

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 February 2023

Public Authority: Government Internal Audit Agency
(Executive Agency of HM Treasury)

Address: 10 Victoria Street
Westminster
London
SW1H 0NB

Decision (including any steps ordered)

1. The complainant submitted a request to the Government Internal Audit Agency (GIAA) seeking copies of reports undertaken by the European Commission on the work undertaken by the GIAA during the years 2018-2021. The GIAA provided a list and brief summary of the six audit reports in scope but withheld copies of the reports themselves on the basis of section 27(2) (international relations) of FOIA. The complainant disputed the GIAA's decision to withhold two of these reports.
2. The Commissioner's decision is that the GIAA is entitled to withhold these reports on the basis of section 27(2) of FOIA.
3. No steps are required.

Nomenclature

4. The GIAA is not listed as a separate public authority in Schedule 1 of the FOIA because it is an Executive Agency of the HM Treasury (HMT). However, as it handles its own FOI requests and as both the complainant and the Commissioner have corresponded with the GIAA during the course of the request and complaint, the Commissioner will refer to 'the GIAA' for the purposes of this notice – although the public authority is, ultimately, HMT.

Request and response

5. The complainant submitted the following request to the GIAA on 23 December 2021:
 - '- information on audits/reviews undertaken by the European Commission (ECA, Regio, Employ, etc) on work undertaken by the Audit Authority (AA) during the years 2018-2021;
 - copies of any final reports (or interim report if not yet concluded) arising from the work of the Commission;
 - details of any changes to the work of the AA as a result of the implementation of any recommendations/actions made by EC bodies including any revisions to the annual error rate previously (or to be amended) notified by the AA.'
6. The GIAA responded on 25 January 2022. It provided a list and brief summary of the six audits falling within the scope of this request. Two of these audits were conducted by European Commission's Internal Audit Service (ECIAS) and four of the audits were conducted by the European Court of Auditors (ECA). In relation to parts two and three of the request the GIAA explained that this information was exempt from disclosure on the basis of section 33(2) (audit) of FOIA but it could confirm that the 'Audit Authority', ie the GIAA, has not made any revisions to reported error rates because of these audits.
7. The complainant contacted the GIAA on 1 February 2022 and challenged its use of section 33 of FOIA to withhold information falling within the scope of the request.
8. The GIAA informed him of the outcome of the internal review on 1 March 2022. It explained that it was no longer seeking to rely on section 33(2) of FOIA but instead was seeking to rely on section 27(2) (international relations) to withhold copies of the audit reports.

Scope of the case

9. The complainant contacted the Commissioner on 25 May 2022 in order to complain about the GIAA's handling of his request. He challenged the decision to withhold the two audit reports conducted by the ECIAS. He did not seek to challenge the decision to withhold the four reports conducted by the ECA. Nor did the complainant raise concerns about the GIAA's response to the third part of his request.

Reasons for decision

Section 27(2) – international relations

10. Section 27(2) of FOIA 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.'

11. Section 27(3) of FOIA explains that:

'For the purposes of this section, 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.'

12. Section 27(2) is a class based exemption and is not subject to the prejudice test.

The complainant's position

13. The complainant explained the EC had made audit reports available in response to information requests and these are sometimes shared on AsktheEU.org.

The GIAA's position

14. By way of background, the GIAA explained that EC funding rules specify that a member state in receipt of grant funding is required to have an Audit Authority function. The GIAA is the Audit Authority for the UK, providing the EC with assurances on the management and payment of grants for several programmes that are funded through the EU's multi-year financial framework.

15. In line with Articles 137 and 138 of the 'Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community', the GIAA continues to deliver its audit services for programmes funded by the EU's multi-year financial framework for the years 2014-2020, with an expected conclusion by March 2025.

16. The two reports produced by the EC in the scope of this request ('Review of the work of audit authorities' and 'Review of the work of audit authorities / compliance audits 2014-20') are reports which audit the work of the GIAA. The GIAA hold copies of these reports as the

subject of the reports, and for the purposes of tracking and reporting on progress with the recommendations listed.

