

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 16 February 2024

**Public Authority:** Cabinet Office

**Address:** 70 Whitehall

London

SW1A 2AS

#### **Decision (including any steps ordered)**

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1. The complainant has requested historical files relating to a number of meetings. The Cabinet Office refused the request, applying the exemption in section 23(1), section 24(1), and section 27(1) of the Act (information supplied by security bodies, national security, and international relations)
2. The Commissioner's decision is that the Cabinet Office was correct to apply section 23(1) and 24(1), in the alternative, to withhold the information from disclosure.
3. The Commissioner does not require the Cabinet Office to take any steps.

## Request and response

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4. On 24 November 2021, the complainant wrote to the Cabinet Office and requested information in the following terms:

*"Please can you release the following files, currently listed by The National Archives as closed and retained by the Cabinet Office under Section 3.4 of the Public Records Act:*

- 1. CAB 134/5, AC(0): Official Committee on Communism (Overseas): Meetings 1-14; Papers 1-42*
  - 2. CAB 134/743, AC(0): Official Committee on Communism (Overseas): Meetings 1-3; Papers 1-30*
  - 3. CAB 134/744, AC(0): Official Committee on Communism (Overseas): Meetings 1-13 (1955); Papers 1-65 (1955); Papers 1-5 (1956)."*
5. The Cabinet Office responded on 18 March 2022. It refused to disclose the information on the basis that the exemptions in sections 23(1), 24(1) and 27(1)(a), (c) and (d) apply.
6. Following an internal review, the Cabinet Office wrote to the complainant on 26 August 2022. It upheld its previous decision.

## Scope of the case

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7. The complainant contacted the Commissioner on 7 October 2022 to complain about the way their request for information had been handled. The complainant argues that other papers from this committee have been published and are available. The Cabinet Office clarified that the nature of the withheld information is different to that published in other papers.
8. The Commissioner therefore considers that the scope of his investigation is to determine whether the Cabinet Office was correct to withhold the information under the exemptions it has cited.

## Reasons for decision

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### **Section 23: Information supplied by or relating to bodies dealing with security matters**

### **Section 24: National security**

9. Section 23(1) of FOIA provides an exemption which provides that:

*"Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)."*

10. To successfully engage the exemption at section 23(1), a public authority needs only to demonstrate that the relevant information was directly or indirectly supplied to it by, or relates to, any of the bodies listed at section 23(3)<sup>1</sup>.

11. Section 24(1) states that: "Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security".

12. FOIA does not define the term 'national security.' However, in *Norman Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045 4 April 2007) the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords' observation as follows:

- 'National security' means the security of the United Kingdom and its people;
- the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
- the protection of democracy and the legal and constitutional systems of the state are part national security as well as military defence;

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2000/36/section/23>

- action against a foreign state may be capable indirectly of affecting the security of the UK; and
  - reciprocal co-operation between the UK and other states in combatting the international terrorism is capable of promoting the United Kingdom's national security.
13. Furthermore, in this context the Commissioner interprets 'required for the purpose of' to mean 'reasonably necessary.' Although there has to be a real possibility that the disclosure of requested information would undermine national security, the impact does not need to be direct or immediate.
  14. As is clear from the wording of section 24(1), the exemptions provided by sections 23(1) and 24(1) are mutually exclusive. This means they cannot be applied to the same information. However, the Commissioner recognises that the fact that section 24(1) can only be applied to information that is not protected by section 23(1) can present a problem if a public authority does not want to reveal whether or not a section 23 security body is involved in an issue.
  15. To overcome this problem, the Commissioner will allow public authorities to cite both exemptions 'in the alternative' where necessary. This means that although only one of the two exemptions can actually be engaged, the public authority may refer to both exemptions in its refusal notice.
  16. As the Commissioner's guidance on this issue<sup>2</sup> explains, a decision notice which upholds the public authority's position will not allude to which exemption has actually been engaged. It will simply say that the Commissioner is satisfied that one of the exemptions cited is engaged and that, if the exemption is section 24(1), the public interest favours withholding the information.
  17. This approach of applying these exemptions in the alternative has been accepted by the Upper Tribunal<sup>3</sup>

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<sup>2</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/how-sections-23-and-24-interact/#text6>

<sup>3</sup>

[https://assets.publishing.service.gov.uk/media/6166ebf5e90e07197f18fc7b/GIA\\_388\\_389\\_390\\_2021-00.pdf](https://assets.publishing.service.gov.uk/media/6166ebf5e90e07197f18fc7b/GIA_388_389_390_2021-00.pdf)

18. In its refusal notice in this case, the Cabinet Office said that "*Sections 23 and 24 are being cited in the alternative as it is not appropriate, in the circumstances of the case, to say which of the two exemptions is actually engaged so as not to undermine national security or reveal the extent of any involvement, or not, of the bodies dealing with security matters*".
19. The Commissioner is satisfied that this approach is appropriate in this case.
20. Having viewed the withheld information the Commissioner is satisfied that the exemptions have been applied correctly by the Cabinet Office. He is satisfied that the withheld information either falls within the scope of the exemption provided by section 23(1) of FOIA or falls within the scope of the exemption provided by section 24(1) of FOIA, and that if the exemption engaged is section 24(1), then the public interest favours the exemption being maintained.
21. The Commissioner cannot elaborate further on his rationale behind this finding without compromising the content of the withheld information itself or by revealing which of the two exemptions is actually engaged.
22. The Commissioner also wishes to note that despite the age of the information, and the passage of time since it was created, he is satisfied that this does not undermine the Cabinet Office's position that section 23(1) and section 24(1) applies in the alternative.
23. The Commissioner's decision is therefore that the Cabinet Office was entitled to rely on sections 23(1) and 24(1) in the alternative, to refuse the request.

## Right of appeal

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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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

**Gerrard Tracey**  
**Principal Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**