

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 24 April 2018

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

#### Decision (including any steps ordered)

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1. The complainant submitted a request to the Foreign and Commonwealth Office (FCO) for information about the kidnapping and murder of British journalist and UN aid worker, Alec Collett, that took place in Beirut during March 1985. The FCO disclosed some information but sought to withhold further information on the basis of the following sections of FOIA: 24(1) (national security); 27(1)(a), (c), (d) and 27(2) (international relations); 38(1)(a) (health and safety); 40(2) (personal data) and 41(1) (information provided in confidence). The FCO also sought to refuse to confirm or deny whether it held any further information falling within the scope of the request on the basis of the exemptions contained at sections 23(5) (security bodies) and 24(2) of FOIA. The Commissioner has concluded that the FCO is entitled to rely on all of the above exemptions in the manner it which is has. However, she has also concluded that the FCO breached section 17(3) by failing to complete its public interest test considerations within a reasonable timeframe.

#### Request and response

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2. The complainant submitted a request to the FCO on 16 February 2015 seeking the following information:

*'documents relating to the kidnapping and murder of British journalist and UN aid worker, Alec Collett, that took place in Beirut during March 1985.'*

3. The FCO contacted the complainant on 16 March 2015 and confirmed that it held information falling within the scope of his request. However, it considered the information to be exempt from disclosure on the basis of section 27 of FOIA and it needed additional time to consider the balance of the public interest.
4. The FCO continued to send him further letters extending the time it needed to consider the public interest test until it provided him with a substantive response to his request on 24 March 2017. The FCO provided him with one document falling within the scope of his request. However, it explained that it considered the remaining information to be exempt from disclosure on the basis of the following exemptions of FOIA: section 21 (information reasonably accessible), sections 27(1)(a), (c) and (d), and 27(2) (international relations), section 38(1)(a) (health and safety), section 40(2) (personal data) and section 41(1) (information provided in confidence). Furthermore, the FCO refused to confirm or deny whether it held any further information falling within the scope of the request on the basis of sections 23(5) (security bodies) and 24(2) (national security).
5. The complainant contacted the FCO on the same day to complain about its handling of the request.
6. The FCO informed him of the outcome of the internal review on 22 February 2018. The review concluded that some of the information that had previously been withheld could now be disclosed to him. With regard to the remainder of the information the FCO explained that it remained of the view that this was exempt from disclosure on the basis of the exemptions contained at sections 27(1)(a), (c) and (d) and 27(2), 38(1)(a), 40(2) and 41(1). The FCO also explained that it considered that section 24(1) applied to some of the withheld information. It also explained that it had determined that the document which it had withheld on the basis of section 21 (a statement to the House of Commons) was in fact out of scope of the request. Finally, the FCO argued that it remained the case that it could not confirm or deny whether it held any further information falling within the scope of the request on the basis of sections 23(5) and 24(2).

## Scope of the case

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7. The complainant contacted the Commissioner on 7 November 2017 to complain about the FCO's handling of his request. He was dissatisfied with the time it took the FCO to complete its public interest test considerations, its failure (at this point) to complete the internal review and fact that it took the FCO nearly a year to complete the internal review, its decision to withhold information falling within the scope of his request and its reliance on sections 23(5) and 24(2) to refuse to confirm or deny whether it held any further information falling within the scope of the request.
8. In terms of the complainant's concerns about the time taken to complete the internal review, FOIA does not prescribe a time limit within which such reviews should be completed. However, the Commissioner has commented on the time it took the FCO to complete the internal review in the Other Matters section of this notice.
9. With regard to the FCO's reliance on the various exemptions, in light of the FCO's disclosure of further information at the internal review stage, the Commissioner has simply focused on determining whether the remaining information is exempt from disclosure, along with considering the FCO's reliance on sections 23(5) and 24(2) of FOIA.

