

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 September 2014

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

Decision (including any steps ordered)

1. The complainant submitted a request to the Foreign and Commonwealth Office (FCO) for a retained section of a report entitled '*Bahrain: Internal Political Situation 1977*'. The FCO initially withheld this on the basis of section 27(1)(a) (international relations). During the course of the Commissioner's investigation the FCO provided the complainant with a redacted version of the report, relying on section 27(1)(a) and section 40(2) to withhold the redacted parts. The Commissioner has concluded that the redacted information is exempt from disclosure on the basis of section 27(1)(a) and that the public interest favours maintaining the exemption.

Request and response

2. The complainant submitted the following request to the FCO on 10 June 2013:

'I am writing respectfully to request the release of a retained section of a report entitled 'Bahrain: Internal Political Situation 1977' - File No. NBB014/1. The National Archives record for this retained extract is FCO 8 2827 Folio 4.

I believe the piece concerns a conversation between DE Tatham and the head of Bahrain's Special Branch. It was dated 1st December 1977'.

3. On 17 June 2013 the complainant clarified his request by confirming that the file he wished to access was FCO 8/2872 and not FCO 8/2827.
4. The FCO contacted the complainant on 8 July 2013 and explained that it considered the requested information to be exempt from disclosure on the basis of section 27 of FOIA but it needed an additional 20 working days to consider the balance of the public interest test.
5. The FCO contacted the complainant again on 2 August 2013 and explained that it had concluded that the requested information was exempt from disclosure on the basis of section 27(1)(a) and that the public interest favoured maintaining the exemption.
6. The complainant contacted the FCO on 4 August 2013 in order to ask for an internal review of this decision.
7. Having received no response to this request, the complainant contacted the FCO again on 11 January 2014 to chase this matter up. Again, having received no response, the complainant contacted the FCO for a third time on 13 February 2014 in order to request that an internal review was undertaken.
8. The FCO acknowledged receipt of this internal review request on the same day and confirmed that it aimed to complete the review within 20 working days.
9. The FCO informed the complainant of the outcome of the internal review on 8 May 2014.
10. Following the commencement of the Commissioner's investigation, the FCO provided the complainant with a redacted version of the information he had requested. The FCO explained that the redacted information was considered to be exempt from disclosure on the basis of section 27(1)(a) with some of the information also considered to be exempt from disclosure on the basis of section 40(2) (personal information).

Scope of the case

11. The complainant initially contacted the Commissioner on 16 April 2014 regarding the FCO's failure to complete the internal review. He was also dissatisfied with the FCO's failure to commence the internal review in response to his emails of 4 August 2013 and 11 January 2014.
12. Following the disclosure of the redacted version of the requested information, the complainant confirmed to the Commissioner that he wished to dispute the FCO's decision to continue to withhold the redacted information.

Reasons for decision

Section 27 – international relations

13. The FCO argued that the redacted information is exempt from disclosure on the basis of section 27(1)(a). This section provides that information is exempt if its disclosure would, or would be likely to prejudice the relations between the UK and any other State.
14. The FCO argued that disclosing the redacted information would (rather than simply being likely to) damage its relations with Bahrain. The FCO elaborated on the reasons for this in detailed submissions to the Commissioner. However, as such submissions directly reference the content of the redacted information, the Commissioner has not referred to these in this notice. With regard to the age of the information, the FCO explained that even information dating back a number of years could be taken into account by States considering their current relationships.
15. In order for a prejudice based exemption, such as section 27(1)(a), 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;
and

- 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; rather 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. The anticipated prejudice must be more likely than not.
16. 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'*.¹
 17. With regard to the first criterion of the three limb test described above, the Commissioner accepts that potential prejudice to the UK's relations with Bahrain clearly relates to the interests which the exemption contained at section 27(1)(a) is designed to protect.
 18. With regard to the second criterion, in light of the FCO's submissions and given the content of redacted information, the Commissioner is satisfied that disclosure of this information (which he has examined) clearly has the potential to harm the UK's relations with Bahrain. The Commissioner is therefore satisfied that there is a causal link between the potential disclosure of the withheld information and the interests which section 27(1)(a) is designed to protect. Moreover, the Commissioner is satisfied that the resultant prejudice which the FCO believes would occur can be correctly categorised, in light of the Tribunal's comments above, as real and of substance. In other words, subject to meeting the likelihood test at the third criterion, disclosure could result in making relations more difficult and/or demand a particular diplomatic response.
 19. In relation to the third criterion, the Commissioner accepts that in the circumstances of this case the higher threshold of likelihood is met and

¹ [Campaign Against the Arms Trade v The Information Commissioner and Ministry of Defence \(EA/2006/0040\)](#), paragraph 81.

he agrees with the FCO that disclosure of this information would prejudice the UK's relations with Bahrain. Again, the Commissioner's reasoning for reaching this conclusion is based upon the content of the information and the FCO's submissions. The Commissioner cannot explain his rationale further without revealing the nature of the redacted information; he recognises that this may prove frustrating to the complainant. The Commissioner can confirm that he has fully taken into account that the requested document dates from 1977, but he remains satisfied that the exemption is nevertheless engaged at the higher threshold.

