

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 December 2022

Public Authority: Foreign, Commonwealth and Development Office ('FCDO')

Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant has requested information relating to contact between UK Embassy Officials and tobacco companies.
2. The FCDO originally withheld some information under section 43(2) (commercial interests) of FOIA and confirmed that no information was held in relation to part of the request. During the course of this investigation, the FCDO rescinded its reliance on section 43(2).
3. The Commissioner's decision is, in failing to respond and disclose all non-exempt information within 20 working days of receipt of the request, the FCDO breached section 10 (time for compliance with request) of FOIA. The Commissioner has also decided that, on the balance of probabilities, the FCDO does not hold any further information that falls within the scope of the request.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the information previously withheld under section 43(2).
5. 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 FOIA and may be dealt with as a contempt of court.

Request and response

6. On 29 September 2021 the complainant wrote to the FCDO and requested the following information:

"I am writing to make an open government request for all the information to which I am entitled under the Freedom of Information Act. Please may you provide a list of all contacts UK embassy officials in Yemen and Jordan have had with British American Tobacco, Imperial Tobacco, Japan Tobacco International, Philip Morris International, Altria, International Tobacco and Cigarette Company, Union Tobacco, United Industries Company and Kamaran as well as any other domestic or transnational tobacco companies in requested countries.

I would like this information for the period from 1 January 2018 to 29 September 2021. Contacts would primarily include attending or arranging meetings or functions and responding to correspondence or phone calls. Please may the information be broken down by:

- Tobacco company name
- Date of contact
- Purpose of contact
- Countries: Yemen and Jordan."

7. The FCDO responded to the request on 3 February 2022. It confirmed holding information relevant to the request for Jordan and disclosed information relating to three tobacco companies but, for one specific company, withheld the purpose of contact under section 43(2). It denied holding information relevant to the request for Yemen.
8. On 10 February 2022 the complainant requested an internal review. The complainant disputed the FCDO's application of section 43(2) and also pointed to information in the public domain that they believe proves the FCDO hold information, relating to Yemen, which would fall within the scope of the request.
9. The FCDO provided the outcome to its internal review on 1 April 2022. It upheld its original position.

Scope of the case

10. When the Commissioner commenced this investigation, he asked the FCDO to explain why, in relation to Jordan, the purpose of contact had been withheld for one tobacco company but not the other two. Upon reviewing this matter, the FCDO indicated the information could be released.
11. Since the FCDO has identified this information it can now be released, the Commissioner won't consider the FCDO's application of section 43(2) any further but he requires the FCDO to take the steps outlined in paragraph 4. However, the Commissioner will return to this matter in the procedural matters section of this notice.
12. The Commissioner therefore considers the scope of this investigation to be to determine, on the balance of probabilities, whether the FCDO is correct when it says it doesn't hold any information in relation to Yemen. The Commissioner will also consider the FCDO's compliance with the procedural sections of FOIA.

Reasons for decision

Section 1 – information held/not held

13. In cases where a dispute arises over the recorded information held by a public authority at the time of a request, the Commissioner, following the outcome of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. This means that the Commissioner will determine whether it is likely, or unlikely, that the public authority held information relevant to the complainant's request at the time that the request was received.
14. The complainant has pointed to information in the public domain which they believe proves that the FCDO holds information, relevant to Yemen, in response to the request. The information in question is an article from an Arabic website and a YouTube video, which demonstrates that Her Majesty's Ambassador to Yemen from February 2018 to August 2021, Michael Aron, attended the opening of a tobacco company in Yemen.
15. In response to this, the FCDO has explained 'I can confirm that Michael Aron did attend the event but after a search of our records we have established that no formal record of the event was recorded and that there was no briefing prepared ahead of the event. I can confirm that there was never a business need for FCDO colleagues to hold information relevant to this event as FCDO would only record details of more formal meetings and not receptions/launch events such as this.'

16. This explanation seems reasonable to the Commissioner. However, for completeness, he asked the FCDO to explain the searches that had been carried out to check that no information, in relation to Yemen, was held and why these searches would have been likely to retrieve any relevant information.
17. The FCDO explained 'In order to establish if we held any record of Embassy officials in Yemen having contract (sic) with companies relating to the tobacco industry current and former staff working on Yemen carried out searches for key terms in their emails, outlook calendars and files which did not bring up any records which we relevant to the request. Those search terms were for particular tobacco companies in the period requested.'
18. Again, these search locations and criteria seem reasonable to the Commissioner who is satisfied that, on the balance of probabilities, no further information is held relevant to the request.

Procedural matters

19. Section 10 of FOIA states that a public authority must, within 20 working days of receipt of a request, respond to the request and communicate any non-exempt information.
20. In this case, the request was made on 29 September 2021 but was not responded to until 3 February 2022, four months later. Furthermore, at the time that this notice was written, the FCDO had failed to disclose all non-exempt information and therefore has breached section 10.

Right of appeal

21. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

22. 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.
23. 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

Alice Gradwell
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Information Commissioner's Office
Wycliffe House
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