## Reasons for decision

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### Section 24 – national security

10. Section 24(1) states that:

*'Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security'.*

11. FOIA does not define the term 'national security'. However in *Norman Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045 4 April 2007) the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords' observations as follows:
  - "national security" means the security of the United Kingdom and its people;

- the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
  - the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
  - action against a foreign state may be capable indirectly of affecting the security of the UK; and
  - reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.
12. Furthermore, in this context the Commissioner interprets 'required for the purposes of' to mean 'reasonably necessary'. Although there has to be a real possibility that the disclosure of requested information would undermine national security, the impact does not need to be direct or immediate.
13. In its internal review response the FCO argued that release of certain parts of the withheld information would impact adversely on UK national security with respect to kidnapping cases. The FCO provided the Commissioner with further brief but specific, reasons, to support this position.
14. The Commissioner recognises that over 30 years have elapsed since this information was created and moreover that the groups / individuals who were alleged to have been involved in the kidnapping of Alec Collet are no longer active. Nevertheless, the Commissioner is satisfied that the information withheld on the basis of section 24(1) would provide an insight into the UK's government's approach to kidnapping cases to the extent that there is a real possibility that its disclosure would undermine its position in respect of current and future hostage situations, albeit that this impact may not be direct or immediate.

### **Public interest test**

15. However, section 24(1) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of the FOIA. The Commissioner has therefore considered whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.
16. The FCO acknowledged that there was a public interest in openness and transparency. However it argued that as disclosure of the information would reveal certain operational aspects of the case in respect of the UK

government's approach to kidnapping cases it was firmly of the view that the public interest favoured maintaining the exemption.

17. The Commissioner agrees that there is a public interest in openness and transparency in order to allow the public to understand actions and decisions that the government takes on its behalf. Disclosure of the information withheld on the basis of section 24(1) would provide the public with a clear and detailed insight into how the UK government handled various aspects of the kidnapping of Alec Collet thus improving openness and transparency in relation to this case. The public interest in disclosing the information should not be dismissed. However, the Commissioner considers that there is also an obvious and weighty public interest in the safeguarding of national security. In the circumstances of this case she considers that this argument attracts particular weight given that disclosure does not risk undermining the government's position in relation to a specific kidnap case but its kidnap policy more generally. In light of this the Commissioner has concluded that the public interest favours maintaining the exemption contained at section 24(1).

## **Section 27 – international relations**

18. The FCO sought to withhold parts of the withheld information on the basis of sections 27(1)(a), (c) and (d) of FOIA. These sections state 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...*

*...(c) the interests of the United Kingdom abroad, or*

*(d) the promotion or protection by the United Kingdom of its interests abroad.'*

### The FCO's position

19. The FCO argued that these exemptions applied because disclosure of information to which section 27(1) had been applied would prejudice UK relations with, and interests in, and the promotion and protection of those interests in, a number of countries within the Middle East and more widely. The FCO provided the Commissioner with a list of the countries in question and explained, with reference to the content of the information, why it believed that disclosure would be prejudicial to the UK's relations with each of those countries. In essence, the FCO argued that the UK works in partnership with the countries in question and relies on the confidence of these international partners. It argued that

these relationships of trust and goodwill would be damaged if the information was disclosed.

### The complainant's position

20. The complainant argued that he failed to see how international relations could be jeopardised by the disclosure of information about a kidnapping that happened in March 1985. He noted that the kidnapping and murder were reportedly undertaken by the Abu Nidal Organisation (ANO) in retaliation for the US bombing of Libya. He emphasised the following:

- That the ANO is no longer operating, it having died with its leader in 2002;
- The then sponsor of the ANO, Colonel Gaddafi of Libya, died in 2011. Whatever government remains functioning in Libya has very little connection to the former regime.
- The ANO's other sponsor countries, Syria and Iraq, have also undergone significant regime changes which may not be impacted by the release of this information; and
- Lebanon has managed to further loosen the grip that the Syrian regime had upon their country.

### The Commissioner's position

21. In order for a prejudice based exemption, such as 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; and
- 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. 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.

