

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 June 2023

Public Authority: Chief Constable of Merseyside Police
Address: Merseyside Police Headquarters
15 Cazneau Street
Liverpool
L3 3AN

Decision (including any steps ordered)

1. The complainant has requested information about referrals made to the counter terrorism service, Prevent. Merseyside Police refused to disclose the requested information, citing sections 24(1) and section 31(1)(a) and (b) of FOIA.
2. The Commissioner's decision is that section 24(1) is engaged and the public interest favours maintaining the exemption and withholding the requested information.
3. The Commissioner does not require Merseyside Police to take any further steps on this matter.

Request and response

4. On 13 December 2022, the complainant wrote to Merseyside Police and requested information in the following terms:

"For each of the years 2017 to 2022, please could you provide a breakdown of all those referred by Merseyside Police to Prevent by:

- a. ethnicity and gender;
- b. ethnicity and age; and
- c. ethnicity and type of concern giving rise to the referral

Please could this data be provided in such a way that it is possible to analyse it intersectionally, particularly as between the three data categories of age, ethnicity and gender. We would like to be able to see, in particular, the ethnicity of females in each group.”

5. Merseyside Police responded on 6 January 2023. It refused to disclose the requested information by virtue of sections 24(1) and 31(1)(a) and (b) of FOIA.
6. Following an internal review Merseyside Police wrote to the complainant on 24 February 2023. It maintained its reliance on sections 24(1) and 31(1)(a) and (b) to refuse the request.

Scope of the case

7. The complainant contacted the Commissioner on 25 May 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine if Merseyside Police has correctly applied either of the cited exemptions and, if so, whether the balance of the public interest lies in favour of disclosing the requested information or maintaining the exemption.

Reasons for decision

Section 24 – National security

9. Section 24(1) of FOIA provides that information is exempt from disclosure if it is required for the purpose of safeguarding national security.
10. The Commissioner has previously considered complaints regarding requests for information relating to the Prevent programme. These include requests made to the Metropolitan Police Service (MPS)¹ and

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4022989/ic-159785-m8z8.pdf>

Essex Police². In the Essex Police case a detailed analysis of the exemption at section 24 of FOIA is included at paragraphs 15-21 of the Decision Notice. The Commissioner has not repeated that analysis here.

11. In this case the complainant has argued that Merseyside Police has failed to demonstrate how disclosure of the requested information would be detrimental to the safeguarding of national security. They further argued that the scenarios which Merseyside Police suggested may occur as a result of disclosure of the requested information are far-fetched and highly speculative, and that Merseyside Police has failed to appropriately assess the likelihood of any such occurrences.
12. Merseyside Police explained that Prevent aims to draw vulnerable individuals away from violent extremism before they become involved in criminal activity. Disclosure of the requested information would highlight individuals who are more susceptible to radicalisation, which could in turn put individuals at risk and consequently put national security at risk too.
13. Merseyside Police further explained that publication of Prevent data could aid those who seek to challenge the process. It gave examples of allegations such as 'spying in the community' and 'targeting Muslims' which misrepresent and undermine the intention of the Prevent programme, which seeks to support those individuals vulnerable to being drawn into violent extremism. Merseyside Police also argued that figures on the ethnicity or age of participants in the Prevent programme may fuel perceived grievances, for example, that young Muslims are being targeted or that the issue of political extremists is not being tackled.
14. Merseyside Police stated that Prevent is a multi-agency process which aims to identify those at risk of being drawn into violent extremism, assessing the nature and extent of the risk, and making referrals on to a multi-agency panel in order to decide on the most appropriate support for the individual at risk. Disclosure of regional statistics could result in the identification of individuals referred to Prevent, those who made the referrals, and those working with the force to protect and safeguard those individuals at risk. This could result in harm to ongoing cases and the withdrawal of individuals from the programme, and thus threaten the successful completion of a case. This would destroy trust and bring the programme into disrepute.

² https://ico.org.uk/media/action-weve-taken/decision-notice/2016/1624043/fs_50614258.pdf

15. As set out in the Essex Police case (referenced in paragraph 10), the Commissioner considers that it is not necessary to show that disclosing the requested information would lead to a direct threat to the UK. The Commissioner's approach is guided by the House of Lords in *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, in which Lord Slynn found that:

"To require the matters in question to be capable of resulting 'directly' in a threat to national security limits too tightly the discretion of the executive in deciding how the interests of the state, including not merely military defence but democracy, the legal and constitutional systems of the state need to be protected. I accept that there must be a real possibility of an adverse effect on the United Kingdom for what is done by the individual under inquiry but I do not accept that it has to be direct or immediate."

