

Safeguarding national security – (Section 24)

Freedom of Information Act

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1. The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by public authorities
2. An overview of the main provisions of FOIA can be found in [The Guide to Freedom of Information](#).
3. This is part of a series of guidance, which goes into more detail than the Guide to help public authorities to fully understand their obligations and promote good practice.
4. This guidance forms part of a suite of complementary guidance along with 'Section 23' and 'How sections 23 and 24 interact' which should be read together.

5. This guidance explains to public authorities how the exemption in section 24 works to protect national security.

Overview

- Section 24(1) provides that information is exempt if exemption from section 1(1)(b) is required for the purposes of safeguarding national security.
 - National security includes more than the security of the UK, its military defence and its systems of government, it also involves co-operation with other states in combating international terrorism and guarding against actions targeted at other states which may impact on the UK and its people.
 - "Required for the purposes of" is interpreted as meaning reasonably necessary.
 - Although there has to be a real possibility that the disclosure would undermine national security, the impact does not need to be direct or immediate.
- Section 24(2) provides an exemption from the duty to confirm information is held, where the exemption is required for the purposes of safeguarding national security.
- Section 24 is subject to the public interest test. It is the interests of the UK and its citizens that are of concern.

What FOIA says

6. Section 24 states:

(2) Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purposes of safeguarding national security.

(2) The duty to confirm or deny does not arise if, or to the extent that, exemption from 1(1)(a) is required for the purpose of safeguarding national security.

Exemption from the duty to communicate

7. In broad terms section 24(1) allows a public authority not to disclose information if it considers releasing the information would make the UK or its citizens more vulnerable to a national security threat. To understand the exemption better it is important to look more closely at the language used.

National security

8. There is no definition of 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.

Required for the purpose of

9. The exemption applies where withholding the information is "required for the purposes of safeguarding national security". Required is taken to mean that the use of the exemption is reasonably necessary. "Required" is defined by the Oxford English Dictionary as 'to need something for a purpose' which could suggest the exemption can only be applied if it is absolutely necessary to do so to protect national security. However the Commissioner's interpretation is informed by the approach taken in the European Court of Human Rights where interference to human rights can be justified where it is 'necessary' in a democratic society for safeguarding national security. 'Necessary' in this context is taken to mean something less than absolutely essential but more than simply being useful or desirable, so we interpret 'required', in this context, as meaning 'reasonably necessary'.
10. This approach was articulated in ICO decision notice [FS50178276](#) which concerned a request to the Metropolitan Police for information on a terrorist plot to attack London. The Commissioner found that the term requires: "...means reasonably necessary. It is not sufficient for the information sought simply to relate to national security; there must be a clear basis for arguing that disclosure would have an adverse effect on national security before the exemption is engaged." This approach was also endorsed by the Information Tribunal in *Philip Kalman v Information Commissioner and the Department of Transport (EA/2009/0111 8 July 2010)*.
11. It is not necessary to show that disclosing the information would lead to a direct or immediate threat to the UK. In a time of global terrorism our national security can depend on cooperating with others. This can involve protecting allies, cooperating with other countries in the fight against terrorism, as well as building relations with other prospective allies. This means that the exemption can be engaged to prevent a disclosure that would have adverse consequences for one of these partners even if disclosure would not result in a direct or immediate risk of attack on the UK or its citizens.
12. Support for this approach is taken from *Secretary of State for the Home Department v Rehman [2001] UKHL 47*, the case concerning the deportation of a foreign national. 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.”

13. Safeguarding national security also includes protecting potential targets even if there is no evidence that an attack is imminent.

Example

In the ICO decision notice [FS50308040](#), the Commissioner considered a request to West Yorkshire Fire and Rescue Service (WYFRS) for the details of its fleet of vehicles. WYFRS operated the National Control Centre for fire and rescue services which coordinates incidents of national significance. The request had been refused on national security grounds. WYFRS argued that disclosing the information would provide sufficient information for someone to clone its vehicles. This would provide a means for its headquarters, to be infiltrated.

Although there was no evidence presented that an attack was being planned, the Commissioner accepted that the control centre was a realistic target and that the explanation of how the information could be used was plausible. Therefore the Commissioner found s24(1) was engaged.