22. 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'.
23. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the FCO clearly relates to the interests which the exemptions contained at sections 27(1)(a), (c) and (d) are designed to protect. With regard to the second criterion having examined the withheld information, and taken into account the FCO's submissions to her, the Commissioner is satisfied that there is a causal link between disclosure of this information and prejudice occurring to the UK's international relations. Furthermore, she is satisfied that the resultant prejudice would be real and of substance. Moreover, the Commissioner is satisfied that there is a more than hypothetical risk of prejudice occurring and therefore the third criteria is met. The Commissioner cannot elaborate in detail on why she has reached this view without referring to the content of the withheld information itself. However, she would emphasise that in reaching this conclusion she has considered both the age of the information and the various points made by the complainant in respect of the significant changes to the situation in the Middle East since the kidnapping took place. The Commissioner would also note that she considers the FCO's argument that in order for the UK to maintain effective relations with international partners it needs to enjoy their trust to be a compelling one and in the circumstances of this case she is persuaded that disclosure of the information withheld on the basis of section 27(1) would undermine this trust.

### **Public interest test**

24. The FCO argued that it would be clearly against the public interest to damage the UK's relations with a number of countries in the Middle East and other countries outside of this region. As noted above, the Commissioner agrees that there is a public interest in openness and transparency in order to allow the public to understand actions and decisions that the government takes on its behalf. In the context of this request, disclosure of the information that has been withheld on the basis of section 27(1) of FOIA would provide the public with an insight into the UK's interactions with a range of international partners and disclosure could provide the public with a better understanding of the UK's response to the kidnapping of Alec Collett. However, the Commissioner agrees with the FCO that there is strong public interest in

ensuring that the UK's relations with its international partners are not harmed and in the circumstances of this case given the number and range of international partners with whom relations could be impacted if the information was disclosed, she has concluded that the public interest favours maintaining the exemptions contained at sections 27(1)(a), (c) and (d).

## **Section 27(2) – international relations**

25. The FCO also argued that some of the information was exempt from disclosure on the basis of section 27(2) of FOIA. This exemption states 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'*

26. Section 27(3) clarifies that:

*'For the purposes of this section [ie section 27(2)], any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.'*

27. The FCO argued that the parts of the withheld information it considered to be exempt on the basis of section 27(2) had been provided to the UK in confidence by a range of other states and international organisations. It argued that given the subject matter of the information, ie relating to a hostage situation, there was a clear expectation from these third parties that the information they had provided would be treated confidentially and further that despite the passage of time this remained the case.
28. Having considered the content of the information which has been withheld on the basis of section 27(2) the Commissioner is satisfied that given its subject matter and the sensitive nature of the information in question, despite the passage of time, it is confidential information. It is therefore exempt from disclosure on the basis of section 27(2).
29. Section 27(2) is also a qualified exemption. However, as with section 27(1), the Commissioner has concluded that the public interest favours maintaining the exemption given the clear public interest in the UK maintaining effective relations with other states and in particularly continuing to be provided with confidential information in scenarios such as hostage situations.

### **Section 38(1)(a) – health and safety**

30. The FCO has argued that some of the withheld information is exempt from disclosure on the basis of section 38(1)(a) of FOIA. This states that:

*'Information is exempt information if its disclosure under this Act would, or would be likely to—*

*(a) endanger the physical or mental health of any individual'*

31. As a prejudice based exemption, in order for section 38(1)(a) to be engaged the Commissioner considers that the three criteria set out at paragraph 21 need to be met.

32. The FCO argued that disclosure of the information withheld on the basis of this exemption would cause mental stress to certain individuals. In its submissions to the Commissioner the FCO identified who these individuals were and precisely why it believed that disclosure of the particular information withheld on the basis of this exemption would cause such distress.

33. The complainant argued that the FCO's reliance on section 38(1)(a) was 'totally bizarre' given that it had previously released, under FOIA, a considerable number of documents about the death of Dennis Skinner in which FCO officials made many comments concerning the sanity of Mr Skinner's widow and how withholding information would probably be more beneficial for her health. The complainant noted that as she was still alive when the information was released and was unaware of what the FCO thought of her and her family, he argued that the FCO's application of section 38(1)(a) was inconsistent.

