

## FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

### DECISION NOTICE

Dated 5<sup>th</sup> January 2006

**Name of Public Authority:** The Foreign & Commonwealth Office

**Address of Public Authority:** King Charles Street  
London  
SW1A 2AH

#### **Nature of Complaint**

The Information Commissioner (the "Commissioner") has received a complaint which states that the following information was requested from the Foreign and Commonwealth Office (FCO) under section 1 of the Freedom of Information Act 2000 (the "Act"):

*"Information about countries whose diplomatic staff in London have allegedly committed a serious offence."*

It is alleged that FCO failed to provide the information requested by the complainant in accordance with their obligations under section 1(1) of the Act because they misapplied the section 27(1) exemption.

Section 27(1) states:

" Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

- (a) relations between the United Kingdom and any other State
- (b) relations between the United Kingdom and any international organisation or international court,
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad."

#### **The Commissioner's Decision**

Under section 50(1) of the Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the public authority.

**Reference: FAC0069504**

The Commissioner's decision is as follows:

The exemption in section 27(1) has been correctly applied to the information requested. The Commissioner considers that the public interest in withholding the information currently outweighs the public interest in disclosing it.

A further explanation of the above decision is provided in the attached Statement of Reasons.

### **Action Required**

In view of the matters referred to above the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he does not require any remedial steps to be taken by FCO.

Reference: FAC0069504

## Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: <a href="mailto:informationtribunal@dca.gsi.gov.uk">informationtribunal@dca.gsi.gov.uk</a>
Leicester	
LE1 6ZX	

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 5<sup>th</sup> day of January 2006

Signed: .....

Graham Smith  
Deputy Commissioner

Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

## **STATEMENT OF REASONS**

### **Background**

In October 2004 the complainant requested details of alleged serious offences committed by foreign diplomats over the previous five years, together with the countries the individuals came from. FCO provided the complainant with figures for such alleged crimes but refused to give specific details of the offences or the countries involved. The complainant then asked for the information under the former Code of Practice on Access to Government Information, after which FCO provided him with a list of the numbers and types of offences, but maintained their refusal to give the nationalities of the individuals concerned.

In January 2005 the complainant repeated his request under the Act. He asked for the names of alleged offenders and their nationalities. FCO again refused to provide the requested information and in doing so applied section 27(1) and section 40 (which exemption relates to personal information which, if released would breach any of the principles of the Data Protection Act 1998). The complainant then asked for a review of FCO's decision but withdrew his request for the names of the individuals concerned. Following a review FCO maintained their original decision not to provide details of the countries involved.

### **The section 27(1) exemption**

This exemption relates to potential harm to relations between the UK and other countries which could be caused by the release of information. FCO asserted that the release of the information requested by the complainant could prejudice future relations between the UK and the countries involved and therefore the section 27(1) exemption applies. This is a qualified exemption and is subject to a public interest test. FCO consider that the public interest in maintaining the exemption outweighs the public interest in releasing the information.

The Commissioner reviewed the information in question and agreed that section 27(1) applies. This is because he is satisfied that there is evidence that the release of information about alleged serious crimes committed by foreign diplomats may well have a detrimental effect of relations between the countries and the UK. In considering the likely prejudice to international relations the Commissioner has taken particular account of the expectations of both foreign and UK Governments and the basis on which they handled these matters at the time and, indeed, since.

### **The public interest test**

Having agreed that the section 27(1) exemption applies, the Commissioner then considered whether the public interest in maintaining the exemption outweighs the public interest in releasing the information. In doing so the Commissioner has considered the following arguments:

**a) *The complainant's view***

The complainant argues that FCO regularly publish details of embassies that do not pay their business rates on time and whose diplomats fail to pay parking fines. He also points out that press reports often reveal the identities of individual diplomats accused of serious crimes. He therefore fails to see why FCO should not publish details of serious offences and believes that the public interest lies in doing so. He believes that releasing such information would act as a deterrent, particularly where drink-driving is concerned.

**b) *FCO's view***

FCO consider that to provide the nationalities of alleged offenders would damage relations between the UK and the countries concerned and could affect their future willingness to cooperate in dealing with such individuals in the future, particularly in regard to waiving immunity or withdrawing an alleged offender. FCO point out that the cases in question have not been brought to court and have not been proven, and the release of information could lead to the identification of individuals, particularly those from a small diplomatic mission. They also emphasise that, whereas they write to missions asking them to pay outstanding fines and business rates, and warning them that they will be named if they fail to do so, that is not the case with serious alleged offences. In view of the potential damage to trust built up with foreign countries, FCO do not believe that the public interest would be served by disclosing the requested information.

**The Commissioner's comments**

The Commissioner recognises that there is considerable public interest in criminal acts committed by individuals who are protected by diplomatic immunity. He also acknowledges that publishing details of the countries involved could act as a deterrent to future offences being committed. However, balanced against that is the potential harm which may be caused to relations between the UK and the countries whose diplomats are alleged to have committed serious offences. An important advantage of maintaining good relations with other countries is their cooperation with UK authorities when an allegation of involvement in a serious offence by a diplomat is made. In many cases the police may request a waiver of diplomatic immunity in order to arrest, interview under caution and, if appropriate bring charges against the individual. FCO make the request for a waiver to the mission concerned which usually consults its capital before reaching a decision. FCO have said that the decision is often a matter of central policy being applied.

The Commissioner has considered whether, even allowing for the potential harm to relations between the UK and other countries, the public interest in this matter is sufficiently strong to justify the release of the information requested. He has reached the conclusion that, on balance, it is not. It is the

Commissioner's view that there is a real risk that publishing the details of countries whose diplomats have been alleged to have committed serious offences would result in the withdrawal of cooperation in relation to future cases. This remains the case even though the information requested covers events which occurred a number of years ago rather than in the very recent past. FCO and the police rely on such cooperation when asking countries to agree to waive immunity or withdraw diplomats who are subject to such allegations, and the Commissioner considers that it would not be in the public interest to jeopardise such cooperation. It is clearly in the interest of the public that the police are given as much assistance as possible in investigating allegations of serious offences.

The Commissioner has found the public interest test to be finely balanced in this case and, in reaching his decision, he has had regard to existing FCO policy and the expectation of foreign missions that information of the type requested will not be disclosed. However, the FCO policy pre-dates the FOI legislation, in which there is an underlying presumption of disclosure. FCO might therefore wish to review their policy on the disclosure of information about crimes alleged to have been committed by foreign diplomats, and to convey any changes to the appropriate to heads of missions. Expectations would then be different and this might lead to a different conclusion when weighing the relevant public interest considerations in the event of similar requests for this kind of information being made in the future.

### **Summary of the Commissioner's decision**

The Commissioner has accepted that section 27(1) can be held to apply to the information requested. He has further decided that, although there is a clear public interest in the disclosure of information about alleged crimes committed by foreign diplomats, this is outweighed by the likely prejudice to international relations potential and the loss of cooperation that would result from publishing the information. The Commissioner does not consider that the public interest would be served by the loss of such cooperation.

**Note:** The Commissioner has not addressed in this decision the question whether the information requested is exempt under section 40 (on the basis that disclosure of personal information about identifiable individuals would be in breach of the Data Protection Act 1998). Even if this were the effect of disclosure in some instances, it would not be the effect in every case. The Commissioner's decision as made relates to the totality of the requested information which this complaint concerns. It is therefore unnecessary for him to consider the other matter further.