

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 July 2023

Public Authority: UK Export Finance
Address: 1 Horse Guards Road
London
SW1A 2HQ

Decision (including any steps ordered)

1. The complainant has requested information about an Export Insurance Policy ("EXIP"). UK Export Finance ("UKEF") provided some information within scope of the request and withheld the remainder with reliance on section 41(1) (information provided in confidence) and section 43(2) (commercial interests) of FOIA. During the course of the Commissioner's investigation UKEF also sought to rely on section 40(2) (personal information), section 42(1) (legal professional privilege), and sections 27(1)(a), (c) and (d) (international relations) of FOIA to withhold the remainder of the requested information.
2. The Commissioner's decision is that UKEF is entitled to rely on sections 27(1)(a), (c) and (d) to withhold the remainder of the requested information.
3. The Commissioner does not require further steps.

Request and response

4. On 12 December 2022, the complainant wrote to UKEF and requested information in the following terms:

"I would like to request the following information under the Freedom of Information act. The information requested relates to an Export Insurance Policy mentioned in UKEF'S Annual Report and Accounts 2021/22.

On page 230 of the report, under the 'Business' Supported header [sic] there is a table of deals UKEF has been involved in. I would like to request information about the £809m deal with a Saudi Arabian entity.

The information I would like is:

1. The name of the Exporter/investor
 2. The name of the Buyer/airline/operating lessor/borrower
 3. The name of the project/goods and services being provided
 4. The name of the product
 5. The sector the project falls under (e.g Aviation/Aircraft, Oil/Gas infrastructure, Arms (e.g aircraft/missile defence systems etc.
 6. The proposal documents submitted to UKEF by the exporter/investor
 7. The due diligence records conducted by UKEF."
5. UKEF responded on 4 January 2023. It provided information within scope of part [4] of the request by confirming that the product is an Export Insurance Policy, and withheld the remainder of the information at parts [1] to [3] and [5] to [7] under section 43(2) of FOIA.
 6. Following an internal review UKEF wrote to the complainant on 2 February 2023. It stated that it was maintaining its response and had also found section 41(1) was engaged in relation to some of the information in scope of the request.
 7. During the course of the Commissioner's investigation UKEF also sought to apply section 27(1) of FOIA to withhold the entirety of the remainder of the information at parts [1] to [3] and [5] to [7] of the request. UKEF also applied section 40(2) to withhold personal information.

Scope of the case

8. The complainant contacted the Commissioner on 28 March 2023 to complain about the way their request for information had been handled.

9. As UKEF has sought to withhold the entirety of the remainder of the requested information under sections 27(1)(a), (c) and (d), the Commissioner considers that the scope of his investigation is to determine whether UKEF is entitled to engage these exemptions to refuse to disclose the information sought.

Reasons for decision

Section 27(1) – international relations

10. Under section 27(1) of FOIA, information is exempt 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.”
11. UKEF is withholding the entirety of the remainder of the information requested at parts [1], [3], [5] and [7] under sections 27(1)(a), (c) and (d) of FOIA.
12. The Commissioner’s guidance on section 27(1) acknowledges that there is some overlap between the different provisions set out in the exemption. It also recognises that the interests of the UK abroad, and the UK’s international relations, cover a broad range of issues.

The complainant’s position

13. In correspondence to the Commissioner regarding UKEF’s application of section 27(1), the complainant argued:

“Clearly that the fact that UKEF has already disclosed that an EXIP was taken out suggests that no reasonable harm could come from disclosing more information about this deal. There is already information in the public sphere, and the release of further information about a partnership that is, as suggested, beneficial to both the UK and Saudi Arabia seems to me to have the opposite effect. It would broadcast how UKEF can help secure large deals and therefore encourage other companies/state organisations to do business with UK companies, as they know they have access to UKEF’s support should they require it.”

