

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 June 2013

Public Authority: Foreign & Commonwealth Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant has requested Tony Blair's communications with the British Embassy in Tripoli and the Foreign Office from June 2007 to the date of the request. The public authority advised that it held information but found that it was exempt from disclosure by virtue of the exemption in section 27(1)(a) of the FOIA. The Commissioner has concluded that the exemption is only engaged in respect of some of the information, having been applied in a 'blanket fashion'. He therefore determines that some of the information should be disclosed. He further notes the considerable time delays in dealing with the request.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - it should disclose the information indicated in the confidential annex provided with this decision notice.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 4 October 2011, the public authority received the following request from the complainant:

"Would you please provide me with copies of all correspondence, or records of oral conversations, between Tony Blair and a) the British Embassy in Tripoli and b) the Foreign Office (i.e. the Department) since June 2007.

Please include in this request correspondence originating from, or sent to, representatives of Tony Blair's organisations:

*Office of Tony Blair
Tony Blair Africa Governance Initiative
Tony Blair Faith Foundation
The Tony Blair Sports Foundation
Office of the Quartet Representative
Breaking the Climate Deadlock".*

5. The public authority responded on 15 November 2011 advising that it held information but that it needed more time to consider the public interest in disclosure, citing the exemption in section 27 of the FOIA. It extended the date for compliance on 2 December 2011, 14 December 2011 and 13 January 2012. On 16 January 2012 it issued a response, finding that the requested information was exempt by virtue of section 27(1)(a) of the FOIA.
6. On 25 January 2012 the complainant requested an internal review; this was acknowledged by return. Having not received one, he wrote to the Commissioner on 27 March 2012. The Commissioner wrote to the public authority on 18 May 2012 about its lack of response.
7. On 25 July 2012 the public authority provided an internal review. In this it drew the complainant's attention to its interpretation of his request and possible shortfalls in what it had considered. It further explained that, had it taken a wider interpretation of his request, it would have exceeded the appropriate limit to locate all the information held; it invited him to make a further request if he so wished. It also drew attention to an invitation it had made to meet with the complainant and that such a meeting was due to take place imminently. It maintained its citing of section 27(1)(a) in respect of the information it had considered to fall within the scope of its initial interpretation of the request.

Scope of the case

8. The complainant contacted the Commissioner on 3 January 2013 to complain about the way his request for information had been handled. The Commissioner confirmed with him that he would consider timeliness and the application of section 27(1) to the original interpretation of the request.

Reasons for decision

Section 10 – time for compliance

Section 17 – refusal of request

9. Section 10(1) of FOIA provides that a public authority should comply with section 1(1) within 20 working days. Section 1(1)(a) initially requires a public authority in receipt of a request to confirm whether it holds the requested information.
10. The request was submitted on received by the public authority on 4 October 2011 and it confirmed, on 15 November 2011, that it held information falling within the scope of the request but that it was considering the public interest in respect of section 27 of the FOIA.
11. It wrote to the complainant again on 2 December 2011, 14 December 2011 and 13 January 2012, extending the time for responding on each occasion.
12. The public authority issued a refusal notice on 13 January 2012 finding the requested information was exempt by virtue of section 27(1)(a).
13. Under s10(3) a public authority may extend the time for compliance where it is necessary to do so in order to properly consider the public interest in maintaining an exemption. However, the extension can only be for as long as is reasonable in all the circumstances. The Commissioner's Good Practice Guidance 4 indicates that in no case should this be more than an additional 20 working days, ie 40 working days in total. Therefore, where a public authority takes longer than 40 working days to comply with a request it will have breached section 10(1) unless the Commissioner accepts that such an extension is reasonable because of exceptional circumstances.
14. The public authority's refusal falls well outside the time for compliance and the Commissioner does not consider that there are extenuating circumstances to justify this delay. In respect of the information which the Commissioner has determined should have been disclosed to the complainant, he finds a breach of section 10(1) of the FOIA.

Section 27 – international relations

15. Under section 27(1)(a) information is exempt if its disclosure under the Act would, or would be likely to, prejudice relations between the United Kingdom and any other State. This is a qualified exemption and is therefore subject to a public interest test.

16. In order for a prejudice-based exemption, such as those set out in section 27(1), to be engaged the Commissioner believes that three criteria must be met.
17. Firstly, the actual harm which the public authority alleges would (or would be likely to) occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption.
18. Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance.
19. Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure would be likely to result in prejudice or disclosure would result in prejudice. If the likelihood of prejudice occurring is only hypothetical or remote the exemption will not be engaged.
20. Furthermore, the Commissioner has been guided by the comments of the Information Tribunal which suggested that, in the context of section 27(1), prejudice can be real and of substance *“if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary”* (*Campaign Against the Arms Trade (CAAT) v the Information Commissioner and Ministry of Defence (EA/2007/0040)*).
21. With the above in mind, the Commissioner has considered the withheld information and the public authority's submissions in support of its reliance on section 27(1)(a).

Does the alleged harm relate to the exemption cited?

22. In correspondence with the Commissioner, the public authority explained how the alleged harm relates to the exemption within section 27(1)(a). It asserted:

“Section 27 (1) (a) recognises the need to protect information that would be likely to prejudice relations between the UK and other states if it were disclosed. It recognises that the effective conduct of international relations depends upon maintaining trust and confidence between governments. In releasing this document we judge that the effects of such a disclosure is likely to compromise relations between the UK and Libya and that of other governments in the region, and could therefore have an adverse affect [sic] on the UK's bilateral relationships in North Africa”.

23. The first criterion for engaging this exemption is therefore met. The harm envisaged relates to the prejudicial outcomes described in the exemption cited.

