



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Appeal Reference: EA/2018/0024**

**Heard at the Rolls Building on 15-16 January 2019**

**Before**  
Judge Stephen Cragg Q.C.

**Tribunal Members**  
Mr Pieter de Waal  
and  
Mr John Randall

**Between**

**Faisal A. Qureshi**

Appellant

And

**The Information Commissioner**

1<sup>st</sup> Respondent

And

**The Home Office**

2<sup>nd</sup> Respondent

The Appellant was unrepresented

The Information Commissioner was represented by Mr Christopher Knight

The Home Office was represented by Mr David Mitchell

## DECISION AND REASONS

### Preliminary

1. At the start of the hearing in this case it was noted that the Appellant had not attended the hearing and that both the Commissioner and the Home Office were represented by Counsel. The parties in attendance raised no objection to the Tribunal contacting the Appellant by telephone and asking his intentions in relation to the hearing.
  
2. Having done this the Tribunal reported that:-
  - (a) The Appellant had been notified of the hearing but had been under the impression that the oral hearing was to be conducted entirely in CLOSED and therefore he was not expected to attend.
  
  - (b) Having had it explained that some of the hearing would be in OPEN, the Appellant confirmed that he was unable to attend the hearing, either on its first or second day.
  
  - (c) He did not want to apply for an adjournment of the hearing and wanted the hearing to proceed in his absence.
  
  - (d) The Tribunal explained that the hearing was inquisitorial, that the Tribunal had read his notice of appeal and subsequent submissions, and would ask appropriate questions of any witnesses.
  
3. Mr Knight for the Commissioner reminded us also that it was part of his role to ensure that the Appellant's case was fully put to witnesses and in submissions.

4. On the basis of the Appellant's responses, the Tribunal decided it was in the interests of justice to continue with the hearing in the Appellant's absence.

### **The Request**

5. On 28 December 2016 the Appellant wrote to the Home Office and requested information in the following terms:

I understand a radio drama was produced that had an anti-extremism message and was overseen by RICU [Research Information and Communications Unit]. This happened during the period of 2007-09. I would like documents concerning the production of this drama that include the following:

- Writer's brief.
- Any scripts and storyline for the projects.
- Website and other counter-terrorism resources that writers were expected to access as background research for the project.
- Strategy documents concerning the distribution and broadcast of the project.
- A list of cast, crew and writers employed on the project that would have been added to the program anyway when it was broadcast.
- Recordings of the completed programmes.

### **Context**

6. The request was taken to refer to a radio programme called 'Divided We Fall' and broadcast in February 2010 on Preston FM as twenty short episodes. The available information shows that a non-profit organisation called Shahbash (which is no longer operational) created the programme. Shahbash's work included facilitating the prevention of violent extremism, and that was the subject matter of the programme. It covered both right-wing and Islamic extremism. The drama was said to be in the style of the Archers, with a series of discussions between characters aimed at encouraging young people and others to deal with the issues and risks raised. It is note-worthy that the programme stated publicly that it had 'funding support from the Home Office'. The open material available in the case includes a full plot summary

and much other information about the programme. It is also clear that the programme was developed to support with the Prevent strategy of the government (see below). Shahbash developed a website which is still available providing information about the programme, but also about the issues of terrorism and extremism more generally, and with directions to Prevent material.

7. The Commissioner has further explained in her skeleton argument her understanding as to the context in which this funding support from the Home Office is available. This context appears to be uncontroversial and we summarise it as follows:-

- (a) The context to this appeal is the Government's counter-terrorism strategy ("CONTEST").
- (b) A fundamental part of CONTEST is the need to prevent people from being drawn into terrorism and extremism, of any type. This is commonly known as the Prevent programme. The introduction of the Prevent statutory duty embedded consideration of the risk of radicalisation in the day-to-day work of statutory partners;
- (c) The Prevent duty is now to be found in s26(1) Counter-Terrorism and Security Act 2015.
- (d) As part of its strategy the Home Office engages with third parties to provide educational and entertainment material which discourages the public from being drawn into terrorism, and encourages those potentially affected to seek advice and guidance.

