

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

### **Decision notice**

**Date:** 17 April 2024

**Public Authority:** Foreign, Commonwealth & Development Office

**Address:** King Charles Street  
London  
SW1A 2AH

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

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1. The complainant submitted a request to the Foreign, Commonwealth & Development Office (FCDO) seeking information about meetings between the FCDO and the Adani Group for the period July to December 2022. The FCDO initially withheld all of the information in scope on the basis of sections 27(1)(a) (international relations), 40(2) (personal data), 41(1) (information provided in confidence) and 43(2) (commercial interests) of FOIA. During the course of the Commissioner's investigation it disclosed some of this information.
2. The Commissioner's decision is that the remaining withheld information is exempt from disclosure on the basis of sections 27(1)(a), 40(2) or 41(1). The only exception to this is a small amount of information in respect of which the Commissioner has concluded that section 27(1)(a) does not apply. The Commissioner has also concluded that the FCDO breached section 17(3) given the length of time it took to complete its public interest test considerations.
3. The Commissioner requires the FCDO to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with a copy of the information identified in the confidential annex.

4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. The complainant submitted the following request to the FCDO on 21 December 2022:

“Under the Freedom of Information Act 2000, I would like to submit the following request for information.

Please provide: 1. Details and copies of any agendas, notes or correspondence relating to meetings with staff from the Adani Group or its subsidiaries that have taken place since July 2022.

Specifically, this should include:

a. meetings that have taken place with the FCDO's UK-based ministerial team where the Adani Group/its subsidiaries have been discussed, either directly or indirectly; and

b. meetings that have taken place with members of the FCDO's team based in India or those with responsibility for overseeing the FCDO's activity in the country.

2. Details and copies of correspondence between members of the FCDO's team with responsibility for activity in India and members of staff from the Adani Group and its subsidiaries, and that have taken place since July 2022.”

6. The FCDO contacted the complainant on 23 January 2023 and confirmed that it held the information but explained to him that it needed additional time to consider the public interest test. It sent similar letters on 20 February, 20 March and 19 April 2023.
7. The FCDO provided him with a substantive response to his request on 18 May 2023. The FCDO explained that it considered the information to be exempt from disclosure on the basis of sections 27(1)(a) (international relations), 40(2) (personal data), 41(1) (information provided in confidence) and 43(2) (commercial interests) of FOIA and that in relation to the qualified exemptions the public interest favoured maintaining the exemptions.

8. The complainant contacted the FCDO on 21 July 2023 and asked it to conduct an internal review of this refusal.
9. The FCDO informed him of the outcome of the internal review on 18 September 2023. This review upheld the application of the exemptions cited in the refusal notice.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 27 October 2023 in order to complain about the FCDO's decision to withhold the information falling within the scope of his request. He was also dissatisfied with the length of time it took the FCDO to complete its public interest test considerations.
11. During the course of the Commissioner's investigation, the FCDO disclosed a redacted version of the information it held falling within the scope of the request to the complainant on 20 February 2024. It explained that the material redacted was exempt from the disclosure on the basis of the same exemptions it had cited in its refusal notice. In relation to the application of these exemptions, in view of this disclosure, this decision notice only considers whether they apply to the remaining information that is still being withheld by the FCDO.

## **Reasons for decision**

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### **Section 27 – international relations**

12. The FCDO withheld parts of the redacted information on the basis of section 27(1)(a) of FOIA. This states that:

“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”

### The complainant's position

13. The complainant explained that the focus of his FOI request was the FCDO's interactions with the Adani Group, as opposed to the Indian government. He noted that while there have been various reports that speak to the closeness of the relationship between the Adani Group and the Indian government, they should be treated as two separate entities. The complainant also noted (a point he argued was relevant to all of the

exemptions cited) that the FCDO's arguments to support the application of the exemption, were generic in nature.

