



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 27 July 2006

Public Authority: Foreign and Commonwealth Office

Address: Old Admiralty Building
London
SW1A 2PA

Summary Decision and Action Required

The Commissioner's decision in this matter is that the public authority has dealt with the Complainant's request in accordance with Part I of the Act. He has decided that the exemptions at sections 27 and 36 of the Act are engaged and that, for the reasons set out below, the public interest requires that further information should not be disclosed. Accordingly there is no remedial action that the Commissioner requires the Public Authority to take beyond the agreed provision of a letter and parts of a telegram.

1. **Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner**
 - 1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').
 - 1.2 Where a complainant has made an application for a decision, unless:
 - a complainant has failed to exhaust a local complaints procedure, or
 - the application is frivolous or vexatious, or
 - the application has been subject to undue delay, or
 - the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.



- 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

- 2.1 The Complainant has advised that the following information was requested from the public authority in accordance with section 1 of the Act.
- 2.2 On 9 February 2005 the complainant told the Foreign and Commonwealth Office (FCO) by email that the Volcker Report into the UN oil-for-food programme (see paragraph 2.4 below) had said that in 1996 Sir John Weston (the then British ambassador to the UN) had helped Lloyd's Register to win a contract in Iraq and had claimed that he was acting on 'ministerial instructions'. The complainant then asked for: "... all communication between the Foreign Office and Sir John Weston in relation to the Lloyd's Register contract".

Background to the complaint

- 2.3 On 3 February 2005 Sir John Weston wrote a letter (the 2005 Weston letter) to the FCO authorising them to issue a statement in his absence abroad saying that he had given evidence in person to the Volcker Commission. His evidence had said that his Ministerial instructions from London during the period in question were set out in FCO telegram 359 of 23 April 1996 and were to ensure that effective arrangements were concluded by the UN to implement the oil-for-food programme with minimum scope for misuse, patronage or evasion.
- 2.4 The UN oil-for-food programme (the programme) ran from 1996 to 2003 and allowed Iraq to sell oil to other countries in order to buy food and medicine to ease the effects of international sanctions within Iraq. One of the programme's procurement actions was to hire a company to conduct inspections of the humanitarian goods entering Iraq; the contract was ultimately awarded to the UK based Lloyd's Register Group (Lloyd's) who were already performing other contracts in the region.
In April 2004, the UN appointed Paul Volcker to lead an independent inquiry to investigate allegations of corruption within the Programme. The Independent Inquiry Committee, led by Mr Volcker, published an Interim Report on 3 February 2005 (the Volcker Report). There was subsequently a Final Report in October 2005.
The Volcker Report contained excerpts from a letter dated 8 August 1996 from Sir John Weston to the then UN Under Secretary General (the 1996 Weston letter).

FCO response to the complaint

- 2.5 On 10 March the FCO told the complainant that exemptions in section 27 (international relations) and section 43 (commercial interests) applied but that they needed to consider further where the balance of the public interest lay. FCO wrote again on 24 March saying that sections 27 and 36 (prejudice to effective conduct of public affairs) applied – they made no reference to section 43 - and explained why



they considered that much of the information could not be released. The FCO did however release fragments of text from two out of ten documents which they had identified, each of which contained some information that was relevant, but withheld the remainder of the relevant information. FCO said they had released information to the Volcker Committee and would continue to do so. The letter did not refer to the 3 February 2005 Weston letter which predated it (nor to telegram 359).

