, what dates were these, what were the outcomes and please share the minutes of the meetings.

5. Has Aurety contributed to the councils Prevent strategy for 2018/2019 and/or 2019/20? If so, how?

6. Has Aurety delivered any programmes in schools with the local authority? If so, please share dates, where these were delivered to and the nature of the programmes.'

13. The Council responded on 24 October 2019 under its reference number IR297570, and refused to confirm or deny whether it held information falling within the scope of the request on the basis of section 31(3) of FOIA.
14. The complainant contacted the Council on 19 November 2019 and asked it to conduct an internal review of this decision.
15. The Council informed her of the outcome of the internal review on 17 December 2019. It upheld the application of section 31(3).

Case reference FS50909664

16. The complainant submitted the following request to the Council on 16 September 2019:

'I would like to request the following information about Empowering Minds Consultancy LTD

1. Has the council carried out any due diligence on Empowering Minds? If so, can you detail the rationale of the due diligence, what has been carried out, the dates and by which department?

2. How many council meetings have any representatives of Empowering Minds been invited to/will be invited from 2017 to 2020? If so, please share dates and minutes of these.

3. How many council meetings have any representatives of Empowering Minds attended from 2017 to present day? If so, please share dates and minutes of these.

4. Has Empowering Minds contributed to any Community Safety Partnership meetings? If so, what dates were these, what were the outcomes and please share the minutes of the meetings.

5. Has Empowering Minds contributed to the councils Prevent strategy for 2018/2019 and/or 2019/20? If so, how?

6. Has Empowering Minds delivered any programmes in schools with the local authority? If so, please share dates, where these were delivered to and the nature of the programmes.'

17. The Council responded on 24 September 2019, under its reference number IR296362, and refused to confirm or deny whether it held any information on the basis of sections 24(2), 31(3) and 43(3).
18. The complainant contacted the Council on 30 September 2019 and asked it to review this decision.
19. The Council informed her of the outcome of the internal review on 9 October 2019 which upheld the application of the exemptions cited in the refusal notice.

Scope of the case

20. The complainant contacted the Commissioner on 15 October 2019 about the Council's handling of the first request she submitted to it (its reference IR289890) and subsequently complained to the Commissioner

about the Council's handling of the three further requests she had submitted to it.

21. The complainant disputed the Council's position that the various exemptions provided a basis to refuse her request, and even if they did, she argued that the public interest favoured disclosure of the requested information.
22. As is clear from the above there is some similarity between the four requests submitted by the complainant. Furthermore, the Council's rationale for relying on the exemptions is the same for each request.¹ Therefore, the Commissioner has considered the Council's refusal of each request in this single decision notice.
23. In relation to these complaints it is important to note that the right of access provided by FOIA is set out in section 1(1) and is separated into two parts. Section 1(1)(a) gives an applicant the right to know whether a public authority holds the information that has been requested. Section 1(1)(b) gives an applicant the right to be provided with the requested information, if it is held. Both rights are subject to the application of exemptions.
24. As explained above, the Council is seeking to rely on sections 24(2), 31(3) and 43(3) to neither confirm nor deny (NCND) whether it holds information falling within the scope of the two requests. Therefore, this notice only considers whether the Council is entitled, on the basis of these exemptions, to refuse to confirm or deny whether it holds the requested information. The Commissioner has not considered whether the requested information – if held – should be disclosed.

¹ Although the Council initially only relied on section 31(3) in relation to requests IR291680 and IR297570 the Commissioner understands that as with the other two requests submitted by the complainant it also considers sections 24(2) and 43(3) to these two requests.

