

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 January 2023

Public Authority: Foreign, Commonwealth and Development Office

Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant submitted a request to the Foreign, Commonwealth and Development Office (FCDO) seeking information relating to meetings between Alexander Nix, CEO Cambridge Analytica and ministers in December 2016. The FCDO disclosed information falling within the scope of the request but withheld certain information on the basis of sections 27(1)(a) and (d) (international relations) and 40(2) (personal data) of FOIA.
2. The Commissioner's decision is that the FCDO is entitled to rely on sections 27(1)(a) and (d) to withhold the disputed information.
3. No steps are required.

Request and response

4. The complainant submitted the following request to the FCDO on 8 March 2022:

'I would like you to send me all correspondence, including minutes, related to two departmental meetings, listed here:

- 7 December 2016: Between Alexander Nix, CEO Cambridge Analytica, and Sir Alan Duncan
 - 8 December 2016: Between Alexander Nix, CEO Cambridge Analytica, and Boris Johnson'
5. The FCDO responded on 28 April 2022 and provided the complainant with a digest of the information falling within the scope of his request. It explained that information had been withheld on the basis of sections 27(1)(a) (international relations) and 40(2) (personal data) of FOIA.
 6. The complainant contacted the FCDO on 3 May 2022 and asked it to conduct an internal review of this response.
 7. The FCDO informed him of the outcome of the internal review on 27 June 2022. It upheld the application of the exemptions cited in the refusal notice with the exception of two sentences of information which had previously been withheld on the basis of section 27(1)(a). The FCDO provided the complainant with a revised version of the digest with these two sentences unredacted.

Scope of the case

8. The complainant contacted the Commissioner on 30 June 2022 in order to complain about the way his request for information had been handled. He argued that there was a significant public interest in the disclosure of all information falling within the scope of his request, albeit that he did not seek to contest the decision to withhold the names of junior officials.
9. The only information which the FCDO sought to withhold on the basis of section 40(2) is the personal data of junior officials. Therefore, this decision notice only considers the FCDO's decision to withhold the remainder of the withheld information on the basis of sections 27(1)(a) and (d) of FOIA.¹

Reasons for decision

Section 27 – international relations

¹ In submissions to the Commissioner the FCDO explained that it wished to rely on section 27(1)(d) in addition to section 27(1)(a).

10. The FCDO withheld some of the information falling within the scope of the request on the basis of sections 27(1)(a) and (d) of FOIA. These state that:

'(1) 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...

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

The FCDO's position

11. The FCDO argued that the effective conduct of international relations depends upon maintaining the trust and confidence between governments. It argued that disclosure of the withheld information in the scope of this request, which details the UK's relations with the US government, would be likely to damage the bilateral relationship between the UK and US. The FCDO argued that if the UK does not maintain trust and confidence of international partners its ability to protect and promote UK interests will be harmed.

12. The FCDO provided the Commissioner with additional submissions to support its application of section 27, but as these relate directly to the content of the withheld information the Commissioner has not included these in this notice.

The Commissioner's position

13. In order for a prejudice based exemption, such as section 27, to be engaged the Commissioner believes 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.
- 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.

14. 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'.²
15. With regard to the first criterion of the test set out above, the Commissioner accepts that the type of harm that the FCDO believes would be likely to occur if the information was disclosed is applicable to the interests protected by sections 27(1)(a) and (d) of FOIA.
16. With regard to the second and third criteria, the Commissioner is satisfied, based on the content of the withheld information and the FCDO's submissions to him, that there is a causal link between disclosure of the withheld information and harm occurring to the UK's relations with US in question. Furthermore, the Commissioner is also satisfied that the risk of such prejudice occurring is one that is more than a hypothetical risk. The Commissioner has reached this conclusion because he accepts that disclosure of the withheld information would directly undermine the trust and confidence between the UK and US. In addition, in reaching this finding the Commissioner has taken into account the findings of the CAAT decision above and is satisfied that disclosure of the particular information would be likely to require a diplomatic response that would otherwise not have been necessary. In turn, the Commissioner considers it plausible to argue that if relations between the UK and US were impacted in this way it would also be more difficult for the UK to protect and promote its interests with the US on a range of bilateral issues.
17. Sections 27(1)(a) and (d) are therefore engaged.

Public interest test

18. Section 27 is a qualified exemption and therefore the Commissioner must consider whether in all the circumstances of the case the public

² Campaign against Arms Trade v the Information Commissioner and Ministry of Defence EA/2007/0040 (26 August 2008)

interest in maintaining the exemptions contained at sections 27(1)(a) and (d) outweigh the public interest in disclosing the information.

19. The complainant noted that the FCDO's reason why it argued that the information should be withheld, ie because it would be likely to reduce the UK's ability to promote its interests in relation to the US, demonstrated that there was a high public interest in releasing the full information.
20. The FCDO acknowledged that disclosure of the information would increase the public's knowledge of the UK's relations with the US. However, it argued that there was a greater public interest in ensuring that the UK maintaining strong relations with the US so that the UK could effectively protect and promote its interests.
21. The Commissioner agrees that there is clear public interest in the disclosure of information that would inform the public about the UK's interests with the US, and in particular about how the UK goes about promoting such interests. Disclosure of the withheld information would provide some insight into this issue in the context of Mr Nix's meetings with the Ministers listed in the request. The Commissioner also acknowledges that given Mr Nix's high profile nature within Cambridge Analytica, and the controversy surrounding the company, that this arguably increases the public interest in disclosure.
22. However, the Commissioner acknowledges that there is a significant public interest in ensuring that the UK's relations with one of its key allies, the US, are not harmed. Whilst disclosure of the withheld information would provide an insight to how the UK has conducted relations in respect of one particular area, the Commissioner is conscious that disclosure of the withheld information would be likely to harm or disrupt UK-US relations across a range of bilateral issues. As result the Commissioner has concluded that the public interest favours maintaining the exemptions contained at sections 27(1)(a) and (d).

Right of appeal

23. 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

24. 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.
25. 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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