- 2.6 On 26 March the complainant requested an internal review. He told FCO that Sir John Weston had said publicly that he was acting on ministerial instructions and that it was clearly in the public interest to know which minister gave those instructions and what they were.
- 2.7 On 25 April 2005 FCO wrote to the complainant, giving him the outcome of their internal review. They maintained their refusal to disclose further information and explained that, after assessing the public interest, they had decided that the exemption in section 43 did not apply but that section 36(2)(b) remained relevant. As a result the Commissioner has given no further consideration to section 43. Again there was no reference to the 2005 Weston letter or telegram 359.
- 2.8 On 7 May 2005 the complainant appealed to the Commissioner. He said that the Volcker report had stated that Lloyd's had been awarded the contract after 'inappropriate' cooperation with British diplomats including Sir John Weston who had "advised the firm to drop their bid by \$1m." Sir John had defended his actions, saying he had been acting on 'ministerial instructions' from London and that 'there was nothing the least bit improper' in what went on. The complainant said that if there was nothing wrong with what had happened then there was a public interest in seeing the information to allow the public to make their own judgement. He said that the FCO seemed to suggest that all correspondence between HM Government and the UN should be kept secret and not released under the terms of the Act. While he could see the need for some material relating to national security matters to be kept confidential, the information he was requesting was related purely to a commercial contract. In addition the UN oil-for-food programme had been unique and should be treated as such.
- 2.9 On 28 November 2005 the Commissioner's staff asked the FCO for their comments and for the information withheld. FCO replied on 13 December, providing extracts from ten documents identified as comprising information relevant to the request and including the information already released to the complainant. FCO initially did not supply the full documents requested by the Commissioner's staff saying that they also covered issues outwith the scope of the request. With regard to the complainant's request to see ministerial instructions, the FCO said that the instructions identified contained no information relating to the Lloyd's contract and that the FCO search for information relevant to this request had not identified any explicit instructions to Sir John Weston regarding support for the Lloyd's contract.



- 2.10 On 10 January 2006, FCO provided the Commissioner's staff with copies of the full documents, one of which indicated the existence of a report that had not been evident from the extracts provided on 13 December 2005. The Commissioner accepted FCO's subsequent assurance that this report was not relevant to the complainant's request and that they had been mistaken in including the document that referred to it in the material provided. FCO provided a copy of the 2005 Weston letter, saying that its contents were already in the public domain and known to the complainant, who had drawn upon it in his original request. FCO also provided a copy of telegram no 359 of 23 April 1996 which the 2005 Weston letter had cited. FCO said that this telegram showed, contrary to the complainant's claim, that there were no ministerial instructions for Sir John Weston to act on behalf of Lloyd's Register to win the UN contract. FCO said that the telegram made no reference to Lloyd's or the relevant contract and therefore did not fall within the terms of the complainant's original request. Telegram 359 summarised the thinking behind the instructions that FCO had been sending to the UK mission at the UN.
- 2.11 The Commissioner's staff met with FCO officials on 13 January to clarify the search methodology used by the FCO and a number of other issues raised by the information FCO had provided. In response to a request to see the submission to their Minister which formed the basis of the Minister's opinion that the information should be withheld, FCO officials gave the Commissioner's staff a full description of the contents of the submission and the process by which it was agreed. FCO said that there had been no direct correspondence between the FCO and Sir John Weston about the Lloyd's contract. FCO subsequently confirmed that there had been no further relevant correspondence between FCO and Sir John Weston between the date of telegram 359 (23 April 1996) and the 1996 Weston letter dated 8 August.
- 2.12 FCO said that when they had replied to the complainant in March and April 2005, the (February) 2005 Weston letter had been overlooked as they had been concentrating on correspondence in 1996; they apologised for that oversight but confirmed that there was no other relevant correspondence outside their timeframe in 1996. However, they were content to release the 2005 Weston letter, together with the relevant section from telegram 359.
- 2.13 FCO said that the passage of time since 1996 did not diminish the potential for the release of the material withheld to prejudice international relations and they still considered that its release, even now, would fail to respect confidences and would be contrary to the public interest. Some of the information withheld had been provided to the Independent Committee of Inquiry appointed by the UN but this had been done within the terms of a Memorandum of Understanding between the Committee and the head of the UK Mission to the UN in New York.
- 2.14 As regards ministerial approval for application of the exemption under section 36(1)(a) of the Act, FCO explained that a submission had been put to the named responsible Minister on 22 March 2005, along with a digest of the potentially



disclosable information. FCO assured the Commissioner that their submission had made clear that: officials favoured maintaining the exemptions; the programme was still a very live issue; and, the Independent Inquiry Committee had yet to complete its work. FCO said that the Minister had requested a short meeting following which he had agreed to the information being withheld and had annotated the submission accordingly.