8. Our attention was also drawn to a Home Office document in the OPEN bundle entitled 'The Prevent Programme - Top Lines' (8 September 2017), which explains that:

“Prevent works with a range of civil society groups to counter extremist ideologies and to equip people in communities with the ability to reject those narratives. By bringing these civil society groups together with communications professionals and industry experts, the Home Office Research, Information, and Communications Unit (RICU) has provided them with advice and support, production capabilities, public relations expertise, and social media training.”

### **Response and Commissioner’s decision notice**

9. The Home Office provided its response to the Appellant’s request on 1 February 2017. This explained that the Home Office held some information concerning the production of a radio drama but did not hold the precise information requested. The Home Office considered that the information that was held was exempt from disclosure on the basis of the exemptions contained in sections 24(1) FOIA (national security), and 43(2) FOIA (commercial interests), and that the public interest for both exemptions favoured withholding the requested information. The reliance on s43 (2) FOIA was later abandoned and we do not address it further.
10. The Appellant requested an internal review on 2 February 2017. The Home Office did not respond until 14 June 2017 but maintained its original position and explained that the information requested fell under section 24 FOIA as it related to the Prevent programme.
11. The Commissioner upheld the reliance on s24(1) FOIA in a decision notice dated 1 February 2018 and the Appellant appealed. In his appeal document he explained that he had discovered that a lot of information about the radio drama and those involved in its production was actually available on a

website linked with Prevent initiatives. A print-out of the information was provided. He also produced documentation to show that Shahbash was no longer operational and was dissolved in December 2014. He was of the view that there was a strong public interest in disclosure when a 'didactic' approach affected a storyteller's artistic techniques.

12. This information led to further disclosure by the Home Office, but continued reliance on s24(1) FOIA for some of the material that the Home Office said fell within the scope of the request.
13. The information that has now been disclosed by the Home Office includes draft scripts, emails from the early stages of production development on plot and characters, casting information, and information about the approaches to evaluating the success of the programme.
14. The decision notice summarises the Home Office position as follows (and Mr Mitchell, for the Home Office, re-iterated the points in the hearing before us in relation to the material which remains withheld):-

24...It said that disclosure of the information would reveal the 'operational blueprint' for projects of this nature, given that the Home Office's campaign processes are similar today to that of 10 years ago. More crucially, it would reveal the extent of the involvement of certain organisation(s).

25. The Home Office has argued that given the type of engagement required for 'Prevent', RICU work with a number of partners, including Civil Society Groups and Media Agencies, to deliver counter-narrative communication campaigns. RICU rely heavily on the partnerships it has with these groups to deliver messages which would otherwise not reach target audiences (who are unlikely to engage or listen to government). Release of this type of information carries a high risk that groups would not be willing to work with Prevent/RICU in future. Therefore, the Home Office contended that whilst the Government's involvement in such projects is acknowledged, and to an extent expected, it is the 'how' and the 'who' in terms of the model and cooperation from support groups and the community, which is sensitive in this case.

26. It highlighted that this position is supported by paragraph 11 of the Commissioner's guidance about section 24(1) which states:

*"It is not necessary to show that disclosing the information would lead to the 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 the partners even if disclosure would not result in a direct or immediate risk of attack on the UK or its citizens".*

27. The Home Office argued that if disclosing the operational blueprint showing how specific parts of the Home Office work with others to prevent terrorism could potentially prejudice those efforts, *"then that is real risk which needs to be acknowledged."*

15. We should mention at this point that RICU (referred to in paragraph 25 of the decision notice) is the Research, Information and Communications Unit within the Office for Security and Counter-Terrorism in the Home Office. The role of RICU is discussed further below.