34. With regard to the three limb test, the Commissioner is satisfied that the FCO's arguments to support its reliance on section 38(1)(a) relate directly to the interest which the exemption is designed to protect. With regard to the second criterion having examined the withheld information, and taken into account the FCO's submissions to her, the Commissioner is satisfied that there is a clear causal link between disclosure of this information and the risk of causing distress to certain individuals. Furthermore, the Commissioner is satisfied that there is a more than hypothetical risk of this harm occurring if the information was disclosed and therefore the third criteria is met. In reaching this conclusion the Commissioner has taken into consideration the comments made by the complainant in relation to the previous disclosures of the information made by the FCO. The Commissioner has not had sight of the information to which the complainant refers. In any event, the application of any exemptions must be considered on the specific

circumstances of each case. In the particular circumstances of this case, having considered the information which has been withheld on the basis of section 38(1)(a), the Commissioner is satisfied that this is exempt from disclosure.

35. Section 38 is qualified exemption and therefore subject to the public interest test. The FCO argued that it would clearly not be in the public interest to release information which would cause mental distress to certain individuals. The Commissioner agrees with this position. Furthermore, she notes that section 38(1)(a) has only been applied to a limited amount of the information being withheld and in her view disclosure of this information would not add greatly to the public's understanding of this subject. She has therefore concluded that the balance of the public interest test favours maintaining the exemption contained at section 38(1)(a).

### **Section 40(2) – personal data**

36. The FCO argued that some of the information falling within the scope of the request was exempt from disclosure on the basis of section 40(2) of FOIA. This provides that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the Data Protection Act 1998 (DPA).

37. Personal data is defined in section (1)(a) of the DPA as:

*'.....data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller; and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual.'*

38. The FCO argued that the information was seeking to withhold on the basis of section 40(2) constituted the personal data of various third parties. The Commissioner has examined this information and is satisfied that the information in question is indeed the personal data of a number of third parties.

39. The FCO argued that disclosure of such information would breach the first data protection principle which states that:

*'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

*(a) at least one of the conditions in Schedule 2 is met, and*

*(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'*

40. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:

- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
  - what the public authority may have told them about what would happen to their personal data;
  - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights (ECHR);
  - the nature or content of the information itself;
  - the circumstances in which the personal data was obtained;
  - any particular circumstances of the case, eg established custom or practice within the public authority; and
  - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
- The consequences of disclosing the information, ie what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
  - whether information of the nature requested is already in the public domain;
  - if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?

41. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling legitimate interest in disclosure to the public.

42. In considering 'legitimate interests', in order to establish if there is a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sake,

as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach.

43. The FCO argued that given the nature of the withheld information the individuals in question would have a clear expectation that this information would not be disclosed to the public and therefore if this information was disclosed it would be unfair.
44. The complainant again suggested that the FCO's application of section 40(2) to the withheld information in this case was inconsistent with the disclosure of information in response to his request about Dennis Skinner. He noted that both requests focused on incidents that happened over thirty years ago and in the case of Dennis Skinner he noted that that very little information appeared to have been held back.
45. With regard to the apparent inconsistencies in relation to the previous case cited by the complainant, the Commissioner would reiterate the point made above in respect of her consideration of section 38(1)(a), ie that the application of exemptions needs to be considered on the basis of the particular circumstances of each request. In the particular circumstances of this request the Commissioner agrees with the FCO that the individuals in question would not expect their personal data which has been withheld on the basis of section 40(2) to be placed into the public domain. Furthermore, the Commissioner considers that to do so would be likely to cause distress and/or invade the privacy of a number of individuals. Whilst the Commissioner recognises that there is public interest in the disclosure of information about the UK government's handling of the Alec Collet case she does not consider that this outweighs the legitimate rights and freedoms of the individuals whose personal data has been withheld on the basis of section 40(2).

