

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 June 2020

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF
(email to: info.access@homeoffice.gov.uk)

Decision (including any steps ordered)

1. The complainant requested information regarding the involvement of Huawei Company in the UK's 5G telecommunications network. Following investigation by the Commissioner, the Home Office told the complainant and the Commissioner that it did not hold any relevant information.
2. The Commissioner decided, on the balance of probabilities, that the Home Office does not hold information falling within the scope of the request.
3. The Commissioner does not require the Home Office to take any steps to ensure compliance with the legislation.

Request and response

4. On 21 June 2019, the complainant wrote to the Home Office (HO) and requested information in the following terms:

*"I would like to revise my (25 May 2019) request as follows:
All written correspondence between Ben Wallace, Minister of State for Security and Economic Crime, and the Cyber and Government Security Directorate, created April 12-26, 2019, which relates to concerns and/or risks associated with Huawei's involvement in the UK's 5G network."*

5. On 26 September 2019, following internal review, HO refused to confirm or deny that it held the requested information. HO cited the section 31(3) (Law enforcement) FOIA exemption as its basis for doing so.

Scope of the case

6. On 27 November 2019, the complainant contacted the Commissioner to complain about the way his request for information had been handled.
7. The complainant said that the security risks allegedly posed by Huawei were a major issue of public concern. Despite what he described as the major economic and security implications of these decisions, he said that the general public had been provided with little information about the alleged risk posed by the company.
8. During the Commissioner's investigation, HO changed its reasoning but continued to neither confirm nor deny holding information within the scope of the request. HO relied instead on the section 24(2) (National security) and section 35(3) (Formulation of government policy) FOIA exemptions.
9. Following further investigation by the Commissioner, HO ceased to neither confirm nor deny holding relevant information. Instead it told the Commissioner that it did not hold any information within scope of the request.
10. The complainant did not accept that HO did not hold relevant information and asked the Commissioner to reach a formal decision which she has done. During her investigation the Commissioner received and considered representations from both parties and made brief internet searches for relevant information.

Reasons for decision

11. Section 1 FOIA states that

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

12. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, if any, the Commissioner follows the lead of a number of First Tier Tribunal decisions and applies the civil standard of the balance of probabilities.

13. The Commissioner therefore sought to determine whether, on the balance of probabilities, HO held information within the scope the request.

14. In deciding where the balance of probabilities lies, the Commissioner considered the complainant's evidence and arguments. She also considered the searches carried out by HO, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she considered the other relevant information and explanations provided by HO.

15. On 23 July 2019, the complainant told HO, when requesting an internal review, that the information he assumed was held was of considerable public interest to citizens not only in the UK, but around the world. He said that the public should have an opportunity to assess Huawei's reported security flaws and the associated concerns. He added that while it might be reasonable to redact some of the information, it was not in the spirit of transparency established under FOIA to withhold it all.

16. On 21 January 2020, the complainant told the Commissioner:

"The issue of the security risks allegedly posed by Huawei is a major issue of public concern, not just in the UK, but in numerous jurisdictions - which are in the process of making decisions, or have already made decisions, about the involvement of Huawei in their 5G networks. Despite the major economic and security implications of these decisions, the general public has thus far been provided with little information about the alleged risk posed by the company."

Observers have effectively been asked to take government figures at their word, with little evidence provided of the specific threats or risks associated with the company. This runs contrary to the public's right to know in a democracy. Whereas the Home Office may have reasonable cause to withhold information about specific network vulnerabilities, the blanket refusal to disclose, or even confirm the existence of, correspondence between Ben Wallace, [the then] Minister of State for Security and Economic Crime, and the Cyber and Government Security Directorate seems excessive and disproportionate. I believe it should be possible to release some material on this matter in suitably limited or redacted form to satisfy the need for transparency and democratic accountability while also protecting information that could legitimately pose a risk to national security or law enforcement operations if released into the public domain."

17. The complainant urged the Commissioner to consider requiring the release of some information on this matter to inform what he described as the important public debate on Huawei, not just in the UK, but around the world.
18. In its representations to the Commissioner, HO described the searches it had carried out to establish whether or not it held information falling within the scope of the request, and the search terms used.
19. HO told the Commissioner that its conclusion that it does not hold the information described in the request had been reached following the outcome of searches which had been undertaken in those areas of HO which would be most likely to hold any relevant information, if such information were to exist.
20. HO said that, if any relevant information had been held, it would have been held in electronic format. Keyword searches had been conducted on networked resources and emails in both the HO cyber policy team and the Private Office of the then Minister of State for Security at the relevant times, including at the date of the request. HO's searches had not identified any relevant information.

The Commissioner's view

21. The Commissioner acknowledged the complainant's concern and frustration that HO says it does not hold further information within the scope of his request. However, she is mindful of the comments made by

the Information Tribunal in the case of *Johnson (Johnson/ MoJ (EA2006/0085))*¹ which explained that FOIA:

"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".

22. Having considered the HO response, and on the basis of the evidence provided to her by both parties, the Commissioner is satisfied on the civil standard of the balance of probabilities, that HO does not hold information within the scope of the request.
23. The Commissioner therefore considered that HO had complied with its obligations under section 1(1) FOIA.

Other matters

Internal Review

24. While there is no statutory time limit within FOIA for carrying out an internal review, the Commissioner considers that internal reviews should normally take no longer than 20 working days and never longer than 40 working days.
25. The Commissioner noted that it took the Home Office two months to tell the complainant the outcome of its internal review. She regarded this as having been poor practice.

¹ <http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i90/Johnson.pdf>

Right of appeal

26. 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: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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

Dr R Wernham
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Wilmslow
Cheshire
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