

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 13 May 2013

**Public Authority:** The Foreign and Commonwealth Office  
**Address:** King Charles Street  
London  
SW1A 2AH

#### Decision (including any steps ordered)

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1. The complainants requested information relating to the death of their son. The Foreign and Commonwealth Office (FCO) disclosed some information, but withheld the remainder citing the section 27 (international relations) and section 40 (personal information) exemptions of FOIA.
2. The Commissioner has investigated the FCO's application of section 27. His decision is that the FCO correctly applied the exemption. He requires no steps to be taken.

#### Request and response

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3. On 25 June 2012 the complainants wrote to the FCO and requested information in the following terms:

*"Dear Sir/Madam,*

*Under the Freedom of Information Act, we are writing to request all correspondence (letters/emails/details of telephone calls etc..) and any held information at the FCO and the British Consulate in Paris, on the case of our son, [name redacted]. [Redacted] died in France on [redacted]. This information will include all communications between the French and British authorities, as well as those communications between the FCO, the aforementioned consulate and any other British/government offices and authorities".*

4. The FCO responded on 25 July 2012, confirming that it held information relevant to the request. However, it advised that it required additional time to consider the public interest test.

5. The FCO provided its substantive response on 7 September 2012. It provided some information within the scope of the request but refused to provide the remainder. It cited the following exemptions as its basis for doing so:
  - section 27 international relations; and
  - section 40 personal information.
6. The complainants requested an internal review on 18 September 2012. The FCO sent them the outcome of its internal review on 11 October 2012. It upheld its original position. The complainants requested a further review on 31 October 2012. The FCO advised that this was not usually permitted, but agreed exceptionally to do so in this case, responding on 21 November 2012.

### **Scope of the case**

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7. The complainants contacted the Commissioner on 9 January 2013 to complain about the way their request for information had been handled.
8. The request in this case relates to information linked to the death of the complainants' son in France. The withheld information is variously referred to as being 'a small amount of information', 'the letters' and 'two Notes'. For the purposes of this decision notice, the Commissioner will refer to it as 'letters'.
9. The Commissioner acknowledges that, in its handling of their request, the FCO recognises the importance the complainants place on having access to as much relevant information as possible. The complainants, in turn, acknowledge how much the FCO has done to help them.
10. During the course of the Commissioner's investigation, the FCO, while continuing to maintain that "*releasing correspondence written in confidence between the French Ministry of Justice and the British Ambassador and Consul would prejudice the relations between French Ministry and the British Embassy*", paraphrased the two letters in question and provided an outline of the content to the complainants.
11. The complainants confirmed that, nevertheless, they would like the Commissioner to continue with his investigation. However, they said that they only wished him to consider the FCO's application of section 27.
12. The Commissioner considers the scope of his investigation to be with respect to the FCO's application of that exemption to the letters.

13. In correspondence with the Commissioner, the complainants also raised other issues that are not addressed in this decision notice because they are not relevant to the requirements of Part 1 of FOIA. In investigating this case, the Commissioner has been mindful that his remit is with respect to the way that the FCO handled the complainant's request for information under FOIA. It is not within his remit to comment either on any other involvement the FCO may have had or on the way the French authorities may have dealt with the complainants.

## **Reasons for decision**

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### ***Section 27 international relations***

14. Section 27(1) (international relations) focuses on the effect of disclosure and provides that information is exempt if its disclosure 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 other international organisation or international court;
  - (c) the interests of the United Kingdom abroad; and
  - (d) the promotion or protection by the United Kingdom of its interests abroad.
15. In this case, the FCO told the complainants that it is relying on section 27(1)(a). The FCO said that disclosure of the withheld information would, or would be likely to, prejudice relations between the United Kingdom and any other state, in this case France.
16. In the context of the request, the complainants asked the FCO:
- "... how can his death prejudice relations between the UK and France up to the highest levels, to cause the withholding of some information from us."*
17. In correspondence with the Commissioner, the complainants said:
- "we feel that the information withheld, regardless of what it refers to, should be made available to us.... As [redacted]'s family we have a right to see ALL of this information, regardless of content."*

18. The Commissioner has issued guidance on the section 27 exemption<sup>1</sup>. That guidance states:

*"The exemption does not necessarily focus on the scale or importance of the issue or on the subject or type of the information, but on whether UK interests abroad, or the international relations of the UK, would be prejudiced through the disclosure of the information relating to the issue".*

19. In order for section 27(1)(a) to be engaged in this case, the FCO must show that the disclosure would, or would be likely to, prejudice the stated interests – relations between the UK and France. In assessing the likelihood of the prejudice that a disclosure of information might cause it is necessary to identify the particular harm that may arise.