14. The Commissioner also recognises terrorists can be highly motivated and may go to great lengths to gather intelligence. This means there may be grounds for withholding what seems harmless information on the basis that it may assist terrorists when pieced together with other information they may obtain.

Example

In [*Peter Burt v Information Commissioner and the Ministry of Defence \(EA/2011/0004 20 September 2011\)*](#) the First Tier Tribunal found that disclosing the report of a visit by officials to an enriched uranium facility in the United States could undermine national security. The Ministry of Defence was concerned that the technical information could assist those who wished to make their own nuclear weapons. The First-tier Tribunal accepted that there was a risk that this technical information could be combined with other information to provide a complete picture of how to build a nuclear device.

Example

In the ICO decision notice [FS50368290](#), the Commissioner considered a request to the Metropolitan Police Service for the previous year's cost of the Royal Protection Unit. The police argued that the information could be compared to other information, in the public domain, and that this would provide terrorists with intelligence on the relative vulnerabilities of members of the Royal family.

15. Although "mosaic" arguments arise when considering other exemptions the issue in these cases is whether combining the requested information with other information in the public domain will cause harm. In section 24 cases, the issue extends to whether the requested information will be useful if combined with other information that terrorists may already have or could obtain.
16. It may be harder to say what additional information terrorists have access to or what they may pick as a target. This means it may be difficult to justify the application of section 24 in some cases. However, the Commissioner will consider each case on its own merits and the public authority will always need to be able to explain why it believes disclosing the information could harm national security.

Sections 24(1) and 23(1) are mutually exclusive

17. Section 24(1) can only be applied to information that does not fall within section 23(1). This means they cannot be applied to the same information but they can be cited in the alternative. This is explained in our guidance [‘How sections 23 and 24 interact’](#).

Section 24(2) neither confirm nor deny – exemption from the duty to confirm that the information is held

18. Section 1(1)(a) of FOIA requires a public authority to confirm whether it holds the information that has been requested. Section 24(2) provides an exemption from this duty. It states:

S24(2) The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.

19. This allows the public authority to neither confirm nor deny that it holds the requested information. This is commonly referred to as NCND.
20. When considering the application of NCND provisions, a public authority is not restricted to considering the consequences of the actual response that it would be required to provide under s1(1)(a). For example, if it does hold the information, the public authority should consider not only what would be revealed by confirming that it holds the information, but also what would be revealed if it were to deny the information was held.
21. It is sufficient to demonstrate that either a hypothetical confirmation or a hypothetical denial would engage the exemption.
22. It is not necessary to show that both potential responses would engage the exemption.
23. When considering section 24(2) the same interpretation of “national security” and approach to “required for the purposes

of” are applied as in section 24(1). The onus is on the public authority to demonstrate there is a link between confirming or denying that the information is held and the alleged harm to national security. Again, the causal effect does not have to be immediate or direct.

Example

In this hypothetical example, tensions have developed between two neighbouring foreign states in a politically volatile region. At the centre of the problem are the activities of a small political group which campaigns for the rights of a particular tribal group. Its campaign is mainly targeted against one of the two states. There is a real risk of this escalating into armed conflict. The relationships with both countries are important to our fight against terrorism. Therefore the UK attempts to mediate between the two countries. While this crisis is on going, the Foreign and Commonwealth Office (FCO) receives a request for details of meetings that are planned between senior diplomats or ministers and the political group at the centre of the crisis.

The FCO is concerned that disclosing whether the UK government has any intentions to meet with the political group would compromise the UK’s relations with the state which is the main target of that party’s campaign. This could result in that state withdrawing cooperation with the UK in the fight against international terrorism. The impact on national security may not be immediate but the FCO could still consider the application of section 24(2) to neither confirm nor deny that such information is held. Clearly, there might also be grounds for considering other exemptions, for example, the exemption in respect of international relations - section 27, or even the formulation of government policy – section 35.

Sections 23(5) and 24(2) are not mutually exclusive

24. This means they can be applied to the same information but they cannot be cited in the alternative. Read our more detailed guidance, '[How sections 23 and 24 interact](#)' for further information.