16. The Appellant produced a further response, expressing concern that the Home Office had said that it had not been aware of the information on the website. He addressed those parts of the witness statement served by the Home Office (see below) that had not been redacted. He related his own experience and knowledge of projects in which RICU had been involved even when the media workers employed by the projects had not been aware of this. He was of the view that there was a wider public interest to know what media organisations were working with RICU and that secrecy was 'counter-productive' both for the public and RICU. He cited the current show (Divided We Fall) as an example where many professionals worked on a show openly supported by the Home Office but where there had been no 'negative consequences'. He was concerned that RICU funding was open to abuse due to a lack of public scrutiny, and he cited a number of concerns about RICU's

involvement in projects which he thought the redacted and withheld documents might throw light upon. He noted two specific concerns (a) that it had been suggested that interest in a Palestinian aid convoy to Gaza 'was in some way a signifier of radicalisation'; and (b) that the resources provided by the Home Office had included police co-operation to push the writers in a particular direction. He noted that the radio drama was broadcast ten years ago and had not been replayed, and that the withheld material may no longer be relevant.

## The Law

17. Section 24(1) FOIA reads as follows:-

"(1) 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."

18. In relation to the term 'national security', in *Baker v Information Commissioner & Cabinet Office* (EN2006/0045), at paragraph 26 the Tribunal applied the approach in *Secretary of State for the Home Department v Rehman* [2003] 1 AC 153 when it said:-

26. The expression "national security" is not defined in FOIA and we can find no exhaustive definition in any statutes or judicial decisions. However we have been referred to the House of Lords (HL) decision on the topic in *Secretary of State for the Home Department v Rehman* [2001] UKHL 47; [2003] 1 AC 153. The HL made a number of findings and observations which we find helpful in this case:

- (i) "national security" means "the security of the United Kingdom and its people." (para 50 per Lord Hoffman);
- (ii) the interests of national security are not limited to action by an individual which can be said to be "targeted at" the UK, its system of government or its people (para 15 per Lord Slynn);



(iii) the protection of democracy and the legal and constitutional systems of the state is a part of national security as well as military defence (para 16 per Lord Slynn); (iv) "action against a foreign state may be capable indirectly of affecting the security of the United Kingdom" (paras 16-17 Lord Slynn); and (v) "reciprocal co-operation between the United Kingdom and other states in combating international terrorism is capable of promoting the United Kingdom's national security" (para 17 Lord Slynn).

19. Case law was cited to us to the effect that the Tribunal should be very cautious about overriding the sincerely held views of relevant public authorities, like the Home Office, on the risks to national security: see for example *R (Binyam Mohammed) v Secretary of State for Foreign Affairs* [2010] EWCA Civ 25; [2011] QB 218 at [131].
20. We bear that advice in mind while also noting that s24(1) FOIA and the statutory scheme for decision making by the Commissioner and the Tribunal does mean that we have to form our own view as to whether an exemption is 'required for the purpose of safeguarding national security'.
21. As to what the word 'required' means in s24(1) FOIA, the case of *Kalman v Information Commissioner & Department for Transport* [2012] 1 Info LR 664 at [33] stated that it means 'reasonably necessary' and that is the definition we will apply.
22. S.24(1) FOIA is a qualified exemption which means that even if we are satisfied that the exemption is required for the purpose of safeguarding national security, it is possible for the public interest in disclosure to outweigh the public interest in maintaining the exemption. However, we accept that, if we reached a decision that the exemption is required to safeguard national security "the reality is that the public interest in maintaining the qualified national security exemption in section 24(1) is likely to be substantial and to require a compelling competing public interest to equal or outweigh it". *Keane*

*v Information Commissioner, Home Office and Metropolitan Police Service* [2016] UKUT 461 (AAC) at [58].

### **The hearing**

23. Although the Appellant was mistaken in his understanding that the whole of the hearing would be closed it is true to say that much of the substantive evidence and submissions did have to take place in a CLOSED session.
24. Evidence in CLOSED session was heard from Ms Sarah Moore on behalf of the Home Office, after she gave some of her evidence in OPEN. Much of Ms Moore's witness statement for the case was redacted and could only be considered in the CLOSED session.
25. The OPEN part of her witness statement states that she is head of RICU (which, as referred to above, is a strategic communications unit within the Office for Security and Counter-Terrorism in the Home Office). She is responsible for the delivery and oversight of a national and international communications programme designed to support CONTEST (the UK's counter-terrorism strategy) and the Serious and Organised Crime strategy. Her view is that release of the withheld information could undermine the government 'in the delivery of the UK's counter-terrorism strategy, CONTEST, and thereby increasing [*sic*] terrorist threats to the UK and its interests'.
26. In the OPEN part of her statement she explained that a 'core component' of delivery is listening to, supporting and working with key partners and stakeholders from private companies, charities and civil society organisations and community groups. She said in her statement that:-

