

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 11 June 2024

**Public Authority:** Cabinet Office

**Address:** 1 Horseguards Road  
London  
SW1A 2HQ

#### **Decision (including any steps ordered)**

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1. The complainant has requested information in relation to a document published by the Cabinet Office in 2023. The Cabinet Office relied on sections 24(1) and 40(2) of FOIA to withhold the information. It later stated to the Commissioner that it wished to rely on the additional exemption of section 38(1) of FOIA.
2. The Commissioner's decision is that the public authority has correctly relied on section 24(1) of FOIA to withhold the information. The Commissioner considers that this exemption applies to the entirety of the requested information so has not considered the Cabinet Office's application of the exemptions at sections 38(1) and 40(2) of FOIA.
3. The Commissioner does not require further steps to be taken.

#### **Request and response**

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4. On 11 September 2023 the complainant made a request for information to the Cabinet Office. That request was as follows:

"I make a Freedom of Information request for the following details in relation to the above document ("NRR23") published by the Cabinet Office on or about 3 August 2023:

- The title and full name or initials; plus
- Institutional affiliation and department/faculty (if any); of
- All academic members of the thematic impact review groups on
  - (i) Conflict and instability, particularly regarding the 'Attack against a NATO ally or UK-deployed forces, which meets the Article 5 threshold' risk scenario and;
  - (ii) Cyber, chemical, biological, radiological or nuclear risks.

By 'academic' I mean either an expert who is a member of a higher education institution or educational charity or a freelance consultant or adviser to government.

See, especially, pages 2, 3 and 13 of NRR23 for Contents and 'Expert Challenge'.

The provision of this information in tabular form, either in a Word document or as a PDF, would be my preferred format sent to the email address below."

5. The Cabinet Office responded on 9 October 2023. It refused to disclose the requested information, citing sections 24 and 40(2) of FOIA as a basis for non-disclosure.
6. The complainant requested an internal review of the Cabinet Office's response on 8 November 2023. The Cabinet Office provided its internal review response on 10 January 2024. The reviewer upheld the original decision.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 16 January 2024 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to establish whether the public authority is entitled to withhold the requested information under the specified sections of FOIA.

## Reasons for decision

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### Section 24 – national security

9. Section 24(1) states 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’.

10. 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.

11. Furthermore, in this context the Commissioner interprets ‘required for the purpose of’ to mean ‘reasonably necessary’. Although there has to be a real possibility that the disclosure of requested information would undermine national security, the impact does not need to be direct or immediate.

### The Cabinet Office’s position

12. The Cabinet Office explained that the National Risk Register 2023 (‘NRR 2023’) was published on 3 August 2023 and outlines the most serious

risks facing the United Kingdom. As is set out in its foreword, the NRR 2023 'is based directly on the government's internal, classified National Security Risk Assessment.' The National Security Risk Assessment ('NSRA') is the Government's principal assessment of the most serious risks - both malicious and non-malicious - that face the United Kingdom over the next two to five years.

13. As the NRR 2023 sets out, it is a classified, internal document containing sensitive information, the circulation of which is carefully controlled. It is a core national security product, as the name suggests. At page 13 of the NRR 2023, it is noted that: 'To ensure that the assessment process is robust, risks are reviewed by a network of experts. These include professionals from industry, charities and academia, as well as subject matter experts within government.<sup>1</sup> The role of experts is to provide challenge by:
  - Supplementing, clarifying or refining the submitted information;
  - Identifying areas of uncertainty;
  - Helping to resolve inconsistencies in the scoring of impact
  - Helping to improve communication of impact information; and
  - Identifying long-term trends that provide context to the submitted risk.
14. To facilitate the provision of expert advice, thematic impact review groups ['expert groups'] were set up to bring together a mix of internal and external expertise. These groups covered individual risk themes (for example, cyber, chemical, biological, radiological or nuclear risks), along with the calculated impacts of different risks (for example, impacts on essential services or the environment) and a group to look specifically at the disproportionate impacts of the risk scenarios on vulnerable individuals and groups.'
15. It is important to note that this process applies to the NSRA and the information within it, and that the NRR is only based on releasable information that is contained in the NSRA. For the purposes of clarity, the NRR 2023 (to which the complainant refers) was based solely on the 2022 version of the NSRA and the Cabinet Office has therefore only

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<sup>1</sup> <https://www.gov.uk/government/publications/national-risk-register-2023/foreword>

considered that version, and the process undertaken to complete it, in its response.

16. The Cabinet Office states that:-

"In his guidance on section 24(1) of the Act, the Information Commissioner notes that the provision: '...allows a public authority not to disclose information if [it] consider[s] that releasing the information would make the UK or its citizens more vulnerable to a national security threat.'

17. As stated above, the NSRA is a critical document and process that enhances the national security of the United Kingdom and the Cabinet Office considers that undermining it would also undermine national security. It is firmly of the view that the disclosure of the requested information would have such an effect.

