

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 June 2023

Public Authority: National Police Chiefs' Council
Address: 1st Floor
10 Victoria Street
London
SW1H 0NN

Decision (including any steps ordered)

1. The complainant requested information relating to the ethnicity breakdown of people stopped under Schedule 7 of the Terrorism Act 2000.
2. The National Police Chiefs' Council (NPCC) provided some information, but refused to provide the remainder, citing sections 24(1) (national security) and 31(1) (law enforcement) of FOIA.
3. The Commissioner's decision is that the NPCC correctly relied on section 24(1) to withhold the information.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 15 February 2023, following earlier correspondence, the complainant wrote to the NPCC and requested information in the following terms:

"... please could I have the ethnicity breakdown of people stopped under Schedule 7 of the Terrorism Act 2000 broken down by Counter Terrorism Region or individual police force, whichever is easiest to provide? Please could you provide the figures as percentages for the time periods July and August 2018; July and August 2019; July and August 2020; July and August 2021; July and August 2022".

6. The NPCC responded on 9 March 2023. It refused to provide the requested information, citing the following exemptions as its basis for doing so:
 - section 24(1) national security
 - section 31(1) law enforcement
7. At internal review, the NPCC maintained its original position.

Scope of the case

8. Following the Commissioner's intervention, the NPCC revised its position. It wrote to the complainant, disclosing regional data. However, it said that, in order to reduce any detrimental impact to national security, where figures were under 5% they were shown as "5% or less".
9. The NPCC described this disclosure as "balancing [the complainant's] requirements for the information with the need to prevent causing harm to others by the release".
10. There was further correspondence between the two parties. Ultimately, the complainant remained dissatisfied.
11. They asked to be provided with the remaining withheld information which they described as "the correct percentages".
12. Although not required to give a reason for requesting the information, the Commissioner understands that the complainant wishes to report on the ethnicity of people stopped under Schedule 7. They explained that, without the actual figures, they would not be able to report accurately and fully.
13. In its submission to the Commissioner, the NPCC confirmed its reliance on section 24(1) (national security) and section 31(1) (law enforcement) to withhold the disputed information.
14. It also told the Commissioner that some of the data is of poor quality as a result of data collection issues. It confirmed that new procedures to improve both data collection and recoding went live in 2022.
15. The complainant acknowledges that they have been advised by the NPCC about the quality of the recorded information within the scope of the request.
16. The Commissioner considers that the scope of his investigation is to determine whether the NPCC was entitled to rely on section 24(1) and /

or 31(1) to withhold the remaining requested information. That information comprises the withheld regional data that was disclosed as a generic figure, namely "5% or less".

Reasons for decision

Section 24 – national security

17. Section 24(1) of FOIA states that:

"Information which does not fall within section 23(1) [information supplied by, or relating to, bodies dealing with security matters] is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding the national security."

18. In broad terms, section 24(1) allows a public authority not to disclose information if it considers that the release of the information would make the United Kingdom or its citizens vulnerable to a national security threat.

19. Although there is no definitive definition of national security, the Information Tribunal for Norman Baker v the Information Commissioner and the Cabinet Office ([EA/2006/0045](#) 4 April 2007) provided the following:

- "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.

The complainant's view

20. The complainant believes that asking for percentages obscures the figures and prevents terrorists obtaining useful information. With reference to the withheld information, they consider that a terrorist knowing the actual percentage figure is not going to impact national

security any more than them knowing that the percentage was 5% or less.

21. They were also sceptical that the requested historic data, which they described as "a snapshot of a period in time", would be useful to a terrorist.
22. The complainant also told the NPCC that both PSNI [Police Service of Northern Ireland] and Police Scotland have released their Schedule 7 data.

The NPCC's view

23. By way of background, and to address the complainant's argument that other public authorities have disclosed Schedule 7 data, the NPCC told the Commissioner:

"Schedule 7 statistical information is reported quarterly via the Home Office website. Police Scotland have released SDE [self defined ethnicity] Schedule 7 data at a country level, as have PSNI for Northern Ireland".

24. In other words, the Schedule 7 data released by Police Scotland and PSNI does not breakdown the data to the level captured by this request. The NPCC argued that those disclosures are therefore not as harmful as the one under consideration in this case.

25. The NPCC also told the Commissioner:

"In an attempt to informally resolve the request the NPCC have released SDE data for England and Wales (for July and August 2018/19, 2019/20, 2020/21 and 2021/22) but this was not accepted as a suitable compromise by the requestor.

We have further provided the requestor with regional data, replacing any figures of 5% or under with "5% or less". This has also been rejected by the requestor ...".

26. With regard to its withholding of the actual percentage where that percentage is 5% or less, the NPCC told the Commissioner:

"It is the NPCC view that breaking down these figures to a regional level would allow subjects of interest to build a mosaic picture of CT [Counter Terrorism] structures, deployments and priorities for the whole of the UK, which would be prejudicial to maintaining effective CT operational capabilities and methodologies across all UK force areas, regions and countries".

