

Freedom of Information Act 2000 (Section 50)

Decision Notice

21 July 2008

Public Authority: Cabinet Office
Address: Admiralty Arch
North Entrance
The Mall
London
SW1A 2WH

Summary

The complainant asked the public authority for records of meetings between Tony Blair and other world leaders in the Azores and Crawford, Texas in 2003. The public authority claimed that a substantial amount of information about the meetings was already in the public domain, and withheld the requested information as exempt under sections 27(1)(a), 27(2) and 35(1)(a) of the Freedom of Information Act 2000 ('the Act'). The Commissioner decided that the information was exempt under section 27 and that the public interest test in maintaining the exemption outweighed the public interest in disclosure.

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 1 of the Freedom of Information Act 2000 (the 'Act'). This Notice sets out his decision.

The Request

2. The complainant made an information request to the Cabinet Office on 4 January 2005. He requested:

'records of the meetings between Tony Blair and George W Bush and Jose Maria Aznar when they met in the Azores in March 2003'.

This was given the reference 'rw/azo' and is referred to in this report as the 'Azores request'. The complainant made a second request for information relating to a

meeting in Crawford, Texas under the reference 'rw/crw' (the 'Crawford request').

3. In a letter of refusal dated 3 February 2005 the Cabinet Office withheld the information relating to the Azores request as being exempt under sections 27(1)(a) and 27(2) of the Act. It claimed that in fact *'a substantial amount of information about this meeting was placed in the public domain as a result of the press conference held at the conclusion of the Azores meeting'*.
4. The complainant requested an internal review of this decision on 2 March 2005 on the grounds that the Cabinet Office had failed to give adequate weight to the public interest in disclosure.
5. The Cabinet Office's internal review decision dated 18 May 2005 concluded that the original refusal of the Azores request was justified. It added that the Crawford information was exempt for the same reasons. Furthermore, the Cabinet Office took the view that all of the requested information was also exempt under section 35(1)(a) of the Act. The Cabinet Office gave the complainant details of the Information Commissioner's Office.

The Investigation

Scope of the case

6. On 28 May 2005 the complainant contacted the Commissioner to complain about the way in which his request for information had been handled. He specifically asked the Commissioner to consider the following points:

'the information already disclosed was not 'substantial' and, in the case of the Crawford meeting, failed to clarify what had been discussed at the meeting;

the Cabinet Office had failed to give adequate weight to the public interest in disclosure as helping to inform public debate and promote understanding of international affairs.'

Chronology

7. The Information Commissioner's Office wrote to the complainant and the Cabinet Office on 26 September 2006 asking the Cabinet Office to comment on various issues. The Commissioner sent reminders on several occasions, including in written requests dated 17 November and 8 December 2006, and 7 February 2007, but the Cabinet Office failed to provide a substantive response. The Information Commissioner's Office also requested sight of the withheld information and arrangements were made for the Deputy Commissioner to view the information at 10 Downing Street on 16 January 2007.
8. On 4 July 2007 the Cabinet Office finally sent its substantive response. It confirmed that, in addition to section 27, it was applying section 35 to both requests, since both

meetings had involved *'the formulation or development of international policy at the highest level'*, and it rehearsed the public interest arguments which it had addressed in respect of section 35. It also confirmed that it was not asserting the exemption under section 21, and pointed out that the relevance of the information which had already been released into the public domain was that it showed that the public interest in informing public debate and promoting understanding of international affairs had been satisfied notwithstanding that the requested information had been withheld. (It reported that a transcript of the joint press conference of Prime Minister Blair and President Bush was available at <http://www.number-10.gov.uk/output/Page1711.asp>; the Butler report could be accessed at <http://www.butlerreview.org.uk>; and a full transcript of the press conference following the Azores meeting was available at <http://www.whitehouse.gov/news/releases/2003/03/20030316-3.html>.)

Analysis

Exemption – section 27(1)(a) and 27(2)

9. The Cabinet Office concluded that information requested by the complainant fell under the exemptions in section 27(1)(a) and 27(2) of the Act. Section 27(1)(a) of the Act 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.'

Section 27(2) states:

'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.'