3. Relevant Statutory Obligations under the Act

Section 1(1) provides 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.”

International Relations

Section 27 provides that:

(1) 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, ...

(2) Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.

...

Prejudice to effective conduct of public affairs

Section 36 provides that:

(1) This section applies to-

- (a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and
- (b) information which is held by any other public authority.



(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

- (a) would, or would be likely to, prejudice-
 - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown,
 - ...
- (b) would, or would be likely to, inhibit-
 - (i) the free and frank provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation, or
- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

...
(5) In subsections (2) and (3) "qualified person"-

- (a) in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown,

4. Review of the case

The complainant's view

4.1 The complainant said that, given Sir John Weston's statement that he was acting on ministerial instructions from London during the period in question in mid-1996, there was a public interest in seeing the information and allowing the public to make their own judgement. He said he accepted that some of the correspondence between HM Government and the UN relating to national security matters should not be released under the terms of the Act, but that the information he was requesting related purely to a commercial contract. In addition, the complainant said that the UN oil-for-food programme had been unique and should have been treated as such.

Section 27(1) International relations – prejudice to relations with the UN

The public authority's view

4.2 The FCO said that section 27 (1)(a) and (b) applied and that the release of frank views and assessments of other States and the UN would be likely to provoke a negative reaction in those places (and potentially beyond), and would as a result be likely to prejudice the UK's international relations. This would hinder the UK Government's ability to engage with the UN and those countries in future, which was clearly not in the public interest.



- 4.3 While accepting that there had been many changes since these events took place in 1996 the FCO did not believe that the passage of time had made any difference to their view of the position. They said that the disclosure of information that had been provided in confidence could still prejudice relations between the UK and other states or international organisations.

The Commissioner's view

- 4.4 The Commissioner has noted the assurance given by the FCO that they have found no ministerial instructions which related to the awarding of the Lloyd's contract; nor do they have reason to believe that any such instructions exist. Thus, on a narrow interpretation of the request – “for all communication between the Foreign Office and Sir John Weston in relation to the Lloyd's Register contract” – FCO are correct in saying that there is no information to release. However FCO, on their own initiative, had then widened their search, and found ten documents containing some information which met their search criteria. They released to the complainant fragments of the relevant text from two documents but withheld the rest of the relevant text in all the documents under the section 27 (and section 36) exemptions.
- 4.5 Section 27 contains two closely related provisions: for information whose disclosure would, or would be likely to, harm UK interests; and, an exemption for information obtained in confidence from another state or international organisation such as the UN. Section 27(1) is subject to the prejudice test which means that the FCO cannot withhold information unless its disclosure would, or would be likely to, prejudice the interests of the UK, for example within the UN.
- 4.6 The Commissioner's staff have viewed the full original text of the ten documents. Having considered their content, the Commissioner is satisfied that section 27(1) of the Act is engaged and accepts as reasonable the FCO's concern that prejudice to the UK's international interests would, or would be likely to, result from disclosure of the content of the documents withheld.

Section 27(2) International relations – confidential information provided by the UN

The public authority's view

- 4.7 The FCO said that section 27(2) also applied because to do business successfully the UK Government and the UN needed to be able to exchange information freely and frankly on a confidential basis to ensure that their shared interests were pursued. The effectiveness of international relations depended on maintaining the trust and confidence which enabled the free and frank exchange of information on the understanding it would be treated in confidence. By releasing the information in question, there was a possibility that the UN and other similar organisations would refuse to share comparable information in the future. If that happened, it would



harm the UK's ability to protect and promote its interests through international relations which there was a strong benefit in maintaining.

- 4.8 In the context of section 27(2), the FCO saw an inherent public interest in the respecting of confidences. At the relevant time there had been a shared
- 4.9 understanding that confidence would be respected and they believed that the exemption should continue to apply despite the passage of time. FCO said that the public interest in respecting the confidences given continued to outweigh the public interest in disclosure. FCO remained firmly of the view that the 1996 information could not be disclosed without adverse repercussions.

