# Freedom of Information Act 2000 (FOIA)

# Decision notice

**Date:** **04 February 2014**

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

## Decision (including any steps ordered)

1. The complainant requested information relating to a farewell dinner hosted by the Foreign Secretary in honour of former US Secretary of State Hillary Clinton. The Foreign and Commonwealth Office (FCO) disclosed some information within the scope of the request but withheld the remainder - information regarding the production of a video farewell by the cast of *Downton Abbey* - citing sections 27(1)(a), (c) and (d) (international relations) and section 40 (personal information) of the FOIA.

2. The Commissioner's decision is that the FCO correctly applied section 27(1)(d). He requires no steps to be taken.

## Request and response

3. On 4 February 2013 the complainant made the following request for information:

*"1. Please can I have a copy of all the correspondence between the FCO and anybody connected in any way with the production of a video farewell to Hilary Clinton by the cast of Downton Abbey. This should include all e-mails and letters sent or received on the topic.*
*2. Please provide me with (a) the cost of all the wines and spirits consumed at the farewell dinner to Hilary Clinton staged at the UK embassy by William Hague, and (b) a breakdown of the number of bottles of each vintage and the cost of each bottle to the FCO."*

4. The FCO responded on 26 April 2013.

5. It provided some information within the scope of the request but refused to provide the remainder. Specifically it provided information within the scope of part (2) of the request but cited section 27(1)(a), (c) and (d) (international relations) and section 40 (personal information) as its basis for refusing to provide information within the scope of part (1).

6. The complainant was satisfied with the response to part (2) of the request. However, on 13 May 2013 he requested an internal review in relation to the FCO's application of section 27 to part (1) of his request. The FCO sent him the outcome of its internal review on 12 June 2013 upholding its original position.

## Scope of the case

7. The complainant contacted the Commissioner on 6 July 2013 to complain about the way his request for information had been handled. He disputed the FCO's application of section 27, telling the Commissioner:

> *"I still remain to be convinced that Section 27 would apply to the requested information or how information relating to this 'soft power initiative' would prejudice any future 'soft power initiative'. I cannot see that information between the FCO and the producers of Downton will go on to affect our relationship with the United States".*

8. With the agreement of the complainant, the Commissioner considers the scope of his investigation to be the FCO's application of section 27 of the FOIA to the withheld information in scope of part (1) of the request. In that respect, the FCO confirmed that it considers section 27 applies to all that information.

## Reasons for decision

*Section 27 international relations*

9. Section 27(1) focuses on the effects of the disclosure of information. It provides for information to be exempt under section 27(1) if its disclosure would, or would be likely to, prejudice:

- relations between the United Kingdom and any other state;
- relations between the United Kingdom and any other international organisation or international court;

- the interests of the United Kingdom abroad; and
- the promotion or protection by the United Kingdom of its interests abroad.

10. In the Commissioner's view, 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.

11. The request in this case relates to a farewell dinner hosted by the Foreign Secretary in honour of former US Secretary of State Hillary Clinton. The dinner featured a 'video tribute' by the cast of *Downton Abbey*.

12. The information at issue relates to the production of that video. In correspondence with the complainant, the FCO said, for example, that:

> *"we believe that release of certain material would prejudice our relations with the US …. and would damage the important contacts that our Embassy relies on in the US Administration".*

13. In requesting an internal review of its decision to withhold the requested information, the complainant told the FCO:

> *"I fear there may have been some misinterpretation of my request as I was expecting copies of correspondence between the FCO and the producers/directors of Downton Abbey relating to the production of the video. I am not entirely convinced that they would in any way be covered by the exemption provisions of Section 27 as I am not sure which part of our nation's foreign affairs they may affect. Even if they did I am not sure they would affect them to the extent that the exemption would apply".*

14. In response to his concerns, the FCO advised that it had reviewed the details of the search carried out, and that it was therefore satisfied:

> *"that a reasonable search was carried out in relation to your request".*

15. Regarding its decision not to disclose the requested information, it told the complainant:

> *"The initiative to produce a video farewell to Hillary Clinton by the cast of Downton Abbey is the sort of soft power initiative that helps support our relationships with foreign countries and, hence, UK interests that are supported by those relationships. Routine release*

*of material relating to such initiatives would be likely to lead some partners to be less willing to engage with us in such activities. This would then limit our scope of action and hence our ability to support UK interests in an innovative manner. I can confirm that the video was produced on a pro-bono basis at no cost to the government".*

16. During the course of the Commissioner's investigation, the FCO clarified that it considers that section 27(1)(d) applies to all the withheld information, with subsections (1)(a) and (c) also applying to specific material within the withheld information.

*Is the exemption engaged?*

17. In order for a prejudice based exemption, such as those set out in section 27(1), to be engaged the Commissioner considers that three criteria must be met:

- 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;

- 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;

- thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority to discharge.