10. The requested information has been considered by the Information Commissioner's Office. Section 27(1)(a) will only be engaged if the requested information relates to international relations and disclosure of it would, or would be likely to, cause some prejudice to United Kingdom relations with (in this case) another state. The Cabinet Office identified that prejudice as other states and organisations being more reluctant to share sensitive information in future and less likely to respect the confidential nature of information supplied to the United Kingdom. Having considered the information and the submissions made, the Commissioner accepts that significant prejudice may very well ensue from disclosure of the information requested in this case. He therefore considers that the exemption under section 27(1)(a) is engaged in respect of this information.
11. Section 27(2) is not subject to a test of prejudice but applies only if the requested information is in fact confidential. No direct evidence was produced in this case to demonstrate that the other states which were party to the Azores and Crawford

meetings expressly laid down that the matters discussed should be treated as confidential. However, information may also be confidential if there is an expectation placed on the information by a non-UK state that it will be held in confidence by the UK public authority involved. The Cabinet Office took the view that the effective conduct of international relations depends upon maintaining trust and confidence between governments, and that the other states involved in the Azores and Crawford meetings would reasonably expect the withheld information to be held in confidence. Furthermore, the Cabinet Office claimed that failing to observe such confidentiality would prejudice the United Kingdom's ability to protect and promote its interests by making other states and organisations more reluctant to share sensitive information in future and less likely to respect the confidential nature of information supplied to (and, presumably, by) the United Kingdom. The records inspected included express statements that access to the detailed information they contained about the content of the exchanges should be very restricted. In light of the nature of the information and the circumstances in which it was generated, the Commissioner is satisfied that in this case there was such an expectation and that section 27(2) is therefore engaged in relation to all of the requested information.

12. Since section 27 is a qualified exemption it is subject to a public interest test under section (2)(2)(b) of the Act. This favours disclosure unless, *'in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information'*. The Cabinet Office applied the public interest test and concluded that this favoured withholding the requested information. It put weight on the fact that some of the information (which it characterised as *'a substantial amount'*) was made public during a press conference held at the conclusion of the Azores meeting. Its review decision added that further information had been disclosed:

'in the Butler report and in statements to Parliament, press conferences, joint statements, and briefings by the Prime Minister's Official Spokesperson'.

The complainant has objected that this information was not in fact 'substantial', and neither did it clarify what was discussed at the Azores and Crawford meetings. The Commissioner's view is that the information which was disclosed through public statements did not constitute a comprehensive 'summary' of the detailed discussions which took place at the meetings. He has therefore decided that these disclosures do not have any significant bearing on the assessment of the public interest test in this case.

13. In relation to section 27(1)(a), the Cabinet Office took the view that the effective conduct of international relations depends upon maintaining trust and confidence between governments; that the other states involved in the Azores and Crawford meetings would reasonably expect the withheld information to be held in confidence; and that failing to observe such confidentiality would hamper the United Kingdom's ability to protect and promote its interests, since other states and organisations could be more reluctant to share sensitive information in future and less likely to respect the confidential nature of information supplied to (and by) the United Kingdom.
14. On the other hand, the complainant claimed that the Cabinet Office had failed in its assessment to give adequate weight to the role of disclosure of such information in

informing public debate and promoting understanding of international affairs. The Commissioner notes that the Cabinet Office told the complainant that *'It is in the public interest that as much information as it is reasonable to release relating to this meeting should be disclosed'*, but otherwise emphasised factors in favour of maintaining the exemption rather than disclosing the information requested. After the Information Commissioner's Office had invited the Cabinet Office to expand upon the public interest arguments, it indicated that in its view the information about the Azores and Crawford meetings which had already been released into the public domain had satisfied the public interest in informing public debate and promoting understanding of international affairs.