Reasons for decision

Section 24 – national security

25. Section 24(2) provides an exemption from the duty to confirm or deny where this is required for the purpose of safeguarding national security.
26. 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 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 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.
27. The approach that the Commissioner takes to the term 'required' as it is used in this exemption is that this means 'reasonably necessary'. In effect this means that there has to be a risk of harm to national security for the exemption to be relied upon, but there is no need for a public authority to prove that there is a specific, direct or imminent threat.
28. Therefore, section 24(2) is engaged if the exemption from the duty to confirm or deny is reasonably necessary for the purpose of safeguarding national security. The Commissioner considers that section 24(2) should be interpreted so that it is only necessary for a public authority to show either a confirmation or a denial of whether requested information is held would be likely to harm national security.

The Council's position

29. The Council's rationale for relying on section 24(2) focused on the consequences that complying with section 1(1)(a) of FOIA would have on the Prevent programme. The Council emphasised that there is a serious terrorist threat to the UK and Prevent is one of the four strands

of the government's CONTEST Counter Terrorism Strategy. The Council argued that weakening the effectiveness of projects, delivered under the Prevent programme, which were designed to protect vulnerable Lambeth citizens from becoming terrorists increases the risk that radicalisation and support for terrorism goes unchallenged, which would have an adverse impact on UK citizens' and national security.

30. The Council advanced two broad arguments to support its view that confirming whether or not it held the requested information would undermine the effectiveness of Prevent programmes and thus in turn impact on the UK's national security.
31. Firstly, it explained that Prevent local delivery is dependent on civil society organisations (CSOs) to reach at risk communities and help prevent vulnerable individuals from becoming terrorists or supporting terrorism. Due to the controversial nature of the programme CSOs may be concerned about reputational damage, both generally and within the vulnerable communities they are trying to engage with, if they are publicly linked with Prevent. Therefore, there is a significant risk that fear of having their identity unilaterally disclosed via FOI would make some CSOs less willing to work with Prevent. The Council argued that this would force it to draw from a smaller pool of project providers and as a result it may be forced to contract substandard projects due to limited alternatives.
32. The Council argued that adopting a NCND position in requests where this it has not officially confirmed a CSO is linked with Prevent delivery mitigates this risk. The Council argued that such an approach reassures CSOs which want to keep their involvement with Prevent secret that their identities will not be disclosed via FOI. Consequently the Council explained that it will adopt a NCND position even when the CSO is officially linked with Prevent in other councils or nationally.
33. The Council also provided the Commissioner with further submissions to support this position. The Commissioner considers such submissions to be sensitive and therefore has not included them in this decision notice.
34. The Council's second argument to support its reliance on section 24(2) was that highlighting an area that received dedicated Prevent funding would allow for a geographical 'threat map' to be built up. In support of this position the Council argued that terrorists are highly motivated and may go to great lengths to gather intelligence. It suggested that individuals could submit multiple FOIs across many councils in the UK which would enable them to build up a threat map of the UK. Individuals, including those with ill intent, could then use this map to better target radicalisation efforts in several negative ways. For example:

- 1) they could focus on counteracting the effects of Prevent projects in certain areas, directly undermining the latter's effectiveness,
 - 2) they could focus on areas with Prevent projects. If an area has several projects running there, this itself is an indicator of potential radicalism/terrorism within them. This would provide them with a relatively large pool of potential terrorists and allow them to tailor their efforts to best target the most vulnerable groups within that area,
 - 3) they could switch focus from areas with projects, to areas without them, where they know they will face less resistance to their ideologies.
35. In short, the Council argued that confirming or denying the location of targeted radicalisation efforts improve radicalisers' chances of success. This could increase the pool of people intending to commit criminal/terrorist offences and enhance the likelihood of a terror attack, thereby undermining the Prevent programme and CONTEST strategy, and ultimately making the public less safe, and jeopardising the UK's national security.
36. The Council emphasised that in applying section 24(2) of FOIA it had to consider the precedent effect. It argued that if it were to confirm whether it held information falling within the scope of these requests then it would make it more difficult to refuse requests for similar information in the future.
37. The Council noted that this rationale, albeit in the context of section 31, had been endorsed in the Commissioner's decision notice FS50122063 which found that HMRC were entitled to reject a request for the number of drug seizures made at particular ports. This is because this exemption recognises the precedent effect:
- 'This was on the basis that responding to the request would make it harder to resist future requests for the number of drug seizures at other ports. If all this information was put together it would eventually reveal the pattern of drug seizures throughout the country. This in turn would enable criminals to identify where the public authority deployed its resources and where smuggling was less likely to be detected'.²*
38. With regard to the complainant's counter arguments to challenge the engagement of the exemption which are set out below, the Council offered the following responses:

² https://ico.org.uk/media/action-weve-taken/decision-notices/2007/421820/FS_50122063.pdf

39. For the reasons set out above, the Council explained that its policy is to NCND in all cases where it has not officially confirmed a CSO is linked with Prevent delivery in Lambeth. It explained that it was under no obligations to confirm involvement with a CSO just because that CSO has confirmed/denied involvement with the Prevent programme. The Council suggested that whilst individual CSO's are at liberty to confirm or deny involvement with Prevent based on personal preference, in its view it is in a different position to individual CSOs and has a wider responsibility to safeguard its relationships with all Prevent delivery stakeholders both now and in the future.
40. With regard to the promotion of Prevent projects the Council explained that these are advertised directly to the schools and institutions that it believed would most benefit from their support, and sessions are arranged with them directly. Some projects are also advertised on the Lambeth Schools Services website. However, the Council explained that just because a school or institution received an email outlining that projects were available, or saw details on the schools services website, the omission of a group from this list would not necessarily mean that this group was not funded by Lambeth, as it may be that the project was not deemed suitable for that institution. As such, the advertisement of projects does not provide a full picture of which companies are funded in the borough.
41. With regard to payments made to suppliers from the 'COUNTERTERRORISM' cost-code that is over £500 these would be included in the proactive publication scheme. However, the Council explained that the reason for the spending is not published, and would not necessarily identify Prevent projects, as it includes events spending, Counter Extremism projects and some community engagement funding as well. It would also not identify which project was being delivered by a group.

The complainant's position

42. The complainant argued that confirming whether or not the requested information was held would not undermine the delivery of the Prevent programme and in turn harm national security.
43. In support of this position she pointed to the information already in the public domain about the two companies covered by her request noting they had both appeared in the press discussing work they had undertaken involving Prevent.
44. She also emphasised that information regarding organisations delivering Prevent programmes was available in the public domain, predominantly through the advertising of the programme but also after delivery through council supplier payments reports.

The Commissioner's position

45. With regard to the arguments advanced by the Council, in relation to the first argument the Commissioner accepts that Prevent has attracted some controversy. She also acknowledges that it encompasses a range of different activities as outlined by the Council some arguably more sensitive and thus understandably requiring greater anonymity than others. In light of the controversial nature of Prevent, and given the specific evidence provided to her by the Council, the Commissioner is persuaded that if the Council complied with section 1(1)(a) of FOIA in relation to these requests this could result in *some* CSOs being unwilling – or at least less willing – to offer to undertake the delivery of such programmes in the future. Moreover, she also accepts the premise of the Council's argument that its ability to deliver Prevent programmes would be undermined by such an outcome.
46. In reaching this conclusion the Commissioner acknowledges that there is some information in the public domain about the work of the two organisations in relation to Prevent. Empowering Minds website specifically confirms that they are involved in delivering Prevent training and there are some limited press articles about Autrey which imply that it has also delivered such training. However, it is the Commissioner's understanding that neither organisation has confirmed whether or not they have been working in the London borough of Lambeth. Therefore, by complying with section 1(1)(a) the Council would be revealing information about these organisations that has not previously been in the public domain. That is to say, whilst the CSOs in question have been linked to Prevent training they have not confirmed whether or not they have actually delivered such training in Lambeth. Consequently the Commissioner is satisfied that compliance with section 1(1)(a) would still be likely, despite the information already in the public domain, to put off other CSOs from offering Prevent training if they considered that their involvement with a particular local authority would be revealed in response to a FOI request.
47. With regard to the second argument, the Commissioner considers the Council's point about the danger of creating a mosaic effect to be a valid one. As with the HMRC example cited, complying with section 1(1)(a) in response to one request may not be particularly harmful in terms of undermining the delivery of Prevent in Lambeth. However, the risk of doing so comes through a series of FOI requests which allow a motivated individual with malicious intent to build up a detailed picture across London, or more broadly, across the UK of where dedicated Prevent training has been delivered by particular CSOs. Furthermore, the Commissioner accepts that such a process could undermine the effectiveness of the Prevent programme in some or all of the three ways identified by the Council. In reaching this conclusion she acknowledges that the threats to the UK from terrorism are clearly real.