18. With the above in mind, the Commissioner has considered the complainant's submissions, the withheld information and the FCO's submissions in support of its reliance on section 27(1)(a), (c) and (d). In doing so, he considers that the arguments cited by the FCO for each of the subsections are sufficiently interrelated for it to be reasonable for him to consider them together rather than separately.

19. In correspondence with the Commissioner the FCO further explained its application of section 27. For example it said that disclosure in this case:

*"would negatively affect our ability to carry out this kind of nimble and creative soft diplomacy and thereby prejudice UK interests abroad (27(1)(c)) and our ability to promote the UK's interests abroad (27(1)(d))".*

20. It further explained:

*"Soft diplomacy, by which we mean the capacity to further our diplomatic ends by informal means, is an essential part of our diplomatic armoury".*

21. The Commissioner accepts that the alleged prejudicial effects of disclosing the withheld information – for example causing damage to the promotion or protection by the United Kingdom of its interests abroad – relate to the applicable interests in section 27(1).

22. He is also satisfied that the disclosure of the information at issue in this case is at least capable of harming the interest in some way, for example by damaging relations with allies and important diplomatic contacts, and that there is a causal link between the disclosure and the prejudice claimed.

23. With respect to the likelihood of the prejudice occurring, the FCO variously used the terms 'would' and 'would be likely to' in correspondence with the complainant. However, in correspondence with the Commissioner the FCO confirmed that it is relying on the 'would be likely to' threshold.

24. Having duly considered the arguments put forward by the FCO, the Commissioner's view is that the lower level of 'would be likely to occur' has been demonstrated. He therefore finds the exemption engaged and has carried this lower level of likelihood through to the public interest test.

*The public interest test*

25. Section 27 is a qualified exemption and is subject to a public interest test. This means that, even where its provisions are engaged, it is necessary to decide whether it serves the public interest better to disclose the requested information or to withhold it because of the interests served by maintaining the relevant exemption. 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.

26. The Commissioner notes that the public interest arguments put forward by the FCO in relation to each of the subsections of section 27 relied on

in this case are broadly similar. He has first considered its arguments with respect to section 27(1)(d).

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

27. The FCO recognised that there is public interest in the farewell dinner hosted by William Hague in honour of Hillary Clinton.

28. The Commissioner acknowledges that there is a clear public interest in transparency and accountability of public authorities.

*Public interest arguments in favour of maintaining the exemption*

29. In favour of maintaining the exemption, the FCO clarified that it considers the public interest relates:

> *"not solely to this one initiative and the related documents, but also to the pursuit of such initiatives in the future".*

30. In its view, such initiatives provide "*positive support*" to its work in building relationships with leading figures in other countries. It explained that it was in the public interest to ensure that such initiatives "*can continue going forward*".

31. It told the complainant that the withheld information:

> *"includes views and comments shared by trusted contacts".*

32. In the FCO's view, breaking that trust is not in the public interest as it would impact on how willing interlocutors would be to share information and views in the future.

*Balance of the public interest arguments*

33. When balancing the opposing public interests in a case, the Commissioner is deciding whether it serves the public interest better to disclose the requested information or to withhold it because of the interests served by maintaining the relevant exemption. 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.

34. He accepts that, in the circumstances of this case, disclosure of the withheld information may well be of interest to the public. However, notwithstanding that, his decision must be with regard to whether or not disclosure is in the public interest.

35. In correspondence with the Commissioner, the complainant said that he was not sure:

*"that sufficient argument has been put forward that would weigh the balance of the public interest test in favour of withholding the information".*

36. In balancing the public interest arguments in this case, the Commissioner is mindful that the weight given to arguments in favour of disclosure will depend both on the need for greater transparency, and any other arguments in favour of disclosure, and also the extent to which the information in question will meet those needs.

37. The Commissioner cannot give an expert opinion on matters relating to the erosion of confidence in the UK government's ability to conduct soft power diplomacy – whether with the US or other states. However, following the approach taken by the Information Tribunal in other cases, the Commissioner respects the FCO's opinion on the potential impact of disclosure on diplomatic relations. He also gives weight to the FCO's views about likely prejudice to the promotion or protection of the UK's interests abroad, for example by failing to maintain and respect the privacy and confidence of those involved in the production of the video farewell.

38. In conclusion, the Commissioner's decision is that the FCO was entitled to apply section 27(1). He considers that the genuine public interest, as opposed to mere curiosity, in the disclosure of the specific information at issue in this case is relatively low and that, in all the circumstances of the case, the public interest in maintaining the exemption at section 27(1)(d) outweighs the public interest in disclosing the information.

39. As the Commissioner has concluded that the public interest in maintaining the exemption at section 27(1)(d) outweighs the public interest in disclosing the information, he has not gone on to consider the public interest with respect to the FCO's application of 27(1)(a) and (c).

## Right of appeal

40. 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: GRC@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

41. 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.

42. 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**
**Wycliffe House**
**Water Lane**
**Wilmslow**
**Cheshire**
**SK9 5AF**