Public interest test

20. Section 27 is a qualified exemption and therefore the Commissioner must consider the public interest test and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest in favour of maintaining the exemption

21. The FCO argued that it was clearly against the public interest to harm the UK's ability to maintain effective bilateral relations with countries in the Gulf region, such as Bahrain, with whom the UK has enjoyed a stable and strong relationship as a trading and regional partner. More specifically, the FCO explained that it was providing an extensive programme of technical and diplomatic assistance in support of the reform programme Bahrain has embarked on since the unrest in 2011. The FCO argued that its ability to provide such a level of reform assistance was based on the strong relations, trust and confidence the UK had established with Bahrain. Furthermore, the FCO emphasised that there were significant British defence interests in Bahrain which acted as an amenable host to the Royal Navy and RAF. Any impact on the UK's relationship with Bahrain could also harm UK interests in other areas such as immigration and consular services where British interests require, or would benefit from, Bahraini assistance.

Public interest in favour of disclosing the information

22. The FCO acknowledged that disclosure of the redacted information would add to the public's understanding of, and knowledge on, this subject. It also accepted that there was a public interest in a greater understanding of the UK's foreign relations and the information could also aid the better historical understanding of Britain's conduct.
23. In his submissions, the complainant referenced the involvement of British colonial forces in the torture of Kenyans during the Mau Mau uprising in the 1950s, the relevance of this being that the requested

document records a meeting with the late Ian Henderson, who in 1977 was the Head of the Bahrain Special Branch. Prior to that Mr Henderson had served as a colonial police officer in Kenya in the 1950s and was directly involved in the suppression of the Mau Mau uprising. In 2000 it was announced that the British government had launched an investigation into allegations about Mr Henderson's complicity in the torture of detainees and prisoners in Bahrain. The investigation was dropped in 2001 and Mr Henderson always firmly denied the allegations. In light of this, the complainant explained that he was concerned that important evidence was being withheld about the possibility of British complicity in egregious acts against Bahraini subjects.

Balance of the public interest

24. In the Commissioner's view a significant amount of weight should be attributed to the public interest in the UK maintaining strong and effective relations with Bahrain. Such weight is due directly to the range of interests the UK has with Bahrain as referenced above, i.e. in terms of defence, assisting Bahrain with its reform programme and more widely in terms of its position as a key a trading and regional partner in the Gulf. It would clearly be counter to the public interest if such interests were harmed, as it would be if there was a negative impact on the UK's ability to liaise with Bahrain over more routine matters such as immigration and consular issues. Furthermore, the Commissioner attaches considerable weight to such arguments in view of his acceptance that prejudice would not simply be likely to, but would result from disclosure.
25. In terms of the arguments in favour of disclosure, the Commissioner agrees that disclosure of the redacted information would provide a further and genuinely informative insight into the security situation in Bahrain in the 1970s. Therefore the public interest in disclosure of the redacted information should not be dismissed lightly. However, having examined the information, the Commissioner's view is that its disclosure would not address the complainant's particular and specific concerns.
26. Therefore, in light of the considerable and notable weight to be attributed to the public interest in avoiding prejudice to the UK's relations with Bahrain, the Commissioner has concluded that the public interest in maintaining the exemption outweighs the public interest in disclosing the redacted information.
27. In light of his findings in relation to section 27(1)(a), the Commissioner has not considered the FCO's reliance on section 40(2).

Other matters

28. The complainant was dissatisfied with the amount of time it took the FCO to complete its internal review. FOIA does not specify a time within which such reviews must be completed. However, in the Commissioner's view most reviews should be completed within 20 working days and reviews in complex cases within 40 working days.
29. During the course of his investigation, the FCO explained to the Commissioner that despite an extensive search it was unable to find the complainant's emails of 4 August 2013 and 11 January 2014 in which he asked for an internal review. The FCO explained that the 'FOI/DPA' mailbox changed in the summer and unbeknown to the FCO, messages were neither forwarded nor bounced back as undelivered. It was therefore unaware of the complainant's request for an internal review until it received his email of 13 February 2014.
30. The Commissioner notes the FCO's explanation as to why work on an internal review did not commence until the complainant's email of 13 February 2014 was received. It reflects a regrettable state of affairs. Furthermore, it then took the FCO 58 working days to complete this review. The Commissioner expects the FCO to ensure that future internal reviews are conducted in line with the timescales set out in his guidance.

Right of appeal

31. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

32. 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.
33. 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
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SK9 5AF