16. The Commissioner therefore considers that safeguarding national security also includes protecting potential targets, even if there is no evidence that an attack is imminent. Such matters would include the radicalisation of individuals who could, as a result, be intent on causing harm to themselves or to others.
17. The Commissioner is satisfied that there is a risk that disclosing the requested figures could provide insight into Prevent referrals which may be of use to those seeking to radicalise vulnerable individuals. For example, if the figures were sufficiently low for a specific gender and ethnicity, it could potentially identify a perceived weakness in the system in the region which individuals could seek to exploit if they so wished. They could accomplish this by either targeting a particular category of individuals which appears to not be being consistently identified and referred to the programme, or equally by identifying those who have in fact already been referred to the programme and seeking to disrupt their engagement with the programme and counteract the work of the agencies supporting them.
18. The Commissioner is aware that some Prevent statistics are published at a national level, as detailed in Merseyside Police's initial response to the complainant. However, he is satisfied that publishing the more detailed regional statistics may offer another avenue for exploitation by revealing areas or regions where the Prevent programme is perhaps not as prevalent as other areas, thereby giving insight as to where those intent on doing so may be able to target vulnerable individuals without the risk of detection.
19. The Commissioner notes the complainant's comment that Merseyside Police had assumed that the request for information was made with the intention of challenging the process. The Commissioner notes that a

disclosure of information in response to a request under FOIA is essentially a disclosure to the world at large. Whilst there may be no concerns regarding how the complainant intends to use the requested information, Merseyside Police must consider that once disclosed in response to a request under FOIA, the information will be readily available to anybody else, including to those who may wish to misuse it.

20. The Commissioner is satisfied that the exemption at section 24(1) of FOIA is correctly engaged on the basis that withholding the requested information is necessary for the purpose of safeguarding national security.
21. Section 24(1) is a qualified exemption, therefore for Merseyside Police to rely on it the public interest in favour of maintaining the exemption must outweigh the public interest in disclosure of the requested information.

Public interest test

22. In both of the earlier referenced cases the Commissioner found that the public interest in maintaining the exemption outweighed the public interest in disclosure. He does not intend to repeat those arguments here, but he notes that for him to order disclosure in this case he would need to be presented with compelling arguments to outweigh the factors which he has previously accepted weigh in favour of withholding information relating to Prevent referrals.
23. The complainant stated that the public interest in publishing anonymised data far outweighs the speculative concerns cited by Merseyside Police, and that being able to scrutinise and ensure public authorities remain accountable to the public is a key principle of FOIA. They argued that:

"Accountability is a core component of the FOIA regime, and the publication of relevant data allows the public to assess the efficacy of policies, both in meeting their stated goals, as well as in terms of their consequences, unintended or otherwise. As with all areas of policing, there is a real concern as to whether ethnic disparities exist as a consequence of the exercise of police powers. It is important that the public can see that police take such concerns seriously, and ensure that measures are in place to mitigate if not fully address them. The importance of accessing reliable data on ethnicity in this respect is indispensable, as recognised by the Lammy Report, the findings of which are implemented by the Government.

In addition, [Merseyside Police] is a public body under the Equality Act 2010. Section 149 of the Act requires that public bodies, in the exercise of their functions, have "due regard" to the statutory equality

objectives, which include, inter alia, the need to eliminate discrimination. We submit that publication of the data requested in our FOI Request is necessary to demonstrate [Merseyside Police's] compliance with the public sector equality duty."

24. Merseyside Police acknowledged that there are some arguments in favour of disclosing the requested information. It stated:

"The public are entitled to know how public funds are spent and by disclosing the information the public would be able to see where public money is being spent and know that forces are doing as much as they can to combat terrorism and radicalisation. Revealing this information would enable the public to have some reassurance that the Government's Counter Terrorism strategy is robust. This is an issue high on the public agenda and therefore the release of this information would contribute to an informed public debate."

25. However, Merseyside Police also identified public interest arguments in favour of maintaining the exemption. It stated:

"Prevent only operates in specific locations. Revealing detailed statistics may increase interest in cases which could ultimately lead to the identity of individuals and the organisation we work with, which may assist others intending to counter such work. Identification of those working locally to deliver the aims and objectives of Prevent could enable those wishing to counter such work to engage in activity to disrupt and jeopardise the successful delivery of ongoing work. This could threaten the successful delivery of Prevent and the government's counter terrorism strategy and lead to the public being at increased risk from terrorism. There is also the potential for such data to be used to increase community tensions in an area, which would not be in the public interest.

Any information shared between agencies (intelligence) has the potential to cover all aspects of criminal activity, be it threats to National Security, future planned robberies or intelligence related to terrorist activity. Disclosure of the information would enable those intent on engaging in terrorist activities to determine on a national level which areas within the UK may be a vulnerable area to target."

26. Whilst it is clear that there is a public interest in referrals to the Prevent programme, and ensuring that there is no ethnic disparity occurring in this process, the Commissioner does not consider that the arguments presented by the complainant are sufficient to outweigh the arguments put forward in favour of maintaining the exemption. The Commissioner considers that disclosure of the requested information is not a proportionate way of satisfying the genuine aims underpinning the

request, and he finds that it would be firmly against the public interest to undermine the Prevent programme and subsequently put the national security of the UK at risk.

27. The Commissioner concludes that the balance of the public interest in this case lies with maintaining the exemption, therefore Merseyside Police was entitled to withhold all of the requested information in accordance with section 24(1) of FOIA.
28. He has therefore not gone on to consider Merseyside Police's application of section 31.

Right of appeal

29. 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

30. 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.
31. 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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Wycliffe House
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