18. The Cabinet Office states that, if the identities of the individuals who composed the expert groups were disclosed into the public domain, it would reveal a significant number of people that have access to and influence over the Government's national security policy. This has the potential to expose those individuals to influence from actors seeking to inflict harm upon the United Kingdom or otherwise undermine its security.

19. As an example, such disclosure may expose a particular individual to entrapment, blackmail, or other pressure which could lead to them being coerced or malignly influenced either to reveal sensitive information which had been provided to them by the Government, or to unduly influence their future input to the NSRA. The net result of this disclosure would therefore be to undermine future iterations of the NSRA and to risk exposure of the information contained within it.

20. The Cabinet Office explained that individuals who recognise, as a result of the requested disclosure, that their involvement in the NSRA process was in the public domain might reasonably be reluctant to be involved in future expert groups or cease their involvement altogether. If such individuals ceased to be involved in the expert groups then the Government would, it follows, have to rely upon the expertise of individuals who were less well qualified to provide advice and individual challenge. That would serve to undermine future iterations of the NSRA which would clearly undermine national security. It follows, in the view of the Cabinet Office, that withholding of the identities of the individuals who compose the expert groups is required for safeguarding it.

### **The complainant's position**

21. In their request for an internal review, the complainant noted that they had: '...only requested certain details regarding 'All academic members' involved in two review groups, and not those from government departments or industry.'
22. The complainant also contended that: '...the type of information requested - the title, names and institutional affiliation (if any) of the said academic members - is not 'sensitive information' as they claim, and can have no bearing on national security in itself' and therefore concluded that the Cabinet Office's reliance on section 24(1) of the Act was 'entirely irrational' and 'designed to prevent me from writing to these academic experts.'

### **The Commissioner's position**

23. The Commissioner notes that in response to the complainant's arguments, the Cabinet Office has stated that it believes it has demonstrated that reliance upon section 24(1) of FOIA is a wholly rational action to protect national security. It considers that it has fully outlined why, in fact, such information is sensitive and can have a bearing on national security.
24. The Cabinet Office understands that the complainant's view may be that individuals who compose the expert groups, when they are academics who are part of higher education institutions or educational charities, would therefore be representing such institutions in their engagement with NSRA. As explained, this is not the case and even if it were so, it would not follow that their identities should be disclosed because the institutions they work for exist for a public benefit. The Cabinet Office is of the view that the background of the individuals is largely irrelevant in view of its contention that the disclosure of the identity of any individual could open them up to the risk of influence or interference. Those taking part in this process typically do so on an individual basis and not as representatives of their institutions.
25. Having carefully considered the Cabinet Office's submissions and the complainant's arguments, the Commissioner is prepared to accept that disclosure of the requested information may expose individuals to threats or pressure which may cause them to be influenced to reveal sensitive information. This would undermine national security.
21. The Commissioner also accepts that if individuals become reluctant to become involved in the NSRA process out of fear that their identities may become public, this could lead to a lower level of expertise and

therefore undermine future iterations of the NSRA, which could serve to undermine national security.

22. The Commissioner is therefore satisfied that section 24(1) of FOIA is engaged in this instance. As it is a qualified exemption, the Commissioner must consider the public interest test and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing that information.

### **Public interest arguments in favour of disclosure**

23. The Cabinet Office acknowledged in its response to the requester of 9 October 2023 that there is a general public interest in the disclosure of information and that openness in government can increase public trust in, and engagement with, the Government. The Commissioner places significant weight on this public interest argument.
24. The Cabinet Office further acknowledged that, in respect of the NRR 2023, disclosure of the identities of the individuals composing the expert groups would demonstrate to the public that the Government's approach to national risk was being challenged by individuals who were capably qualified for such a task.

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

25. The Cabinet Office states that the public interest in favour of national security is, as the Commissioner notes in his guidance, 'obvious and weighty'. It considers that the public interest in the Government being able to robustly assess the most serious risks facing the country in an unimpeded and confidential manner are very strong.
26. The Cabinet Office further stated that future iterations of the NSRA, and the related NRR, being less comprehensive or less accurate as an indirect consequence of the disclosure of the requested information would not be in the public interest. It considers that such a public interest could only be overridden in exceptional circumstances and that it is not apparent that the complainant has given any compelling reasons why the disclosure of the requested information is more convincingly in the public interest than maintaining the exemption.

### **Balance of the public interest arguments**

27. The Commissioner, having considered all of the public interest arguments, has concluded that there is a significant public interest in favour of maintaining national security, which in this case outweighs the public interest in transparency and in demonstrating to the public

that the Government routinely faces expert scrutiny regarding its approach to national risk. Therefore in all the circumstances of the case the public interest in maintaining the exemption outweighs that in disclosure. As the Commissioner considers that section 24(1) applies to all of the requested information, he has not gone on to consider the other exemptions applied.

## **Other matters**

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28. The complainant informed the Commissioner that they were dissatisfied with the fact that the Cabinet Office had taken over 40 working days to provide its internal review response. The Commissioner has noted this and would remind the Cabinet Office of the importance of responding promptly and adhering to recommended timescales.



## **Right of appeal**

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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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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.

**Deirdre Collins**  
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