48. With regard to whether refusing to comply with section 1(1)(a) is *necessary* in order to protect national security, the Commissioner has concluded that it is. She has reached this finding given the cumulative risks posed by the Council of it doing so because of fewer CSOs being willing to deliver Prevent programmes *and* the risk of a geographical threat map being created if the Council complied with these requests and confirmed whether or not it held the requested information.
49. In addition to these factors, in reaching this conclusion the Commissioner has also taken into account the importance of NCND provisions being applied consistently in order for them to be effective. That is to say there are situations where a public authority will need to use the neither confirm nor deny response consistently over a series of separate requests, regardless of whether it holds the requested information. Otherwise, if the same (or same type of) requests were made on several occasions, a changing response could reveal whether information was held. The Commissioner considers that such concerns apply here and maintaining a consistent NCND position is both relevant and important in relation to both of the Council's arguments.
50. Finally, in reaching this conclusion the Commissioner wishes to emphasise that she has taken into account the complainant's submissions summarised at paragraphs 42 to 44. Whilst payments to any suppliers delivering Prevent training in Lambeth would (if any were incurred) be included in the Council's spending data, for the reasons set out by the Council it would not be possible to link such payments directly to the provision of Prevent training. Furthermore, again for the reasons set out by the Council, whilst there is some local publicity regarding some Prevent training, this would not provide a full picture as to the nature of the training offered within the borough. In contrast, by complying with FOI requests such as the ones which are the subject of this request local authorities make it much easier for motivated individuals to build up a geographical threat map and/or establish a much wider, and potentially national, picture of the CSOs involved in delivering such training.
51. The Commissioner has therefore concluded that section 24(2) is engaged.

Public interest test

52. Section 24(2) is a qualified exemption. Therefore, the Commissioner is required to consider whether, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in confirming whether the Council holds the requested information.

53. The complainant argued that there was a clear public interest in the disclosure of the requested information as it would provide assurance that the Prevent agenda and contracts that are awarded are appropriate and effective.
54. The Council argued that it was clearly against the public interest to jeopardise the delivery of any counter-terrorism strategy, and, as a result jeopardise the national security of the UK and its citizens. It was therefore of the view that public interest favoured maintaining the exemption contained at section 24(2) of FOIA.
55. The Commissioner agrees that there is a clear public interest in local authorities being open and transparent about how they are deliver training within their area given the role that Prevent plays in UK's CONTEST strategy. Furthermore, the Commissioner acknowledges that in light of the arguably controversial nature of Prevent, the importance of such transparency should not be underestimated. However, the Commissioner agrees with the Council that there is a very strong public interest in ensuring that the national security of the UK is not compromised. Given the risks that complying with section 1(1)(a) in respect of these requests presents to the delivery of Prevent, not just in Lambeth, but more broadly, she has therefore concluded that the public interest favours maintaining the exemption contained at section 24(2) of FOIA.
56. In light of this finding the Commissioner has not considered the Council's reliance on sections 31(3) and 43(3) of FOIA.

Right of appeal

57. 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: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

58. 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.

59. 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

Jonathan Slee
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