Is there a causal relationship between disclosure and the harm described in the exemption?

24. The public authority provided relevant background detail. It referred to specific examples of the subject matter contained in the withheld information and explained how disclosure could be harmful; unfortunately, the Commissioner is unable to set this out on the face of this notice without disclosing the withheld information itself.
25. However, the Commissioner notes that some of the withheld information is already in the public domain; yet the exemption has been applied in a 'blanket fashion' to the withheld information in its entirety. For that information which is already known, the Commissioner does not accept that the public authority is able to demonstrate a causal relationship between disclosure and the harm described. Any harm will be attributable to the fact that the information is already publicly available through official channels. The information which the Commissioner finds is not caught by this criterion is provided to the public authority in a confidential annex appended to this notice for its own reference only.
26. In respect of the remaining information, the Commissioner's view is that the public authority has satisfactorily established a causal link between disclosure of the withheld information and the prejudicial outcome described in section 27(1)(a). He also agrees that the alleged likely prejudice is real and of substance and he therefore finds that the second criterion for engaging section 27(1)(a) is met.

Likelihood of prejudice

27. Considering the third criterion, that is, likelihood of prejudice, the Commissioner notes that the public authority is relying on the lower threshold, namely that prejudice would be likely to arise as a result of disclosure rather than asserting that prejudice would arise.
28. The Commissioner has considered the detail of the withheld information and agrees that disclosure would be likely to have a negative impact on the UK's relations with other states. The withheld information includes subject matter which remains sensitive.
29. With the above in mind, the Commissioner agrees that the prejudicial outcome described in section 27(1)(a) would be likely to arise if the

public authority were to disclose the withheld information to which this exemption has been correctly applied.

30. As section 27(1)(a) is a qualified exemption, the Commissioner has gone on to consider the public interest test in this case in respect of the information he has agreed is exempt.

Public interest arguments in favour of disclosure

31. The public authority recognised the public interest in disclosure for the purposes of transparency. It further recognised the public interest in the recent history of diplomatic relations with Libya, as well as public interest in greater transparency and an insight into foreign policy work, advising that:

"We accept that the United Kingdom's relations with Libya have changed since the beginning of the NATO led action to enforce UN Security Council Resolution 1973".

32. It further advised the Commissioner:

"We accept that there is public interest in disclosing information on the relationship between Tony Blair and the Libyan regime for the reasons of transparency, accountability and historical significance".

Public interest arguments in favour of maintaining the exemption

33. The public authority advised that:

"... the effective conduct of international relations depends upon maintaining trust and confidence between Governments and other contacts. If the United Kingdom does not maintain this trust and confidence, its ability to protect and promote UK interests through international relations will be hampered".

34. It went on to add that:

"... it is our view that the release of the material requested would be highly likely to prejudice our continuing relationship with Libya and would have implications for our relationships with other States".

35. It further advised the Commissioner:

"... since the fall of Col Qadhafi in 2011 the FCO has made great efforts to improve and modernise the bilateral relationship, focusing on assisting the Libyan people as they re-build their country's

institutions. Although the climate in Libya remains fragile, the UK has managed to position itself as one of Libya's leading supporters and partner of choice".

Balance of the public interest arguments

36. The Commissioner considers that there is a strong public interest in transparency in the workings of government and in particular with regard to its relations with other countries to further public understanding of decisions taken which stem from international relationships.
37. However, the Commissioner considers that there is a significant public interest in avoiding damage to relations between the UK and Libya and between the UK and other governments in the region. He considers that, due to the sensitive issues to which the requested information relates, the weight to be attributed to this public interest argument is substantial.
38. The Commissioner considers, having regard to the content of the withheld information and the competing public interest arguments in this case, that the public interest in favour of maintaining the exemption clearly outweighs the public interest in disclosure.

Section 40 – personal information

39. This exemption provides that 'personal data' is exempt if its disclosure would contravene any of the data protection principles set out in schedule 1 of the Data Protection Act 1998 ("the DPA"). Personal data is defined by the DPA as any information relating to a living and identifiable individual.
40. Although not referred to by the public authority, the information also contains the names of parties as the originator and receivers of email correspondence. The Commissioner has produced guidance which gives his view as to whether or not it is fair to release staff names in response to requests made under the FOIA¹. There are also several decision notices covering such issues.

¹[http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Practical_application/section_40_requests_for_personal_data_about_employees.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~/media/documents/library/Environmental_info_reg/Practical_application/section_40_requests_for_personal_data_about_employees.ashx)

41. One of the names is a first name only. The Commissioner does not consider this to be 'personal data' as it is not possible to determine the identity of this person from any information already available in the public domain. When this was put to it, the public authority added no further comment in this regard.
42. In respect of the remaining named parties, the Commissioner searched the internet for evidence as to whether or not details about them were already available in the public domain. He located all the names in various articles and therefore suggested to the public authority that this information was already known. The public authority responded saying: "*As the names of these officials are already in the public domain, we can agree to their release*".
43. In line with his guidance, previous decisions made and the public authority's assertion that the names can be released, the Commissioner determines that disclosure would be fair and warranted would not be in breach of the DPA.

Other matters

44. Although they do not form part of this decision notice the Commissioner wishes to highlight the following matters of concern.

Internal review

45. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his '*Good Practice Guidance No 5*', the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is therefore concerned that it took a further six months for an internal review to be completed, compounding the delay in issuing a substantive response to the original request.

Right of appeal

46. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

47. 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.
48. 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

**Graham Smith
Deputy Commissioner
Information Commissioner's Office
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SK9 5AF**