20. The FCO told the complainants:

*"The effective conduct of our relationship with other governments depends on maintaining their trust and confidence. If we do not, our ability to work with them on a range of issues would be impeded"*

and

*"The letters were written with no expectation that they would at some point be shared. Sharing the documents could result in reduced future communication between the two states which would be detrimental to the UK."*

21. Similarly, in correspondence with the Commissioner, the FCO said that, having re-assessed its decision to withhold the information at issue:

*"We remain of the view that releasing correspondence written in confidence .... would prejudice the international relations between the French Ministry and the British Embassy and have significant negative impact on the willingness of the French Ministry to engage frankly and freely with British officials on these types of issue in the future".*

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[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/awareness\\_guidance\\_14\\_-\\_international\\_relations.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/awareness_guidance_14_-_international_relations.ashx)

22. Having viewed the withheld information, the Commissioner is satisfied that it is two short items of correspondence between officials of the United Kingdom and another State, namely France, written with an inherent expectation of confidence.
23. Having considered the arguments put forward by the FCO the Commissioner accepts that disclosure of any such correspondence would, or would be likely to, harm relations between the UK and France. It follows that he finds the exemption engaged.

*The public interest*

24. Although the Commissioner is satisfied that the exemption is engaged, the public interest test must be applied to determine whether or not the withheld information should be disclosed.

*Public interest arguments in favour of disclosing the requested information*

25. The FCO acknowledged the public interest in transparent and open government. It also recognised the public interest in:

*"releasing information that would inform public debate about our efforts to co-operate with international partners on consular cases involving British nationals".*

26. However, in reaching its conclusion about disclosure, it told the complainants:

*"... we assess the general interest in this information to be relatively small".*

*Public interest arguments in favour of maintaining the exemption*

27. In favour of maintaining the exemption, the FCO told the complainants:

*"Our relationship with the French government, including local authorities, allows us to freely discuss foreign policy and to carry out our consular obligations. If we do not honour our part in this relationship, the French government, and other international partners, may be more reluctant to share sensitive information with the UK government in future ...".*

28. In the FCO's view, this could "seriously compromise" its ability to work with its international partners, such as the French government, including work on ongoing and future consular matters involving British nationals. During the Commissioner's investigation it confirmed its view:

*"that the wider public interest lay in ensuring that British and French officials continue to share information about consular cases*

*freely and frankly, to allow consular officials to provide the best support to British nationals in distress”.*

*Balance of the public interest arguments*

29. When balancing the opposing public interests in a case, the Commissioner is weighing the harm that is identified in a particular exemption against the wider public interest that may be served by disclosure. If the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, the information in question must be disclosed. The test must be applied on a case-by-case basis.
30. The Commissioner understands the complainants' personal reasons for wanting access to all relevant information. However, in reaching a decision in this case, the Commissioner has to take into account the fact that neither the identity of the applicant nor any purely personal reasons for wanting the requested information is relevant to the consideration of a freedom of information request. He must consider whether or not it is appropriate for the withheld information to be released to the general public.
31. The Commissioner accepts that there is a public interest in the transparency of the FCO with respect to the way in which it works with its international partners, including in consular matters involving British nationals.
32. However, in assessing the weight of the arguments for disclosure, in the Commissioner's view it is important to consider how far disclosing the requested information would further the public interests identified. In this case, he considers that disclosure of the letters would not significantly add to public understanding.
33. The Commissioner also considers that it is strongly in the public interest that the UK maintains good international relations. He considers that it would not be in the public interest if there was a negative impact on the effective conduct of international relations as a result of the release of the letters. In his view, disclosure would be likely not only to harm the UK's relationship with France, but could also prejudice the UK's relations with other countries. The Commissioner is clear that such a broad prejudicial outcome is firmly against the public interest and he has therefore concluded that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

## Right of appeal

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34. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

35. 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.
36. 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 Information Commissioner  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
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SK9 5AF**