The Commissioner's view

- 4.10 Confidential information for the purpose of section 27(2) is not subject to a test of prejudice. The Commissioner considers too that disclosure could also be a breach of the reasonable expectations of confidentiality that existed between UK and UN officials at what was a sensitive time in international relationships relating to Iraq. This remains a very sensitive area in terms of international relations. As regards section 27(2), the Commissioner accepts that the information could well have been imparted in circumstances which make it reasonable to expect that it would be held in confidence and that the exemption is engaged.

Section 27(1) and (2) - the public interest

The public authority's view

- 4.11 FCO added that they believed they had fulfilled their public interest requirements by cooperating fully with the Volcker Committee and related UN disciplinary hearings, and noted that they had done so under the terms of a confidentiality agreement. Relations with the UN would be likely to be prejudiced if there was a breach of reasonable expectations of confidentiality.

The Commissioner's view

- 4.12 A public interest test applies to both section 27(1) and 27(2) of the Act. Factors favouring disclosure in this instance include: furthering public debate of the issues; and, promoting accountability and transparency for decisions. Public interest factors against disclosure include the likelihood of provoking a negative reaction in the UN and beyond and prejudicing UK relations and the ability of UK representatives to exchange information freely and frankly in an atmosphere of confidence and trust. Within the foreign affairs setting, the circumstances, nature of the information and identity of the confidante as well as the context in which the information was imparted must be taken into account.



- 4.13 The Commissioner has also considered whether the passage of time has diminished the risk of prejudice or altered the balance of the public interest and has concluded that it has not. While there has been considerable political change in and around Iraq, he is satisfied that recent events such as the Iraq war and continuing tensions there, as well as publication of the Volcker reports and the consequential events within the UN, mean that there is a continuing sensitivity about these matters.
- 4.14 The Commissioner is satisfied that the balance of public interest in this matter favours maintaining the exemption and has therefore concluded that the information should continue to be withheld.

Section 36 Prejudice to effective conduct of public affairs

The public authority's view

- 4.15 The FCO said that the section 36 exemption applied as: officials needed to have a relationship of trust characterised by considerable frankness; it was important to protect the ability of officials to develop ideas and contribute to the effective operation of Government; and, if there was a risk that officials could come under pressure not to challenge ideas, this could jeopardise future exchanges leading to poorer decision making.

The Commissioner's view

- 4.16 Under section 36(2) information is exempt if, in the reasonable opinion of a qualified person its disclosure would, or would be likely to, inhibit the free and frank provision of advice. The Commissioner has received FCO assurances that on 22 March 2005, a submission was sent to a qualified person, in this case the relevant named minister, with a digest of the information being withheld extracted from the ten documents. The Commissioner has ascertained that the qualified person met with officials to discuss the submission and then annotated the submission indicating his approval. He is satisfied that the reasonable opinion of a qualified person was thus obtained and section 36 was engaged. He is also satisfied that the balance of the public interest does not favour disclosure for the reasons given at paragraphs 4.12 and 4.13 above.

The 2005 Weston letter

- 4.17 It is surprising, and a matter for criticism, that when the FCO replied to the complainant on 10 and 24 March, and again on 27 April 2005, they acted in ignorance of the 2005 Weston letter which FCO accept they had received by 22 February 2005. However the Commissioner welcomes the fact that FCO are willing now to release it to the complainant along with the relevant sections of telegram 359 dated 23 April 1996 to which it refers.



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5. Action Required

- 5.1 The Commissioner's decision in this matter is that, FCO have dealt with the complainant's request in accordance with the requirements of Part I of the Act for the reasons given.
- 5.2 The Commissioner welcomes FCO's offer to release to the complainant the text of the 2005 Weston letter, along with the relevant sections of telegram 359, and does not require FCO to take any further action.

6. Right of Appeal

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

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

- 6.2 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 27th day of July 2006

Signed

Graham Smith
Deputy Commissioner

Information Commissioner
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