



Home Office

**Office for Security and
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Mr John Goss

request-165353-d5325d65@whatdotheyknow.com

FOI Ref: 27879

Date: 09 October 2013

Dear Mr. Goss,

Thank you for your e-mail of 18 June 2013 in which you requested information on Abu Qatada. Your request has been handled as a request for information under the Freedom of Information Act 2000. I apologise for the delay in replying to you.

The response to your request is provided below:

1) Has Abu Qatada committed a crime, or crimes, in this country?

We neither confirm nor deny whether we hold the information you requested. Section 40 (5) of the Freedom of Information Act absolves us from the requirement to say whether or not we hold information, where to do so would contravene any of the data protection principles and where the public interest falls in favour of neither confirming nor denying. This is because to confirm or deny whether we hold any information relating to crimes committed by an individual would, in itself, constitute a release of personal data.

2) If he has committed a crime could you please state what his crime(s) was (were)?

Please see response to question (1) above.

3) If he has not committed a crime can I ask why he has been imprisoned for so long?

In respect of the first part of this question please see response to question (1) above.

In respect of the second part of the question:

The Immigration Rules permit detention for individuals subject to deportation action. Abu Qatada was initially detained under the provisions of part 4 of the Anti Terrorism Crime and Security Act 2001. He was initially detained in October 2002 until March 2005. From August 2005 until his deportation on 7 July 2013 he was detained (other than brief periods of bail) under the Immigration Acts pending his deportation from the UK. Detention under the Immigration Acts is subject to judicial oversight, and it was open to Abu Qatada to apply for bail at any time. He most recently applied for bail in May 2013, an application refused by the Special Immigration Appeals Commission.

4) Does the Home Office operate a system of racism (religionism if you like) against Islam?

Religion forms no part of Home Office consideration as to whether action is appropriate.

5) Can you tell me please how many people have been held in custody under the Anti-Terrorism, Crime and Security Act 2001 and then the Protection of Terrorism Act 2005?

Sixteen individuals were certified and detained under part 4 of the Anti Terrorism, Crime and Security Act 2001. One other individual was certified under the Act but detained under separate powers. The Prevention of Terrorism Act 2005 introduced control orders. However this did not confer any power of detention.

6) How many of those held under the aforementioned acts were Muslim?

We do not ask for an individual's religion when taking immigration action and nor did we ask when issuing a Control Order against an individual. Religion does not inform our decision making process either in detaining individuals under the Immigration Acts or the use of powers in the Prevention of Terrorism Act 2005.

7) How many of those held under the aforementioned acts were non-Muslim?

Please see response to question (6) above.

8) Was Abu Qatada ever a resource of the security services?

You asked for information on whether Abu Qatada was ever a resource of the security services. We neither confirm nor deny whether we hold the information you requested by virtue of sections 23(5) and 24(2) (Information supplied by, or relating to, bodies dealing with security matters and national security) of the Freedom of Information Act. These sections exempt us from our duty to say whether or not we hold the information you ask for.

Further explanation of this decision, including the relevant public interest test, can be found in the annex A to this letter. This response should not be taken as conclusive evidence that the information you have requested exists or does not exist.

Anything that would endanger the state and prejudice national security is not in the public interest.

9) If yes, who did he work for?

Please see response to (8) above.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to the address below, quoting reference FOI 27879. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response. I am happy to talk to you about our response if you wish to contact me at the telephone number given above.

Information Access Team

Home Office

Ground Floor, Seacole Building

2 Marsham Street

London SW1P 4DF

e-mail: info.access@homeoffice.gsi.gov.uk

As part of any internal review the Department's handling of your information request will be reassessed by staff who were not involved in providing you with this response. If you remain dissatisfied after this internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

Yours sincerely

FOI Caseworker

Home Office

Annex A

Section 23(5) and 24(2) of the Freedom of Information Act state:

'23(1) Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

(5) The duty to confirm or deny does not arise of, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

24(1) Information which does not fall within subsection 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.

(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.'

Section 23(5) is an absolute provision and consequently there is no further consideration required.

Public Interest Test

Some of the exemptions in the FOI Act, referred to as 'qualified exemptions', are subject to a public interest test (PIT). This test is used to balance the public interest in disclosure against the public interest in favour of withholding the information, or the considerations for and against the requirement to say whether the information requested is held or not. We must carry out a PIT where we are considering using any of the qualified exemptions in response to a request for information.

The 'public interest' is not the same as what interests the public. In carrying out a PIT we consider the greater good or benefit to the community as a whole if the information is released or not. The 'right to know' must be balanced against the need to enable effective government and to serve the best interests of the public.

The FOI Act is 'applicant blind'. This means that we cannot, and do not, ask about the motives of anyone who asks for information. In providing a response to one person, we are expressing a willingness to provide the same response to anyone, including those who might represent a threat to the UK.

Section 24(2) public interest test

Public interest considerations in favour of confirming whether the information is held

To confirm or deny whether the requested information is held would reveal whether or not the Home Office has operational or resource information on the subject of the security and intelligence agencies and Abu Qatada. The issues surrounding this subject are of significant public interest. The Home Office recognises that there is a general public interest in transparency and openness in Government. Such openness would lead to a deeper public knowledge in matters relating to national security. There is also a public interest in understanding what information the Home Office may or may not hold on Abu Qatada.

Public interest considerations in favour of maintaining the exclusion of the duty to either confirm or deny

In this instance, maintenance of the exclusion of the duty to confirm or deny whether the department holds the information you have requested is required for the purpose of safeguarding national security. It is important to protect the space within which the security

and intelligence agencies work operationally. To reveal what information, if any, exists would be prejudicial to the operational processes used by the agencies and could reveal detailed information on the type of resources used for intelligence purposes. The work of the agencies is clearly one which has an impact on national security issues, therefore any decision which would hinder operational decisions, or the gathering and use of intelligence, would be damaging to national security.

This is in line with the usual practice in not commenting on the activities of the security and intelligence agencies and should not be taken as evidence that any such information does or does not exist.

Balance of the public interest – section 24

We have determined that safeguarding national security interests is of paramount importance and that in all circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in confirming or denying whether we hold the information in question.