

## Freedom of Information Act 2000 (FOIA)

### Decision Notice

**Date:** 25 July 2022

**Public Authority:** The Executive Office  
**Address:** Castle Buildings  
Stormont Estate  
Belfast  
BT4 3SR

#### Decision (including any steps ordered)

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1. The complainant requested information relating to contacts with Chinese Consulate representatives. The Executive Office initially refused the request, citing section 27 (prejudice to international relations) and section 40 (third party personal data) of FOIA. Following the Commissioner's intervention the Executive Office disclosed the requested information to the complainant.
2. The Commissioner's decision is that the Executive Office breached section 10(1) of FOIA in disclosing information outside the statutory time for compliance. No steps are required.

#### Request and response

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3. The complainant submitted the following request to the Executive Office on 10 August 2020:

"I would like to request details of meetings or conference calls with Belfast's Chinese Consulate representatives or the Consul General, Madame Zhang Meifang.

Please disclose the following for the period from January 2020 to present: 1. A list of all the meetings held with the Chinese Consulate or Consul General, held either in person or via conference call or video call. For each, please give the date it occurred, the location, and the names and positions of those present. 2. For each meeting, a copy of any minutes or notes taken. 3. If the meeting

was via video or conference call, a copy of the video or audio from the meeting.”

4. The Executive Office responded on 6 October 2020. It disclosed some information and withheld the remainder. The Executive Office cited the exemption at 40(2) of FOIA in respect of third party personal data. It also cited section 27(1) on the basis that disclosure of the requested information would prejudice international relations, ie relations between the UK and China.
5. The complainant requested an internal review on 9 October 2020. The Executive Office provided the outcome of that review on 1 December 2020. The Executive Office upheld its original response.

### **Scope of the case**

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6. On 20 December 2020 the complainant wrote to the Commissioner to complain about the Executive Office’s response to his request.
7. The complainant referred to a public statement, reported in the media and on the Consulate's website, which claimed the First Minister and deputy First Minister had said in a meeting that they 'understand and respect' China's new national security law being imposed on Hong Kong.<sup>1</sup> This reference was subsequently removed from the published report.
8. The complainant agreed that the scope of his request could be limited to any reference in the minutes or note of any meeting, to discussion of Hong Kong.
9. The Commissioner attempted to resolve the case via informal resolution. He pointed out to the Executive Office that the Chinese Consulate had apparently published its own record of the meeting. In the Commissioner’s view this action undermined the argument that disclosure of the requested information would prejudice UK-Chinese relations.

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<sup>1</sup> See <https://www.bbc.co.uk/news/uk-northern-ireland-53725212> and <https://www.irishnews.com/news/northernirelandnews/2020/08/11/news/arlene-foster-and-michelle-o-neill-respect-hong-kong-national-security-laws-2031376/>

10. The Commissioner asked the Executive Office to reconsider disclosing the portion of the minutes that referred to Hong Kong. The Commissioner was of the opinion that this would serve the public interest by providing clarification of the discussion.
11. The Executive Office subsequently disclosed this information to the complainant on 24 May 2022.
12. The complainant asked that the Commissioner issue a decision notice to provide a record of the outcome of the complaint. He remained of the view that the Executive Office ought to have disclosed the requested information at the time of its original response.
13. The Commissioner understands that the complainant is frustrated that it has taken nearly two years for him to receive the information he requested in August 2020. However the Commissioner will generally try to resolve a case informally where possible, since this will often lead to a better outcome for all parties. A public authority may agree to disclose information in the interests of informal resolution even though it remains of the position that it is entitled to rely on an exemption. Equally, a requester may agree to withdraw their complaint if they receive some of the requested information. The Commissioner recognises that this may save time and resources for everyone involved.
14. For this reason, where a public authority relies on an exemption to withhold information, but subsequently discloses it, the Commissioner will not usually investigate whether the exemption was appropriately cited. Since the Executive Office has now disclosed the requested information in this case the Commissioner's decision is limited to the Executive Office's compliance with the procedural requirements of FOIA.

## **Reasons for decision**

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### **Section 1: general right of access**

#### **Section 10(1): time for compliance**

15. Section 1(1)(a) of FOIA requires a public authority to inform the requester in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the requester unless a valid refusal notice has been issued.
16. Section 10(1) requires that the public authority comply with section 1 promptly, and in any event no later than 20 working days after the date of receipt of the request.

17. In this case the Executive Office took nearly two months to issue a response to the request. At this point it did confirm that it held the requested information, but this was outside the statutory time for compliance. Accordingly the Commissioner finds that the Executive Office failed to comply with section 10(1) in respect of section 1(1)(a).
18. Following the Commissioner's intervention the Executive Office disclosed the requested information to the complainant. Since this was also well outside the statutory time for compliance the Commissioner finds that the Executive Office failed to comply with section 10(1) in respect of section 1(1)(b).

## **Other Matters**

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19. Although it does not form part of the decision the Commissioner also wishes to comment on the internal review conducted by the Executive Office. The complainant requested an internal review on 9 October 2020, setting out his reasons for disagreeing with the Executive Office's response.
20. FOIA does not require a public authority to offer an internal review, but good practice recommendations are set out in the Code of Practice issued under section 45 of FOIA. The Code of Practice was updated and reissued by the Cabinet Office in 2018.<sup>2</sup>
21. Paragraph 5.8 of the Code recommends that

"The internal review procedure should provide a fair and thorough review of procedures and decisions taken in relation to the Act."
22. Paragraph 5.9 further recommends that:

"The public authority should in all cases re-evaluate their handling of the request, and pay particular attention to concerns raised by the applicant."
23. In this case the Commissioner notes that the complainant set out detailed grounds for appeal. He drew the Executive Office's attention to the record published by the Chinese Consulate, and suggested that this "circumvented" the confidentiality of the meeting.

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<sup>2</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

24. The Commissioner further observes that the Executive Office's internal review letter acknowledged, but did not explicitly address, the complainant's grounds of appeal. The Commissioner is of the opinion that, had the Executive Office given greater consideration to these arguments, it ought to have reached the decision that its reliance on the exemption at section 27 could not be sustained. Had this been the case then the Executive Office might have disclosed the requested information in response to the original request, ie in 2020, rather than in 2022 and only after the Commissioner's intervention.
25. The Commissioner considers this to be an important point for a number of reasons. Although internal reviews are not a statutory requirement under FOIA, they provide a valuable opportunity for a requester to explain why they may disagree with the way their request has been handled by a public authority.
26. The Commissioner considers it important that requesters set out clearly why they disagree or are not satisfied when requesting an internal review, as the complainant did in this case. This provides the public authority with the opportunity to check its response and ensure that it is satisfied with its position. Procedural deficiencies may be identified and rectified at this stage, and further explanation may be provided.
27. The Commissioner considers that the requester and the public authority should both be mindful of the purpose of the internal review. They should be prepared to engage as effectively as possible to resolve complaints at the earliest stage. This may reduce the work required to deal with further complaints and appeals, which may otherwise consume precious time and resources for all parties.

## Right of appeal

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28. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

29. 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.
30. 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 .....**

**Sarah O’Cathain**  
**Senior Case Officer**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**