17. In terms of application of section 27(2), the GIAA explained that the two reports in question had been provided to it by ECIAS which is an organ body of an international organisation, namely the EC. Therefore, in the GIAA's view the withheld information was clearly information which had been obtained from an international organisation.
18. With regards to whether this information was confidential, the GIAA explained that the audits in question contain confidentiality clauses requiring non-disclosure prior to the completion of follow-up.
19. Furthermore, GIAA explained that 'REGULATION (EC) No 1049/2001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 30 May 2001' regarding public access to European Parliament, Council and Commission documents includes in its Exceptions section the following:

'2. The institutions shall refuse access to a document where disclosure would undermine the protection of: — commercial interests of a natural or legal person, including intellectual property, — court proceedings and legal advice, — the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure.'
20. On this basis, the GIAA considered section 27(2) to apply because:
 - the ECIAS has explicitly requested that GIAA treat the reports confidentially prior to the completion of follow-up (this applied to one of the reports in scope); and
 - the part of the Regulation noted above reinforces ECIAS' expectation that such information shall not be disclosed (whether in finalised reports or not).
21. With regard to the complainant's position as set out above at paragraph 13, the GIAA explained that it had liaised with the EC about this point. The EC confirmed that they would only release into the public domain fully closed reports, following consultation with GIAA, and with personal data removed. GIAA explained that the EC had been unable to identify the release of any audit reports relating to the GIAA.
22. The GIAA therefore explained that it was confident that EC has not made available audit reports relating to the GIAA, and the GIAA did not believe that the release of any other organisation's audit reports by the EC would provide a satisfactory principle to require the GIAA to release these specific reports under FOIA.

The Commissioner's position

23. The Commissioner is satisfied that the withheld information is exempt from disclosure on the basis of section 27(2). The information was clearly obtained by the GIAA from an organ within an international organisation, ie ECIAS, part of the EC. Furthermore, the Commissioner is satisfied that for the reasons set out by the GIAA the information in question was provided to the GIAA with the clear expectation that it would be treated confidentially. In addition, in light of the GIAA's comments above the Commissioner is satisfied that the potential availability of other audit reports conducted by the EC does not undermine the application of section 27(2) in this case.

Public interest test

24. However, section 27(2) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of 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 information.
25. The GIAA acknowledged that there was a public interest in its work as an audit authority. However, in its view the public interest was better served by withholding the reports for the following reasons:
- Relevant law, regulations or decisions made by or applying to ECIAS reports assumes non-disclosure of audit related information i.e. confidentiality;
 - In its work as an Audit Authority, ECIAS policy is clear that the GIAA is unable unilaterally to disclose reports generated by ECIAS unless it explicitly states in the report that the GIAA shall disclose such information. Neither of the reports requested explicitly permit disclosure; and
 - Overriding ECIAS policy and assumptions of confidentiality would seriously erode the GIAA's ability to work efficiently and effectively with the ECIAS to ensure that public money is not wasted or misused, which would be damaging to the public interest.
26. In the Commissioner's opinion there is an inherent public interest in protecting confidentiality. This is because disclosure of confidential information undermines the principle of confidentiality, which depends on a relationship of trust between the confider and the confidant. Furthermore, in the Commissioner's view there is a public interest in respecting international confidences to ensure that states, international organisations or courts are not deterred from providing information.
27. In terms of the weight that should be applied to the public interest arguments both for and against disclosure consideration has to be given

to the likelihood and severity of any harm, the age of the information, how far the requested information will help public understanding and whether similar information is already in the public domain.

28. In the circumstances of this case the Commissioner accepts that there is legitimate public interest in disclosure of information to provide a better understanding of the GIAA's work as an audit authority, particularly in respect of its work auditing the spending of EC funds. Disclosure of the withheld information could assist in meeting this interest.
29. However, the Commissioner agrees with the GIAA that there is a greater public interest in ensuring that the GIAA's ongoing relationship with the ECIAS is not undermined in order to ensure the effectiveness and efficiency of any such audits. The Commissioner also notes that the audit reports were relatively recent (with the final reports being dated April 2019 and July 2021 respectively, but with discussions on the later report still ongoing). These factors, allied to the inherent public interest in maintaining confidences between international partners mean that in the Commissioner's view the public interest favours maintaining the exemption contained at section 27(2).

Right of appeal

30. 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

31. 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.
32. 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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