#### The FCDO's position

14. As part of its submissions to the Commissioner the FCDO provided him with detailed arguments to support its reliance on section 27(1)(a), albeit that the FCDO explained that parts of these referred to confidential and sensitive information and therefore were not suitable for inclusion in the decision notice. However, in summary the FCDO's position is that disclosure of the redacted information would prejudice the UK's relations with India. Disclosure would undermine the trust and confidence India has in the UK and would impact on the UK's ability to effectively promote and protect its interests abroad.

#### The Commissioner's position

15. 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 – i.e., disclosure would be likely to result in prejudice or disclosure would result in prejudice. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.

16. 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'.<sup>1</sup>

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

17. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the FCDO clearly relates to the interests which the exemption contained at section 27(1)(a) is designed to protect.
18. In considering the second and third criteria, the Commissioner accepts the complainant's point regarding the Adani Group and the Indian government being separate entities. Nevertheless, having considered the content of the withheld information, and the FCDO's detailed submissions to him, the Commissioner accepts that disclosure of the information concerning meetings between FCDO staff and the Adani Group could prejudice relations between the UK and Indian government in a number of ways. Furthermore, the Commissioner is satisfied that there is more than a hypothetical risk of this prejudice occurring if such information were to be disclosed.
19. The only exception to this finding are a small number of redactions, the focus of which is not the Adani Group, for which the Commissioner is not persuaded that disclosing such information would harm the UK's relations with India (or indeed any other state). The Commissioner has identified this information, and elaborated on his findings in a brief confidential annex, a copy of which will be sent to the FCDO only.

### **Public interest test**

20. 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 exemption cited by the FCDO outweighs the public interest in disclosing the information.
21. With regard to the public interest in disclosure of the information the complainant explained that reports in the media around the time period of his request refer to potential partnerships between the Adani Group and the UK government on defence, aerospace and other sectors. He noted that limited information is in the public domain about these negotiations. The complainant argued that the conduct of the Adani Group was, at the time of his FOI request, already highly controversial. It had faced allegations of corruption, cronyism and breaching human rights standards. In view of this the complainant argued that it is in the public interest to therefore understand whether the government had adequately assessed these concerns around the Adani Group.
22. During the period in which the FCDO was extending the response time to his FOI request, the complainant noted that serious allegations were made by the Hindenburg Group that the Adani Group had committed

fraud on a 'historic scale'.<sup>2</sup> The complainant suggested that subsequent reports by media outlets had substantiated some parts of these allegations. (The Commissioner notes that Adani Group refuted the allegations.<sup>3</sup>) The complainant argued that given the FCDO's extension to the response time, in his view it was appropriate to take these factors into account, and could speak to the government's awareness of any such concerns with the Adani Group's conduct.

23. The FCDO argued that it is in the public interest that the UK maintains the trust and confidence of other states so that it can protect and promote its interests abroad. In the particular circumstances of this case the FCDO argued that disclosure of the information withheld on the basis of section 27(1)(a) would be against the public interest as it would directly undermine the UK's ability to protect and promote its interests in India.
24. The Commissioner considers there to be a public interest in the FCDO, and the UK government more broadly, being open and transparent about commercial and business discussions it has with foreign companies. The Commissioner accepts that in the circumstances of this case, given the points made the complainant, that there is a genuine interest in the disclosure of information which would provide an insight into discussions with the Adani Group during the period covered by the request. In the Commissioner's opinion, disclosure of the withheld information could provide some insight into this.
25. However, the Commissioner accepts that there is a clear public interest in the UK being able to maintain effective relations with other states. In the context of this request he accepts that there is a strong public interest in the UK being able to protect and promote its range of interests in India, which depend directly upon the strength of that bilateral relationship. As a result the Commissioner considers there to be a significant public interest in favour of maintaining the exemption contained at section 27(1)(a). With regard to the public interest in favour of disclosing the information, the Commissioner also considers that to some extent this is met by the partial disclosure of information falling within the scope of this request.