RICU works with a range of civil society groups and other partners to safeguard communities and vulnerable audiences from radicalisation and equip them with the ability to challenge the ideologies promoted by terrorist and extremist groups including Daesh, al-Qa'ida and the far-right. By bringing organisations together with communications professionals and industry experts, RICU builds communications capability and makes best use of this shared expertise.

27. In her OPEN statement and in evidence Ms Moore told us that some organisations are happy to be publicly linked to the Home Office, some are happy to be publicly linked to Prevent, and some are not content for any link or relationship to be publicised. She provided an example of an organisation which works with Prevent, but said that 'some organisations would alienate their core audiences if they were publicly known to work with Prevent'. In her open evidence Ms Moore also explained that she was concerned that the disclosure of the withheld material would (a) risk other organisations being reluctant to work with RICU if it was believed that details of the involvement of RICU would be revealed; (b) provide extremist groups with detailed information about the blue-print of RICU's work with organisations; and (c) enable those groups to provide a counter-narrative to the work of RICU.

28. Having given evidence in CLOSED session, there was an agreed gist of what could be explained in an OPEN session which was read out in open court. It is produced in full here as the Appellant was not present, and explained as follows:-

HO's witness, Ms Sarah Moore, tendered for evidence. Witness stated her name and work address and confirmed the contents of her CLOSED witness statement were true and accurate to the best of her knowledge.

Witness asked one question in chief by HO's counsel to clarify two references in document 4 (the relevant part of which is redacted in the OPEN bundle at [OB/170]).

Witness then cross-examined by IC's council. IC's counsel asked a serious of questions concerning the witness's understanding of the engagement of s24(1) FOIA and how it arose on the facts. This included asking the witness to revisit a question from the Judge about examples of harm which she had been unable to answer in OPEN

IC's counsel then went through the contents of the witness's CLOSED statement and each withheld document in the CLOSED bundle of documents (comprising documents which have been provided to the Appellant with partial redactions and documents which have been withheld in their entirety), exploring the basis upon which the information has been withheld.

The Judge and Tribunal Members interjected during the course of counsel's cross-examination with their own questions of the witness.

IC's counsel put the Appellant's case on the content of the withheld information, as set out in the Notice of Appeal and supporting documents [OB/11-37] and his Reply plus supporting documents [OB/59-74], to the witness.

At the end of counsel's questions the Tribunal Members and Judge then asked the witness their further questions.

The questions asked of the witness, and her answers to those questions, cannot be provided in OPEN without revealing the content of the CLOSED withheld information in issue, or the content of the CLOSED part of her witness statement.

Throughout her evidence the witness maintained that the national security exemption at s24(1) FOIA applied to all the information which has been withheld from the Appellant.

The witness was briefly re-examined. Following a query raised by the Tribunal, the HO's counsel confirmed that no reliance was being placed on the exemption at s23 FOIA.

Witness was released.

29. In addition, following short submissions in OPEN, where the Commissioner and the Home Office relied upon their previous OPEN written submissions and Ms Moore's open evidence, the Tribunal heard submissions in CLOSED in which counsel for the Commissioner and the Home Office addressed us as to the reasons it was said that the s24 FOIA exemption applied, and answered the Tribunal's questions about particular documents and parts of documents.

### **Discussion**

#### *Required to safeguard national security*

30. Having considered the withheld information we are satisfied that the information reveals details of the 'operational blueprint' and the way that RICU engages with third party organisations in furthering CONTEST and the Prevent initiative. We accept the Home Office explanation that the current operational blueprint (2019) remains much the same as it was ten years ago. There is nothing in the material which supports the Appellant's concerns about possible abuse of RICU funding, or anything about RICU's approach to support for Palestinian aid convoys, or that the police were involved in the making of the radio drama.