14. The complainant added:

“Also in response to s.27 UKEF is ultimately responsible to UK taxpayers, and not to foreign companies or governments. It is UK taxpayer money which is on the line. UKEF have disregarded this in repeatedly favouring the interests of the companies/organisations involved in the deal over the interests of the taxpayer. I would again argue that public scrutiny of deals which involve huge sums of public money being at risk is essential.”

UKEF’s position

15. In a letter to the complainant UKEF explained its reasoning for relying on section 27(1), stating that trade relations with other countries benefit not only exporters, but the UK as a whole, and these relations rely on trust and confidence. UKEF argued that disclosure of the information would be likely to undermine the trust and confidence other states or international organisations have in the UK, affecting the UK’s broader international relations in this area.
16. In its submissions to the Commissioner, UKEF confirmed that it considers the prejudice it envisions through disclosure would be likely to happen, rather than would happen. UKEF is therefore relying on the lower threshold of likelihood.

The Commissioner’s Position

17. UKEF provided the Commissioner with detailed arguments in respect of its position on section 27(1), which the Commissioner will not reproduce in this notice as to do so would effectively disclose the information sought. Nevertheless, as section 27(1) is a prejudice based exemption, the Commissioner has considered UKEF’s submissions against the three criteria he believes must be met in order for the exemption to be engaged:

- 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,

confirmation or denial '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.

18. 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'.¹
19. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the UKEF clearly relates to the interests which the exemptions contained at sections 27(1)(a), (c) and (d) are designed to protect.
20. With regard to the second criterion, having considered the content of the withheld information and taking into account UKEF's submissions to him, the Commissioner is satisfied that there is a causal link between disclosure of this information and the prejudice which the three limbs of the exemption are designed to protect.
21. With regard to the third criterion, having duly considered the arguments put forward by UKEF, the Commissioner's view is that the lower threshold of prejudice, 'would be likely to occur', has been met.

Public interest test

22. Section 27(1) 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 exemptions cited by the UKEF outweigh the public interest in disclosing the information.

Public interest in disclosing the information

23. In its submissions to the Commissioner UKEF acknowledged the public interest in transparency and accountability in respect of His Majesty's Government's support for UK exports, particularly in regard to exports

¹ Campaign against Arms Trade v the Information Commissioner and Ministry of Defence EA/2007/0040 (26 August 2008)

involving the nation named in the request. It also acknowledged the substantial sum of public money potentially at risk from UKEF's issuing of the EXIP, and that the transaction that EXIP is insuring being a legitimate matter for public concern and debate that would be assisted by appropriate transparency of information. This mirrors the complainant's public interest arguments in favour of release of the remainder of the requested information, as outlined at paragraph 14 above.

Public interest in maintaining the exemption

24. In defence of maintaining the exemption, UKEF repeated its arguments that there is a strong public interest in the effective conduct of the UK's international relations and in its ability to protect and promote its interests abroad, particularly where there is an opportunity to develop stronger mutually beneficial relationships through trade. UKEF stated that disclosure of the requested information may negatively affect the trust and confidence that other nations have in the UK's ability to conduct export finance business with discretion and sensitivity.

Balance of the public interest test

25. The Commissioner accepts there is a public interest in the disclosure of information which relates to how public funds and resources are used, and that disclosure of the information would provide direct insight into how UKEF supports the UK's interests in respect of global trade.
26. However, in contrast, the Commissioner considers that there is very strong public interest in ensuring that the UK's relationships with other states is not harmed or made more difficult and less effective. This is to ensure that the UK can protect and promote its relations and interests abroad and it goes to the heart of the purpose of the exemption.
27. In the context of this request, the Commissioner accepts that disclosure of the withheld information would be likely to have a direct, and detrimental, impact on the UK's relations with the state in question. In his view such an outcome would be against the public interest not only in the context of business relations between the UK and Saudi Arabia, but potentially more broadly.
28. In light of the above, the Commissioner has concluded that the balance of the public interest favours maintaining the exemptions contained at sections 27(1)(a), (c) and (d).

Right of appeal

29. 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

30. 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.
31. 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
Senior Case Officer
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