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<sup>2</sup> <https://hindenburesearch.com/adani/>

<sup>3</sup> <https://www.adani.com/-/media/Project/Adani/Invetsors/Adani-Response-to-Hindenburesearch-January-29-2023.pdf>

26. In conclusion, having taken the above into account, the Commissioner has concluded that the public interest favours maintaining the exemption contained at section 27(1)(a) of FOIA.

### **Section 41 – information provided in confidence**

27. Section 41(1) of FOIA states that:

‘(1) Information is exempt information if—

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.’

28. Therefore, for this exemption to be engaged two criteria have to be met; the public authority has to have obtained the information from a third party and the disclosure of that information has to constitute an actionable breach of confidence.
29. With regard to whether disclosure would constitute an actionable breach of confidence the Commissioner follows the test of confidence set out in *Coco v A N Clark (Engineering) Ltd* [1968] FSR 415. This judgment suggested that the following three limbed test should be considered in order to determine if information was confidential:
- whether the information had the necessary quality of confidence;
  - whether the information was imparted in circumstances importing an obligation of confidence; and,
  - whether an unauthorised use of the information would result in detriment to the confider.
30. However, further caselaw has argued that where the information is of a personal nature it is not necessary to establish whether the confider will suffer a detriment as a result of disclosure. Although, it is still necessary to show that disclosure of such information would be an unauthorised use of the information.
31. The Commissioner has assessed each of these criteria in turn. It should be noted however, that the FCDO has requested that parts of its submissions to the Commissioner are not included in the decision notice as to do so would reveal details of the withheld information.



Was the information obtained from another person?

32. With regard to the requirements of section 41(1)(a), the Commissioner accepts that the information that has been withheld on the basis of this exemption was provided to the FCDO by the Adani Group. Section 41(1)(a) is therefore met.

Does the information have the necessary quality of confidence?

33. In the Commissioner's view information will have the necessary quality of confidence if it is not otherwise accessible and it is more than trivial.
34. The Commissioner is satisfied that the information withheld on the basis of this exemption has the quality of confidence. The information is clearly not trivial, nor is it in the public domain.

Was the information imparted in circumstances importing an obligation of confidence?

35. The FCDO explained to the Commissioner the circumstances by which the information was provided to it. The Commissioner is satisfied that based upon these circumstances, and indeed from an examination of the information itself, it is clear that the party providing the information expected this to be kept confidential.

Would disclosure be of detriment to the confider?

36. The FCDO provided the Commissioner with specific and focused reasons as to why disclosure of the information would be detrimental to the confider. On the basis of these submissions the Commissioner is satisfied that this criterion is met.

Is there a public interest defence to the disclosure of the information?

37. Section 41 is an absolute exemption and so there is no requirement for an application of the conventional public interest test. However, the common law duty of confidence contains an inherent public interest test. This test assumes that information should be withheld unless the public interest in disclosure outweighs the public interest in maintaining the duty of confidence (and is the reverse of that normally applied under FOIA). British courts have historically recognised the importance of maintaining a duty of confidence, so it follows that strong public interest grounds would be required to outweigh such a duty.
38. However, disclosure of confidential information where there is an overriding public interest is a defence to an action for breach of confidentiality. The Commissioner is therefore required to consider



whether the FCDO could successfully rely on such a public interest defence to an action for breach of confidence in this case.

39. The FCDO explained it had weighed the general public interest in ensuring that public authorities remain transparent, accountable and open to scrutiny against the wider public interest in preserving the principle of confidentiality. With respect to the information that has been withheld, it did not consider that the public interest in maintaining the duty of confidence is overridden by the public interest in disclosure given that a breach of confidence would impact on the UK government's relationship with a potential investor in the UK and the UK government's business and investment relationships more broadly.
40. As noted above, the Commissioner considers there to be a genuine public interest in the disclosure of information regarding UK government's discussions with the Adani Group. However, in the particular circumstances of this case the Commissioner considers there to be a significant interest in ensuring that the detriment identified by the FCDO does not occur. Given this, and the general public interest in ensuring that confidences are maintained, the Commissioner has concluded that there is not a sufficiently compelling argument in support of a public interest defence against an action for breach of confidence.