### **Section 41 – information provided in confidence**

46. Finally, the FCO also sought to withhold a small amount of information on the basis of section 41(1) of FOIA.
47. This section states that:

*'(1) Information is exempt information if—*

*(a) it was obtained by the public authority from any other person (including another public authority), and*

*(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.'*

48. Therefore for this exemption to be engaged two criteria have to be met; the public authority has to have obtained the information from a third party and the disclosure of that information has to constitute an actionable breach of confidence.
49. With regard to whether disclosure would constitute an actionable breach of confidence the Commissioner follows the test of confidence set out in *Coco v A N Clark (Engineering) Ltd* [1968] FSR 415. This judgment suggested that the following three limbed test should be considered in order to determine if information was confidential:
  - Whether the information had the necessary quality of confidence;
  - Whether the information was imparted in circumstances importing an obligation of confidence; and
  - Whether an unauthorised use of the information would result in detriment to the confider.
50. However, further case law has argued that where the information is of a personal nature it is not necessary to establish whether the confider will suffer a detriment as a result of disclosure.
51. The FCO explained that the information withheld on the basis of section 41(1) was provided to it by a number of different third parties. Having examined the information the Commissioner is satisfied that this is an accurate description of the information and therefore section 41(1)(a) is met.
52. In relation to section 41(1)(b), the FCO argued that information was clearly provided with the expectation that it would be kept confidential and further had the necessary quality of confidence given that it was not trivial nor was it otherwise accessible. Again, having reviewed the information the Commissioner is satisfied that this represents an accurate description of the information in question. She also accepts that given the sensitive nature of the information in question, pertaining as it does to discussions concerning a hostage situation, then disclosure could potentially result in detriment to the confider. Section 41(1)(b) is therefore met.
53. However, although section 41 is an absolute exemption, the law of confidence contains its own built in public interest test with one defence to an action being that disclosure is in the public interest. As noted above, the Commissioner accepts that there is a public interest in the disclosure of information about the Alec Collet case. Although, the amount of information withheld on the basis of section 41(1) is small, in the Commissioner's view its disclosure would nevertheless prove illuminating to the public's understanding of this case. However, the

Commissioner does not consider this to be a sufficient basis to argue that there is a valid public interest defence to justify disclosure of this information when taking into account the public interest in ensuring that third parties will be prepared to share information with the UK government in similar scenarios in the future.

**Section 23 – security bodies**

**Section 24 – national security**

54. The FCO also explained that it was relying on sections 23(5) and 24(2) of FOIA as a basis to refuse to confirm or deny whether it held any *further* information falling within the scope of the request other than which it had withheld on the basis of the exemptions discussed above.
55. Sections 23(5) and 24(2) exclude the duty of a public authority to confirm or deny whether it holds information which, if held, would be exempt under section 23(1) or 24(1) respectively.
56. Information relating to security bodies specified in section 23(3) is exempt information by virtue of section 23(1). Information which does not fall under section 23(1) is exempt from disclosure under section 24(1), if it is required for the purpose of safeguarding national security.
57. By virtue of section 23(5) the duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in section 23(3).
58. By virtue of section 24(2) the duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.
59. The Commissioner does not consider the exemptions at sections 23(5) and 24(2) to be mutually exclusive and she accepts that they can be relied on independently or jointly in order to conceal whether or not one or more of the security bodies has been involved in an issue which might impact on national security. However, each exemption must be applied independently on its own merits. In addition, the section 24 exemption is qualified and is therefore subject to the public interest test.
60. The test as to whether a disclosure would relate to a security body is decided on the normal standard of proof, that is, the balance of probabilities. In other words, if it is more likely than not that the disclosure would relate to a security body then the exemption would be engaged.

