

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 4 July 2007

Public Authority: The National Archives
Address: Kew
Richmond
Surrey
TW9 4DU

Summary

The National Archives refused to allow the complainant access to a closed Foreign and Commonwealth Office file relating to the supply of tanks for the Saudi Arabian National Guard citing section 27 of the Freedom of Information Act 2000 (the Act). The Commissioner decided that in refusing this request, The National Archives had dealt with it in accordance with part I of the Freedom of Information Act.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 12 December 2005 the complainant asked The National Archives (TNA) for access to a closed Foreign and Commonwealth Office (FCO) file, reference FCO 8/1200, relating to the supply of Saladin tanks for the Saudi National Guard from 1 January 1968 to 31 December 1969. The request was one of three closely related requests from the complainant to TNA seeking material on arms deals with Saudi Arabia; the other related requests were Information Commissioner's Office case references FS50119364 and FS50125539.
3. On 30 January 2006 TNA told the complainant that all of the information requested was covered by the exemption arising from section 27 of the Act (International relations). TNA said that disclosing the information would harm bilateral relations with another country and would also damage British commercial interests in the region.

4. On 31 January 2006, the complainant requested an internal review of the decision and explained why he believed that the public interest favoured disclosure of the information. On 20 March 2006 TNA told the complainant that details of his request had been passed to the then Department for Constitutional Affairs (DCA) and the FCO. TNA decided that the section 27 exemption still applied. TNA said it had also carried out a public interest test; factors for and against disclosure had been taken fully into account and, after consultation with FCO, TNA had released approximately 24 pages of material but continued to withhold the remainder.

The Investigation

Chronology

5. On 26 March 2006 the complainant contacted the Commissioner about the outcome of his request for information. The complainant said that, while the process of dealing with his request had been satisfactory, he disagreed with the outcome of the public interest test that had been undertaken. He said that declassification of this file was vital for both the public and Parliament to be able to assess the risk of current arms contracts with Saudi Arabia being tainted by corruption.
6. On 9 February 2007 the Commissioner began his investigation. On 21 March 2007 TNA gave the Commissioner its comments and explained its reasons for continuing to withhold some of the information. TNA said that the file had been transferred to it with an extended closure period of 40 years. During the last of those 40 years, FCO would review the file to see if any of the information it contained merited a further period of closure. If so, an application for an extended closure period would be made, typically for a further ten years. TNA said that public interest tests had been applied by FCO. TNA added that, in releasing information, it had kept redactions to the absolute minimum that would protect information of a sensitive nature.
7. On 16 April 2007, in response to an enquiry from the Commissioner's staff, the complainant said that the public had a right to expect public officials to act with the highest standards of integrity, even in their dealings with foreign countries or with companies. The complainant added that he had been to Cambridge University Library to view the Vickers archive. (The Vickers archive contains papers, etc which were formerly stored at the head office of Vickers plc, once one of the largest armaments companies in the world.) The complainant said that he had learned from sources there the content of the censored part of a FCO telegram with the FCO reference number 624 (the telegram). He provided the Commissioner with a copy of the telegram which had part of the text redacted. The complainant added that the telegram formed part of one of his related requests (Information Commissioner's Office case number FS50119364). The Commissioner's staff later noted the telegram among the collection of papers being withheld by TNA in respect of the complainant's three linked requests.
8. On 18 April 2007 the Commissioner's staff visited TNA and studied the papers being withheld.

Findings of fact

9. On 15 December 2006 the Attorney General announced that the Serious Fraud Office was discontinuing an inquiry it had been conducting for some time relating to the Al Yamamah arms deal with Saudi Arabia. He said that the decision had been made in the wider public interest, which had to be balanced against the rule of law. On the same day, the Prime Minister confirmed that he had advised the Attorney General that it was not in Britain's national interests for the Serious Fraud Office inquiry to continue. The Commissioner has seen that the information requested relates to arms purchase agreements that were forerunners of the Al Yamamah deals and was of a piece with subsequent contracts.
10. FCO told the Commissioner's staff that it had not consulted the Saudi Arabian government about its attitude to releasing any of the withheld papers. FCO believed that, in the light of the accidental disclosure by DTI in 2006 of files about Al Yamamah to TNA for public viewing, the Saudi Arabian government would have been gravely offended by the implication that the United Kingdom government was even considering the release of sensitive papers about defence sales to Saudi Arabia.

Analysis

Exemption

Section 27

11. Under section 27(1) of the Act, information is exempt if its disclosure would, or would be likely to, prejudice relations between the United Kingdom and any other state, the interests of the United Kingdom abroad or the promotion and protection by the United Kingdom of its interests abroad. Under section 27(2) information is exempt if it is confidential information obtained from a state other than the United Kingdom. The text of those parts of section 27 is set out in the legal annex. For the exemption to apply, prejudice to the interests of the United Kingdom must be demonstrated and, as the exemption is qualified, the information must be disclosed unless the balance of the public interest is in favour of withholding it.
12. The Commissioner is satisfied that the governments of both the United Kingdom and Saudi Arabia consider the information requested to be confidential and that bilateral relations between the United Kingdom and Saudi Arabia would be prejudiced by disclosing it. He is satisfied therefore that the exemption is engaged and, on that basis, is now required to consider the public interest.

Section 27 – balance of the public interest

13. The complainant told the Commissioner that he disagreed with the outcome of the public interest test as it had been applied by FCO and TNA and asked the Commissioner to take account of the points he had put to TNA. He said that he particularly wanted to stress two points. Firstly, under the 40 year closure rule, the

papers were, in any event, due for release in 2010 and that the release of a file in three years time was as likely to cause as much harm to bilateral relations and damage to United Kingdom commercial interests then as it was now. There was therefore no point in continuing secrecy.