#### **Section 40 – personal data**

41. The FCDO explained that on the basis of section 40(2) it had redacted the names, job titles and contact details of junior members of civil servants, and similar information regarding representatives of the Adani Group.
42. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
43. In this case the relevant condition is contained in section 40(3A)(a).<sup>4</sup> This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
44. It is common practice for a public authority to argue that the names and contact details of junior officials are exempt from disclosure under FOIA

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<sup>4</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

on the basis of section 40(2) as disclosure would contravene the principles set out in Article 5 of the GDPR. Furthermore, unless there are very case specific circumstances, the Commissioner accepts that the names and contact details of the junior officials are exempt from disclosure on the basis of section 40(2) of FOIA. This is in line with the approach taken in the Commissioner's section 40 guidance.<sup>5</sup> Therefore, in this case the Commissioner adopts the reasoning set out in these previous decision notices which found that the personal data of junior officials was exempt from disclosure on the basis of section 40(2) of FOIA.<sup>6</sup>

45. Furthermore, the Commissioner is also satisfied that disclosure of similar information about the representatives from the Adani Group would be a breach of data protection principles as it would result in the disclosure of personal information about them that they would not necessarily expect to be made public. In addition, disclosure of such information would not contribute to or meet in any way the public interests considered above. Such information is therefore also exempt from disclosure on the basis of section 40(2) of FOIA.
46. In reaching this finding the Commissioner recognises that the complainant argued that it is conceivable that there would be some information about individuals who could be readily identified given their role in the Adani Group or FCDO and that it would be reasonable to disclose such names. The Commissioner is satisfied that for the individuals whose personal data he accepts is exempt from disclosure on the basis of section 40(2) this is not the case. The Commissioner notes that as part of its disclosure in February 2024 the FCDO did not seek to redact the name of Alan Gemmell who was His Majesty's Trade Commissioner for South Asia and the British Deputy High Commissioner for Western India in the period covered by the request.

### **Section 43 – commercial interests**

47. The Commissioner has not considered the FCDO's application of section 43(2) as he is satisfied that the information to which that exemption has

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[https://ico.org.uk/media/fororganisations/documents/1187/section\\_40\\_requests\\_for\\_personal\\_data\\_about\\_employees.pdf](https://ico.org.uk/media/fororganisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf) - see page 12

<sup>6</sup> IC-114449-B7P7 - <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022310/ic-114449-b7p7.pdf> Paragraphs 49-71 and IC-110922-T9R1 <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022447/ic-110922-t9r1.pdf> paragraphs 39-62.

been applied is also exempt from disclosure on the basis of section 27(1)(a) of FOIA.

## **Procedural matters**

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### **Time taken to respond to the request**

48. Section 1(1) of FOIA provides that any person making a request for information to a public authority is entitled, subject to the application of any exemptions:

'(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and (b) if that is the case, to have that information communicated to him.'

49. Section 10(1) of FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt. Under section 17(3) a public authority can, where it is citing a qualified exemption, have a 'reasonable' extension of time to consider the balance of the public interest.

50. The Commissioner considers it reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days, which would allow a public authority 40 working days in total. The Commissioner considers that any extension beyond 40 working days should be exceptional and requires the public authority to fully justify the time taken.

51. In this case the complainant submitted his request on 21 December 2022 and the FCDO issued its substantive response on 18 May 2023. The Commissioner does not consider this to be a reasonable amount of time in the circumstances of this case and this delay therefore represents a breach of section 17(3).

## **Right of appeal**

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53. 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)

54. 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.
55. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Jonathan Slee**  
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**Information Commissioner's Office**  
**Wycliffe House**  
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