61. From the above it can be seen that section 23(5) has a very wide application. If the information requested is within what could be described as the ambit of security bodies' operations, section 23(5) is likely to apply. This is consistent with the scheme of FOIA because the security bodies themselves are not subject to its provisions. Factors indicating whether a request is of this nature will include the functions of the public authority receiving the request, the subject area to which the request relates and the actual wording of the request.
62. The Commissioner finds that on the balance of probabilities, further information about this subject matter, ie the kidnapping of Alex Collett, if held, could be related to one or more bodies identified in section 23(3).
63. With regard to section 24(2), the Commissioner again considers that this exemption should be interpreted so that it is only necessary for a public authority to show either a confirmation or a denial of whether requested information is held would be likely to harm national security.
64. In relation to the application of section 24(2) the Commissioner notes that the First Tier Tribunal (Information Rights) has indicated that only a consistent use of a '*neither confirm nor deny*' (NCND) response on matters of national security can secure its proper purpose. Therefore, in considering whether the exemption is engaged, and the balance of the public interest, regard has to be given to the need to adopt a consistent NCND position and not simply to the consequences of confirming whether the specific requested information in this case is held or not.
65. In the context of section 24, Commissioner accepts that withholding information in order to ensure the protection of national security can extend to ensuring that matters which are of interest to the security bodies are not revealed. Moreover, it is not simply the consequences of revealing whether such information is held in respect of a particular request that is relevant to the assessment as to whether the application of the exemption is required for the purposes of safeguarding national security, but the need to maintain a consistent approach to the application of section 24(2).
66. On this occasion the Commissioner is satisfied that complying with the requirements of section 1(1)(a) would be likely to reveal whether or not the security bodies were in any way involved in the subject matter which is the focus of this requests. The need for a public authority to adopt a position on a consistent basis is of vital importance in considering the application of an NCND exemption.
67. The Commissioner is satisfied that the public authority was entitled to rely on sections 23(5) and 24(2) in the circumstances of this case. She

accepts that revealing whether or not further information is held about the kidnapping of Alec Collet would be likely to reveal whether information is held relating to the role of the security bodies. It would also undermine national security and for that reason section 24(2) also applies because neither confirming nor denying if additional information is held is required for the purpose of safeguarding national security.

68. As noted above section 24 is a qualified exemption. However, the Commissioner considers that there is a significant public interest in protecting information required for the purposes of safeguarding national security. Therefore, in the circumstances of this case the public interest in maintaining the exemption at section 24(2) outweighs the public interest in complying with the duty imposed by section 1(1)(a).

### **Section 10 and section 17**

69. Section 10(1) of FOIA requires public authorities to respond to a request promptly and in any event within 20 working days of receipt.
70. Section 17(1) of FOIA explains that if a public authority intends to refuse to comply with a request it must provide the requestor with a refusal notice stating that fact within the time for compliance required by section 10(1). Section 17(3) allows a public authority to extend its consideration of the public interest for a reasonable period of time if necessary. The Commissioner considers that this should normally be no more than an extra 20 working days, which is 40 working days in total to deal with the request. Any extension beyond this time should be exceptional and the public authority must be able to justify it.
71. In this case the complainant submitted his request on 16 February 2015 but the FCO did not inform him of the outcome of its public interest considerations until 24 March 2017, 537 working days later.
72. In its submissions to the Commissioner the FCO explained that the delays – in relation to both its public interest test considerations and the time taken to complete the internal review (see below) - were due to the complex nature of the case and the particularly sensitive material falling within the scope which necessitated extensive stakeholder consultation. The FCO acknowledged that this response took longer than it should have done and it regretted this. The Commissioner agrees with this assessment; even taking into account the sensitive nature of the request the FCO should have completed its public interest considerations in a far shorter period of time. It follows that the Commissioner has concluded that the FCO breached section 17(3) of FOIA.

## Other matters

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73. FOIA does not impose a statutory time within which such reviews must be completed albeit that the section 45 Code of Practice explains that internal reviews should be completed within a reasonable timeframe. In the Commissioner's view it is reasonable to expect most reviews to be completed within 20 working days and reviews in exceptional cases to be completed within 40 working days.
74. In this case the complainant submitted his request for an internal review on 24 March 2017. The FCO informed him of the outcome of the internal review on 22 February 2018, nearly a year later. The Commissioner clearly considers this to be an unsatisfactory period of time, especially when taking into account the significant amount of time the FCO had already taken in considering the balance of the public interest test. She also notes that the FCO's delays in completing its internal review also led to a delay in the complainant receiving information to which he was entitled, ie the disclosures of information made by the FCO following its completion of the internal review.
75. In the future the Commissioner expects the FCO to ensure that it completes internal reviews – and its public interest considerations - within the timeframes set out in her guidance. Furthermore, she would note that in her view if, as in this case, public authorities take over three years to process a request from the date of its submission to the completion of the internal review then this severely undermines the purpose and value of the legislation and a requester's right of access to information.

## Right of appeal

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76. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

77. 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.
78. 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 .....**

**Gerrard Tracey**  
**Principal Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**