Secondly, he strongly believed that the classified material related to the subject of corruption involving United Kingdom companies and that it contained evidence of official facilitation and encouragement of corrupt practices; the public interest in disclosure and accountability was therefore overwhelming.

In his view, disclosing the file was vital for both the public and Parliament to be able to assess the risk of current arms contracts with Saudi Arabia being tainted with corruption.

14. In his earlier letter to TNA, the complainant had listed five arguments why he believed that the public interest favoured disclosure. They were:

- 14.1. disclosing the papers being withheld was unlikely to prejudice relations between the United Kingdom and Saudi Arabia any more than files from this period that were already in the public domain;
- 14.2. disclosure was likely to reveal prima facie evidence of bribery or attempted bribery by United Kingdom companies and/ or their agents in Saudi Arabia;
- 14.3. disclosure was likely to reveal evidence of gross misconduct by FCO and Ministry of Defence (MOD) officials in knowingly facilitating corrupt activities by United Kingdom companies and/ or their agents in Saudi Arabia;
- 14.4. disclosure would have a material bearing on a public assessment of the risk of current United Kingdom arms sales to Saudi Arabia being tainted by corruption because some of the key decision makers who were in post in 1970 were still in positions of power;
- 14.5. the file was under 40 year closure and those 40 years were almost up so what was the point in waiting out the full 40 year term? The file was likely to be as sensitive in 40 years as it would be after 37 years.

15. In response to a request from the Commissioner's staff, the complainant clarified his view as to what behaviours he would regard as gross misconduct by officials. The complainant said that people would expect officials not to use their position to assist the arranging of bribes in transactions, nor to collect intelligence with the intention that it would be used to assist companies (whether private or nationalised) to pay bribes, nor to arrange for companies under the Crown Agents (as Millbank Technical Services was) or nationalised companies (e.g. British Leyland) to pay bribes. He said that the world was a different place forty years ago. He thought that attitudes had changed and that corruption was now more generally frowned upon. However, he did not think that his comments would have been out of place with what the public would have expected 40 years ago, and did not see why any misconduct there might have been then should not now be exposed even if it had taken place a long time ago.

16. TNA, acting on advice from FCO, told the complainant that the balance of the public interest was against releasing certain information (although some other documents from the file were released). TNA said that the factors in favour of releasing the information were: improving openness and accountability, making available a full

historical account and the age of the material. However the factors against disclosure were that the extracts contained information on the negotiation of certain trade sales to Saudi Arabia, the release of which could have an adverse effect on the UK's relations both economic and bilateral with Saudi Arabia. While the FCO accepted that disclosure would provide a full historical record of British interests in the Gulf it also considered that the release of this information would, or would be likely to, have an adverse effect on UK relations with Saudi Arabia. Saudi Arabia traded extensively with the UK and had a large British expatriate community and the trade interests and the interests of British Nationals must be considered. Therefore the FCO considered that the public interest was best served by maintaining the exemption used. TNA explained that it could not be assumed that the material would necessarily be released on its 40th anniversary. Rather the 40 year closure period sets a limit to the length of time for which a record can be closed before the sensitive information in it has to be re-examined to see if any of it merits further closure (see paragraph 6).

The Commissioner's view

17. The Commissioner has noted the complainant's view that the information would be released shortly under the 40 year rule but has also found, in the course of his investigation, that release of the relevant papers at the 40 year mark was not a forgone conclusion. A further closed period could be imposed and, if present circumstances remained in place for the next few years, FCO and TNA might well be minded to extend it – possibly by as much as ten years. The complainant was also concerned that the papers withheld might provide evidence of what he described as gross misconduct by United Kingdom officials. The complainant gave the Commissioner an indication of what he would regard as gross misconduct by officials, and the Commissioner noted his view. In reaching his decision, the Commissioner also took into account the five arguments from the complainant listed above, and the other points made by the complainant in presenting his case that the public interest favoured releasing the information.
18. In determining the balance of the public interest, the Commissioner has noted that there are strong concerns on the part of the United Kingdom and Saudi Arabian governments to maintain high levels of reciprocal trust and mutual respect in bilateral relations. TNA and FCO understand that the Saudi government feels strongly that disclosure of material of the kind being withheld by TNA would be a serious breach of confidence on the part of the United Kingdom government.
19. The Commissioner has received evidence, which he accepts, that any breakdown that might have occurred in relations with the government of Saudi Arabia in December 2005, the time when this request was made, would have had an immediate, significant and direct impact on bilateral relations and United Kingdom commercial interests. In the Commissioner's view this evidence has a clear impact on how the public interest in this case might be interpreted. The Commissioner has also taken into account that nothing he has seen in the material being withheld provides compelling reasons in the public interest for it to be disclosed. The Commissioner has also noted the United Kingdom government statements of December 2006 about where the balance of the United Kingdom's national strategic interest lies. He accepts that, although those statements post-date the December

2005 request for information, the case made out by the Prime Minister and the Attorney General in December 2006 concerning the public interest provides additional retrospective supporting evidence for the position as it had been in December 2005, and the risks to the United Kingdom's national interest at that time.

20. Taking the representations he has received from TNA and FCO, and after weighing them against the arguments from the complainant in favour of disclosure, the Commissioner's decision is that the balance of public interest in maintaining the exemption outweighed the public interest in disclosing the information at December 2005 and he has seen no evidence to suggest that this position has now changed.

The Decision

21. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

22. The Commissioner requires no steps to be taken.

Failure to comply

23. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

24. Either party has the right to appeal against this Decision Notice to the Information 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

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

Dated the 4th day of July 2007

Signed

**Richard Thomas
Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal annex

Relevant sections of the Act

International Relations

Section 27(1) provides that –

“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.”

Section 27(2) provides that –

“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.”