31. We agree with the Commissioner when she states at paragraph 25 of her skeleton argument that:-

....Any information closely linked to counter-terrorism strategy is self-evidently likely to be operating in the national security sphere. Where release of information under FOIA is said to reveal information about the counter-terrorism strategy, or an element of that strategy, there is an obvious starting point that section 24(1) may be engaged.

32. We accept that the withheld information is closely linked to counter-terrorism strategy and that therefore there are issues relating to national security and safeguarding national security if the withheld information is disclosed.

33. We accept that, from the released information, national security concerns no longer arise on identifying those organisations, individuals, cast or crew members involved in the particular programme to which this request relates. All that information has been available for some time and is still available on a website, and of course, the Shahbash organisation no longer exists and the company is dissolved.
34. However, it seems to us that the withheld information in this case goes further and reveals the extent of government involvement in the making of these radio broadcasts and indicates the detail of the operational blueprint of the Home Office and RICU in relation to such projects.
35. We accept the submission and the evidence that the work of RICU with third party providers to produce content with the aim of providing a counter-narrative to the messages of extremists and terrorist sympathisers is an important aspect of safeguarding the national security of the United Kingdom and its people. If the ability of the Home Office to fund and produce such content is damaged then that will be to the detriment of national security.
36. In our view if the withheld information is released, it might be used by those with extremist aims to seek to influence those who work with the Home Office and RICU, and to seek to undermine the intended purpose of Home Office and RICU involvement in such productions.
37. Further, it seems to us that any third party organisation contemplating working with the Home Office and RICU as part of the Prevent strategy, might well be reluctant to do so if it forms the view that extensive information about how the Home Office and RICU have worked with it will or might subsequently be disclosed. In our view on the evidence we have heard that risk is significant.

38. Dissuading and preventing people being drawn towards terrorism and extremism is an important aim in protecting the national security of the UK and its people. Thus, the disclosure of information which enables extremists to undermine the effectiveness of Prevent and the CONTEST strategy would be detrimental to national security. In addition, release of information which might discourage organisations from working with the Home Office and RICU and dissuade them from assisting the Home Office and RICU in pursuing counter-terrorist strategy aims would also be detrimental to national security.

39. We accept the submissions and evidence that that the risks of this detriment occurring are very real. Therefore, using the words of s24(1) FOIA and applying the case law set out above the withheld information is exempt from disclosure under FOIA because non-disclosure is 'required for the purpose of safeguarding national security', where 'required' is defined as 'reasonably necessary'.

#### *Public interest*

40. As set out above, the exemption under s24(1) FOIA is a qualified exemption. Even where the exemption is rightly applied because it is necessary for the purposes of safeguarding national security, it is possible for the public interest to require the disclosure of the information in any event.

41. We can see that principles of openness and transparency are important in a case like this. There is a clear public interest in it being known what strategies and approaches are used by central government for influencing the content of radio broadcasts and other media, and any input that central government has into dramas, documentaries and other public presentations, especially where (as is clear from the evidence of Ms Moore) the involvement of central government may sometimes not be credited at all. There is also a public

interest in it being revealed the degree to which public money and resources are expended on such projects, as the Appellant refers to.

42. However, as has been adverted to above (paragraph 22), once the s24(1) FOIA exemption has been triggered because it is required to safeguard national security, the public interest in safeguarding national security is likely to require a 'compelling competing public interest to equal or outweigh it'. In our view, and having viewed the withheld material and considered it in the light of the points made by the Appellant and the public interest in transparency and openness, that 'compelling competing public interest' has not been established to outweigh the need to safeguard national security. Disclosure of the withheld material in this case would lessen the influence that central government can have on the prevention of extremism and terrorism in the UK, increasing the likelihood of people becoming radicalised in beliefs and actions that potentially put the people of the UK in danger. Therefore, on the facts of this case the balance of public interest weighs towards non-disclosure of the withheld information.

43. Having reached these conclusions, the Appellant's appeal is dismissed.

**Stephen Cragg QC**

Judge of the First-tier Tribunal

Date: 31 January 2019

Promulgation Date: 18 February 2019

(Case considered by Panel on 15-16 January 2019).