Public interest test and section 24

25. Both the exemption from the duty to confirm whether the information is held and the exemption from the duty to communicate the information are subject to the public interest test. Both exemptions are only engaged when it is reasonably necessary to do so to prevent national security being undermined. There is an obvious and weighty public interest in safeguarding national security. However this does not elevate the exemptions to the status of absolute ones.
26. The public interest in disclosure may be equally real and when restrictions are placed on the rights and freedoms of the public, it is important that the public are reassured that those measures are both proportionate and effective.

The public interest in maintaining the section 24 exemptions

27. For either of the exemptions contained in section 24 to be engaged, compliance with the relevant duty under section 1(1) must undermine national security. The public interest test provides the public authority with an opportunity to explain the severity of the damage that would be caused, so it can be weighed against the public interest in disclosure.

Example

In [*Philip Kalman v Information Commissioner and the Department for Transport \(EA/2009/0111 6 July 2010\)*](#), a request had been made for the details of government directives issued to airports on the procedures for searching passengers using a particular airline. Having satisfied itself that section 24 was engaged the First-tier Tribunal went on to consider the public interest in withholding the information.

The First-tier Tribunal found that the nature of the risk added weight to the public interest in withholding the information. The consequences of a successful terrorist attack on a plane were so great that even if there was only a low risk that disclosing the information would aid such an attack, there was a very strong public interest in withholding the information

28. Not every disclosure will have the same potential consequences as the Kalman case and public authorities should not attempt to elevate section 24 to the status of an absolute exemption. But the example demonstrates that once the exemption is engaged the nature of the potential harm that could be caused is an important factor, even if the chance of that harm occurring is relatively low. However this does not mean that any risk, regardless of how unlikely it is to occur, can be considered. If the threat was so fanciful that the use of the exemption was not reasonably necessary to safeguard national security, section 24 would not be engaged in the first place. But once that “reasonably necessary” threshold is met, the potential consequences of disclosure are important factors when considering the public interest.

Public interest in disclosing the information

29. Even though the Commissioner gives significant weight to safeguarding our national security it is important to give proper consideration to the public interest in disclosing information.
30. Some of the relevant factors are described below. Safeguarding national security can involve covert activities which may give rise to concerns over civil liberties and human rights. It is important that the public are reassured these activities are proportionate to the risks. Procedures such as security checks or other restrictions may be imposed on the public. The public are more likely to cooperate with security measures if they understand the need for them and, again, are satisfied that they are proportionate to the risks they are seeking to address. The public also have a natural concern that the measures in place to safeguard national security are effective.
31. There may also be public interest arguments very specific to the information requested.

Example

Returning to [*Philip Kalman v Information Commissioner and the department for Transport \(EA/2009/0111 6 July 2010\)*](#), the Tribunal noted that deliberately obstructing the measures which were introduced by these government directives is a criminal offence. Therefore, the public had an interest in knowing whether they were legally obliged to submit to

searches. In Kalman this was referred to as the “secret law” argument ie that the public should have access to the source of any legal obligations they were under. The First-tier Tribunal accepted this as a valid argument.

However, ultimately the public interest in preventing acts of terrorism targeting air travel outweighed this public interest argument.

32. When considering the public interest in favour of disclosure, it is necessary to check that the information in question does in fact serve the public interest that is being argued.

Example

In [*Peter Burt v Information Commissioner and Ministry of Defence \(EA/2011/0004 20 September 2011\)*](#) the requested information was a report by the UK Atomic Weapons Establishment (AWE) produced after a visit to a facility in the US.

One public interest argument advanced by the appellant in favour of disclosure was that the information would shed light on the activities of AWE. However the withheld information related purely to the technical details of the US facility and therefore would say nothing about the activities of AWE.

The public interest of the UK

33. The public interest inherent in maintaining section 24 relates to safeguarding the UK’s national security. It follows that we are concerned with the public interest of the UK and its citizens. As discussed earlier, in an age of global terrorism, the security of the UK will often depend on cooperation with other countries. Therefore public authorities will need to consider whether disclosing information will discourage that cooperation.
34. Furthermore as a result of that cooperation, UK public authorities may hold information which has implications for another country’s national security. However, when considering the public interest in maintaining section 24, a public authority can only look at the importance to the UK in withholding the information. This does not mean however that the impact on other countries is totally irrelevant, as demonstrated by the

example below.