15. The Commissioner accepts that public understanding and debate has been facilitated by the information which has been disclosed. Nevertheless, he believes that disclosure of the remaining requested information would play a significant role in increasing public confidence, promoting decision makers' accountability to the public, and facilitating public understanding and debate on the particular issues in hand.
16. However, he notes that in this case there are a number of specific factors which favour withholding the information. First, all of the documents are marked either 'Secret and Personal' or 'Secret and Strictly Personal'. While the Commissioner does not consider that a security classification/descriptor is sufficient by itself to justify non-disclosure, it is relevant to the extent that it reflects an expectation amongst the parties that the content will be treated in confidence and that access will be strictly controlled.
17. As a related second factor, most of the documents contained a note recording the Prime Minister's expectations about who would see them, signalling a clear expectation of confidentiality and very limited circulation. Thirdly, the documents (except for those relating to one issue which is addressed below) pertain to diplomatic and international policy issues which are still live and affecting UK relations with other states.
18. The withheld information covered by the Crawford request includes information which relates to a specific issue of less strategic importance in terms of international relations than the bulk of the information withheld. The issue was not referred to in the joint press conference which followed. Nevertheless, the Commissioner considers that the same arguments apply as to the prejudice to international relations which would be caused by the unilateral non-disclosure of the content of exchanges which take place behind closed doors between government representatives at the highest level.
19. Likewise the Commissioner considers that the balance of the public interest requires similar factors to be taken into account. He recognises that it could be argued that the public interest in maintaining the exemption might reduce where the topicality or significance of the subject-matter has diminished with time. Nevertheless he has taken the view that the public interest in maintaining strong relationships with key international allies, based on, among other things, mutual trust and respect for the confidentiality of exchanges between political leaders, is not one which should be overridden lightly. The Commissioner considers his approach in this matter to be consistent with that of the Information Tribunal in the case of *Foreign &*

Commonwealth Office v Information Commissioner and Friends of the Earth (EA/2006/0065).

20. Having considered all of the factors in favour and against disclosure, the Commissioner takes the view that the public interest in maintaining the exemption under section 27(1)(a) outweighs the public interest in disclosure of the requested information.
21. In relation to section 27(2), the same public interest factors apply. Disclosure of the requested information would increase public confidence, promote decision makers' accountability to the public, and facilitate public understanding and debate. However, these factors have to be balanced against the desirability of maintaining trust and confidence between governments, and the fact that there was an expectation among the parties that their discussions would be treated in confidence. Since section 27(2) covers confidential information as a class the expectation of confidence is particularly significant. The Commissioner recognises that the grounds for breaching confidentiality in a case must be strong because the preservation of confidentiality is a highly desirable end in itself. Furthermore, he considers that the information will remain confidential for as long as the states involved in the Azores and Crawford meetings expect it to be so held, and that is likely to be the case for the foreseeable future because the issues involved (with the exception of that relating to steel embargoes which is addressed below) remain 'live'. Therefore, having considered all of these factors, the Commissioner takes the view that the public interest in maintaining the exemption under section 27(2) outweighs the public interest in disclosure of the requested information.

Exemption – section 35(1)(a)

22. In its review decision the Cabinet Office took the view that section 35(1)(a) of the Act also applied to the requested information, since it related to the formulation and development of government policy. However, given his conclusions in relation to the applicability of section 27 to the withheld information the Commissioner does not consider it necessary to decide whether section 35(1)(a) also applies.

The Decision

23. The Commissioner's decision is that the public authority dealt with the request in accordance with the requirements of the Act in that it appropriately withheld the requested information by reference to the exemption under section 27 of the Act.

Steps Required

24. The Commissioner requires no steps to be taken.

Other matters

25. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern. Although the Information Commissioner's Office repeatedly asked the Cabinet Office to comment on a number of points, it received no substantive reply for several months. This has impeded the Commissioner's investigation and caused unnecessary delay in resolving this case.

Right of Appeal

26. 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 21st day of July 2008

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

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.”

Section 16(1) provides that -

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”.

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.”

Section 27(4) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a)-

- (a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1), or
- (b) would involve the disclosure of any information (whether or not already recorded) which is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.”

Section 27(5) provides that –

“In this section-

"international court" means any international court which is not an international organisation and which is established-

- (a) by a resolution of an international organisation of which the United Kingdom is a member, or
- (b) by an international agreement to which the United Kingdom is a party;

"international organisation" means any international organisation whose members include any two or more States, or any organ of such an organisation;

"State" includes the government of any State and any organ of its government, and references to a State other than the United Kingdom include references to any territory outside the United Kingdom.”

Section 35(1) provides that –

“Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

- (a) the formulation or development of government policy,
- (b) Ministerial communications,
- (c) the provision of advice by any of the Law Officers or any request or the provision of such advice, or
- (d) the operation of any Ministerial private office.

Section 35(3) provides that –

“The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).”

Section 35(4) provides that –

“In making any determination required by section 2(1)(b) or (2)(b) in relation to information which is exempt information by virtue of subsection (1)(a), regard shall be had to the particular public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to decision-taking.”