27. Similarly, the NPCC told the complainant that, to break down data further could reveal regions where no stops of a particular ethnicity have taken place, which would highlight vulnerabilities and intelligence gaps within certain regions.
28. With reference to the nature of the requested information, the NPCC recognises that the applicant seeks percentage data broken down to a regional level. It told the Commissioner:

“... on casual review, one could argue that the data does not allow terrorists to map counter terrorism policing capability and capacity”.
29. However, it went on to explain its reasons for considering that disclosure of the withheld information could harm national security.
30. Clearly, the Commissioner is limited in what he is able to say about those arguments in this notice. However, he accepts that the arguments relate to the NPCC's view that disclosure of the withheld percentage data would be detrimental to the overall effectiveness of preventing and deterring those intent on terrorism from entering the UK.
31. In support of that view, the NPCC said that the threat from terrorism is not a hypothetical one, with numerous attacks evidencing that the threat is both sustained and serious. It also stated that effective policing of UK borders is a key factor in preserving the integrity of the national counter terrorism effort.

Is the exemption engaged?

32. The Commissioner has considered the arguments put forward by the complainant and the NPCC. He has also consulted his guidance on section 24¹.
33. Having considered the arguments put forward in this case, the Commissioner is satisfied that the exemption from the duty to disclose the information is required for the purpose of safeguarding national security.
34. The exemption is therefore engaged.

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-24-safeguarding-national-security/>

Public interest test

35. Section 24(1) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has therefore considered whether, in all the circumstances of the case, the public interest in maintaining the exemption cited by the NPCC outweighs the public interest in disclosing the information.

Public interest in disclosing the information

36. The complainant considers that the requested data can show patterns of disproportionality across the years. With reference to the data showing if any English and Welsh police forces are acting in a disproportionate manner, the complainant argued that it is clearly in the public interest for disproportionality to be identified and addressed.
37. The NPCC acknowledged the general public interest in transparency.

Public interest in maintaining the exemption

38. The NPCC explained that the decision to stop someone and exercise Schedule 7 powers is based on the threat posed by various terrorist groups active in, and outside of, the UK.
39. In favour of maintaining the exemption, the NPCC argued that it was not in the public interest to disclose information that would be helpful to terrorists to change their behaviour to avoid detection and thereby threaten national security.

Balance of the public interest

40. The Commissioner acknowledges that there will always be a general public interest in transparency. He also recognises the obvious and weighty public interest in safeguarding national security.
41. In the circumstances of this case he recognises the public interest in transparency regarding the manner of stops under Schedule 7.
42. In that respect, he has taken into account that the NPCC publishes Schedule 7 statistical information via the Home Office website. He considers that this goes some way to meeting the public interest despite the published data not being at the same level as that requested in this case.
43. In his guidance on the national security exemption, the Commissioner recognises that the public are more likely to cooperate with security measures if they understand the need for them and are satisfied that they are proportionate to the risks they are seeking to address.

44. With that in mind, he gives weight to the argument that disclosing the remaining withheld information in this case would meet the public interest in transparency and accountability surrounding the ethnicity breakdown of people stopped under Schedule 7. Disclosure of the withheld information would also meet the complainant's stated interest in being able to fully analyse the Schedule 7 data and in particular to identify any disproportionality.
45. However, balanced against this, the Commissioner must consider whether disclosure would have any effects which would run counter to the public interest in safeguarding national security, and if so, whether they are outweighed by the benefits of disclosure.
46. With reference to his guidance, the Commissioner recognises "that terrorists can be highly motivated and may go to great lengths to gather intelligence".
47. The Commissioner accepts that, on its own, the disputed information appears to be simple percentages representing a snapshot in time.
48. However, disclosure under FOIA is disclosure to the world at large, not just the requester. Disclosure in this case would enable anyone to analyse the data and map regional counter terrorism activity. It would allow terrorists to make judgements in respect of what CT policing knows about their activities and movements and has the potential to highlight any vulnerabilities and intelligence gaps. This would clearly not be in the public interest.
49. The Commissioner has also considered whether combining the withheld information with other information in the public domain has the potential to cause harm.
50. While not able to predict what information a terrorist may have access to, the Commissioner is mindful for example, that, if a series of requests were received, each specifying different timeframes, it might be possible to identify the full picture.
51. In the circumstances of this case, the Commissioner considers that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. It follows that the NPCC was entitled to rely on section 24(1) of FOIA to refuse to disclose the remaining requested information.
52. In light of this decision the Commissioner has not considered the NPCC's application of section 31(1) of FOIA to the same information.

Right of appeal

53. 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

54. 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.
55. 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

**Laura Tomkinson
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