Example

In the previous example, [*Peter Burt v Information Commissioner and Ministry of Defence \(EA/2011/0004 20 September 2011\)*](#) disclosing details of a US nuclear facility could prejudice the US's national security. If the UK disclosed such information it is likely that the US would consider withdrawing its cooperation with AWE. It is this threat to Anglo US cooperation that has the potential to undermine the UK's national security and is the route by which the exemption is engaged.

This must feed through into consideration of the public interest test. The issue is how the US will react in terms of its cooperation with the UK and the impact this will have on the UK's national security. It is not the severity of the damage to the US's domestic security that is of direct concern for these purposes.

35. The focus on the UK's interests applies equally when considering the public interest in favour of disclosure. It is possible that a disclosure could benefit the interests of another state, including one opposed to the UK. Clearly the value of the disclosure to a state opposed to the UK is not a relevant factor when considering the public interest in disclosure.

The Commissioner's approach to complaints

36. When investigating complaints about the application of section 24(1), the Commissioner will need to be satisfied that the exemption from the duty to communicate the information is required for the purpose of safeguarding national security. Where he is satisfied that the exemption is engaged he will also need to consider the public interest test. In the majority of cases the Commissioner will need access to the information in order to undertake these assessments. However the Commissioner recognises that within those public authorities which regularly handle this kind of information there will be staff with significant expertise and experience of national security issues. In some circumstances the Commissioner is prepared to consider whether he can satisfy himself as to the risks that would be posed to national security by disclosing the

information, together with the public interest for and against maintaining the exemption, based on submissions from, or confidential discussions with such staff or both. The description of the information in the request itself is likely to be relevant in this regard.

37. In respect of complaints about the application of s24(2), generally the Commissioner will be able determine whether the NCND provisions apply without knowing whether the information requested is actually held. However, in exceptional cases the Commissioner will need to know whether the information is held and in a very limited number of cases, where the information is held, he will require access of the information. This is most likely to be necessary to determine where the public interest lies when considering the public interest test.

Ministerial certificates

38. Section 24 contains a provision for a Minister of the Crown to issue a certificate stating the exemption is engaged.
39. Under section 24(3) a Minister can issue a certificate stating that either the exemption from the duty to communicate the information, (section 24(1)), or exemption from the duty to confirm whether the requested information is held (section 24(2)), is required for the purpose of safeguarding national security.
40. The certificate can also have a prospective effect. This means that it may apply to information not currently held, or requested, at the time the certificate is issued, but which the public authority envisages it may hold in the future.
41. A certificate issued under section 24(3) is conclusive proof that the exemption is engaged.
42. Although a certificate issued under section 24(3) engages the section 24 exemptions, this is not the end of the matter. The public authority is still required to consider the public interest test. If the Commissioner receives a complaint will make his own decision on where the public interest lies.

Other considerations

43. There are a range of other exemptions which may also be relevant when section 24 is engaged, depending on the circumstances. The most obvious of these is section 23. In an age of international terrorism, national security and the work of security bodies will often involve cooperation with other states. Therefore, disclosing the information captured by some requests may also prejudice international relations and therefore engage section 27.
44. Clearly there are links between national security and security body issues and the defence of the UK and so some requests will have the potential to engage section 26.
45. Where there is an increased risk of a terrorist attack the information may be protected by section 38 which provides an exemption for disclosures that could endanger someone's physical or mental health. Where the disclosure could assist terrorists targeting a specific individual, there may be grounds for considering the application of section 40 which protects the personal data from inappropriate disclosure.
46. These examples are not exhaustive. Other exemptions may apply. As always it is the specific circumstances of the case that will dictate the application of exemptions. For further information read our detailed guidance:
 - [Exemption relating to security bodies \(Section 23\)](#)
 - [How sections 23 and 24 interact](#)

More information

47. This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, First-tier Tribunals and courts.
48. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
49. If you need any more information about this or any other aspect of freedom of information or data protection, please [contact us: see our website www.ico.org.uk](http://www.ico.org.uk).