

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 17 January 2022

Public Authority: Foreign, Commonwealth & Development Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant submitted a request to the Foreign, Commonwealth & Development Office (FCDO) seeking a copy of the '*BIOT [British Indian Overseas Territory] Conservation Management Plan*'. The FCDO withheld this on the basis of section 27(1)(a) (international relations) of FOIA and regulation 12(5)(a) (international relations) of the EIR.
2. The Commissioner's decision is that the requested information is exempt from disclosure on the basis of regulation 12(5)(a) of the EIR and that in all the circumstances of the case the public interest favours maintaining the exception.
3. No steps are required.

Request and response

4. The complainant submitted the following request to the FCDO on 25 March 2021:

'In the current Blue Belt Work Plan for the BIOT (2020/21 Extension Plan dated 14 May 2020) it is stated that a BIOT Conservation Management Plan was completed in March 2019.'

Please could I request a copy of that Plan under FOI/Environmental Information Regulations.'

5. The FCDO responded on 26 April 2021 and confirmed that it held the 'Conservation Management Plan' (the Plan) but considered it to be exempt from disclosure on the basis of section 27(1)(a) (international relations) of FOIA and regulation 12(5)(a) (international relations) of the EIR.

6. The complainant contacted the FCDO on 3 May 2021 and asked it to conduct an internal review, noting that:

'1. Under the EIR, public authorities have a duty to consider whether information they are withholding under one of the exceptions provided by regulations 12(4), 12(5) or 13 can be separated from other information that can be released, and if possible, to disclose that information.

*2. The document in question has previously been released to the scientific community - see citation in: Perez-Correa, J, Carr, P, Meeuwig, JJ, Koldewey, HJ, Letessier, TB. Climate oscillation and the invasion of alien species influence the oceanic distribution of seabirds. Ecol Evol. 2020; 10: 9339- 9357.
<https://doi.org/10.1002/ece3.6621>'*

7. The FCDO informed the complainant of the outcome of the internal review on 19 May 2021. The review upheld the application of section 27(1)(a) of FOIA and regulation 12(5)(a) of the EIR. In relation to the complainant's comments in his request for an internal review, the FCDO explained that during the drafting stage the document was shared with only a very limited distribution and therefore could not be said to be in the public domain.

Scope of the case

8. The complainant contacted the Commissioner on 20 July 2021 in order to complain about the FCDO's refusal to provide him with the information falling within the scope of his request.

9. The Commissioner considers the requested information to constitute 'environmental information' as defined by the EIR. This decision notice therefore considers whether the information is exempt from disclosure on the basis of regulation 12(5)(a) of the EIR as opposed to whether it is exempt from disclosure under FOIA.

Reasons for decision

Regulation 12(5)(a) – international relations

10. Regulation 12(5)(a) provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect international relations, defence, national security or public safety.

The complainant's position

11. The complainant explained that he was dissatisfied with the FCDO's refusal to withhold any information from the requested Plan. He explained that prior to the current plan, there existed an 'Interim Conservation Management Framework' (the 'Framework'). He noted that the Framework was principally concerned with the protection and management of the natural environment and its contents did not obviously give rise to an exception under regulation 12(5)(a). Moreover, the complainant noted that the Framework had been freely disseminated. He explained that the Plan was understood to be the natural successor to this Framework.
12. Furthermore, as the complainant noted in his request for an internal review, the Plan was cited in a published academic paper where the citation states that '*further rat eradication has been designated a priority target within the conservation framework of the BIOT Draft Conservation Management Plan 2018 – 2023 (BIOT Administration, 2018)*'. The complainant suggested that why a target of rat eradication should attract an exception under regulation 12(5)(a) was hard to understand.
13. The complainant also explained that the BIOT Administration had publicised 11 conservation and environmental priorities on its website.¹ The complainant argued that these priorities must surely arise from the Plan rather than being based on some other, unpublished, evaluation. He suggested that with the exception of the first priority ('Combating Illegal, Unregulated and Unreported (IUU) fishing in BIOT') it was very hard to understand why further details of the other priorities might harm the UK's relations with Mauritius.
14. Finally, the complainant noted that scientific publications also emerge from the conservation and environmental priorities. He noted that the Bertarelli Foundation², the primary source of funds for the

¹ <https://biot.gov.io/environment/>

² <https://www.marine.science/>

environmental work, freely publicises the work it is funding, in contrast to the FCDO's current position.

15. In light of the above, the complainant argued that it was hard to envisage why the entire contents of the present Plan should, or could be, withheld on the basis of regulation 12(5)(a).

The FCDO's position

16. The FCDO argued that disclosure of the Plan would adversely affect the UK's relationship with Mauritius. The FCDO provided the Commissioner with further submissions to support this position but it considered such submissions to be sensitive and not suitable for inclusion in the decision notice. However, the Commissioner can confirm that the FCDO explained why, in its view, disclosure of even a redacted version of the Plan would harm the UK's relations with Mauritius. The FCDO's submissions also explained, why in its view, the fact that the predecessor to the Plan had been freely disseminated did not undermine its reliance on regulation 12(5)(a) in relation to the withheld information.

The Commissioner's position

17. The Commissioner can understand the complainant's scepticism as to why the Plan would attract the exception contained at regulation 12(5)(a) given both its subject matter and the fact that the predecessor version of it, ie the Framework, was freely available.
18. However, having had the benefit of considering the FCDO's confidential submissions to him the Commissioner is satisfied that disclosure of the withheld information would result in harm occurring to the UK's relations with Mauritius. This is despite the availability of the Framework and the fact that a draft version of the Plan had been shared with some academics. In reaching this finding the Commissioner has considered whether it is possible to disclose a redacted version of the withheld information, but he is satisfied that disclosure of any parts of the document would harm the UK's international relations in the way envisaged by the FCDO. The Commissioner appreciates that the fact that he cannot elaborate on why he has reached the above conclusion is likely to prove frustrating to the complainant.
19. In light of the above, the FCDO can rely in regulation 12(5)(a) to withhold the information falling within the scope of the request.

Public interest test

20. Regulation 12(5)(a) is subject to the public interest test. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions.

As stated in the Upper Tribunal decision *Vesco v Information Commissioner* (SGIA/44/2019), *'If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure...'* and *'the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations'* (paragraph 19).

21. The FCDO argued that there was a clear public interest in the UK maintaining effective relations with other states, and in the context of this request, with Mauritius.
22. As noted above, the complainant argued that the FCDO's lack of transparency in withholding this information was in marked contrast to the (presumed) very similar information published by the BIOT Administration, and in contrast to the availability of the predecessor document to the Plan.
23. The Commissioner accepts that there is a clear public interest in the disclosure of information which would provide further details about conservation issues in relation to BIOT, particularly given that the predecessor version of the Plan has been available. However, in light of the FCDO's submissions, the Commissioner is satisfied that there is a greater public interest in ensuring that the UK's relations with Mauritius are not harmed. He has therefore concluded that the public interest favours maintaining the exception contained at regulation 12(5)(a), even which taking into account the presumption in favour of disclosure cited above.

Right of appeal

24. 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

25. 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.
26. 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

Jonathan Slee
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