

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 24 April 2018

**Public Authority:** The Cabinet Office  
**Address:** 70 Whitehall  
London  
SW1A 2AS

#### Decision (including any steps ordered)

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1. The complainant submitted a request to the Cabinet Office asking for information about the meeting which took place on 21 July 2005 between Tony Blair and Sir Ian Blair, the then Commissioner of the Metropolitan Police. The Cabinet Office initially responded by explaining that although it held information confirming that this meeting took place, it did not hold any further information falling within the scope of the request. It subsequently amended this position and explained that it did hold further information falling within the scope of this request but it considered this to be exempt from disclosure on the basis of section 23(1) (security bodies), 24(1) (national security), 31 (law enforcement), 38 (health and safety) and 40 (personal data) of FOIA. The Commissioner has concluded that the withheld information is exempt from disclosure on the basis of section 23(1) or section 24(1) of FOIA.

#### Request and response

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2. The complainant submitted a request to the Cabinet Office on 17 July 2017 asking for information about the meeting which took place on 21 July 2005 between Tony Blair and Sir Ian Blair. A full copy of the request is attached as an annex to this notice.
3. The Cabinet Office responded to the request on 16 August 2017 and explained that:

*'We hold information confirming the meeting between Sir Ian Blair and Prime Minister Tony Blair took place on the 21st July 2005, alongside*

*other attendees such as the Home Secretary Charles Clarke. No other information is held. Please note that information relevant to your request maybe held by the Home Office.'*

4. The complainant contacted the Cabinet Office on 18 August 2017 and made a number of comments about the shooting of Jean Charles de Menezes and also asked that *'May we in the public interest request full disclosure between the PM and Ian Blair and all attendees'*.
5. The Cabinet Office responded on 23 August 2017 and replied as follows:  
*'Thank you for your email As explained already in our reply we hold no other information on this matter, and as such will be taking no further action.'*

## **Scope of the case**

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6. The complainant contacted the Commissioner on 23 August 2017 in order to complain about the Cabinet Office's handling of his request. He argued that the Cabinet Office was likely to hold information falling within the scope of his request. During the course of the Commissioner's investigation the Cabinet Office confirmed to her that it did hold further information falling within the scope of the complainant's request but it considered this to be exempt from disclosure on the basis of section 23(1) (security bodies), 24(1) (national security), 31 (law enforcement), 38 (health and safety) and 40 (personal data) of FOIA.
7. The focus of the Commissioner's investigation has therefore been on determining whether this information is exempt from disclosure on the basis of any of these exemptions.

## **Reasons for decision**

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### **Section 23(1) – information supplied by or relating to bodies dealing with security matters**

### **Section 24 – national security**

8. Section 23(1) of FOIA provides an exemption which states 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).'*
9. 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>

10. 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'.*

11. 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' observations 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 of national security as well as military defence;
- 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 combating international terrorism is capable of promoting the United Kingdom's national security.

12. Furthermore, in this context the Commissioner interprets 'required for the purposes 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.

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<sup>1</sup> A list of the bodies included in section 23(3) of FOIA is available here: <http://www.legislation.gov.uk/ukpga/2000/36/section/23>

13. 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 request.
14. 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 a section 23 security body is involved in an issue. To overcome this problem the Commissioner will allow public authorities to cite both exemptions 'in the alternative' when 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. This is essentially the position adopted by the Cabinet Office in this case, albeit that it was not until the course of the Commissioner's investigation that it confirmed that it held information but was seeking to withhold it on the basis of sections 23(1) or 24(1). As the Commissioner's guidance on this issue explains, a decision notice which upholds the public authority's position will not allude to which exemption has actually been engaged.<sup>2</sup> It will simply say that the Commissioner is satisfied that one of the two exemptions cited is engaged and that, if the exemption is section 24(1), the public interest favours withholding the information.
15. In the circumstances of this case a representative of the Commissioner's office examined the withheld information in March 2018. Based on this inspection of the information the Commissioner 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 maintaining the exemption. The Commissioner cannot elaborate on her rationale behind this finding without compromising the content of the withheld information itself or by revealing which of these two exemptions is actually engaged.
16. In light of this finding the Commissioner has not considered the Cabinet Office's reliance on the other exemptions it has cited, namely sections 31, 38 and 40 of FOIA.

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<sup>2</sup> [https://ico.org.uk/media/for-organisations/documents/1196/how\\_sections\\_23\\_and\\_24\\_interact\\_foi.pdf](https://ico.org.uk/media/for-organisations/documents/1196/how_sections_23_and_24_interact_foi.pdf)

## Right of appeal

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17. 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: 0300 1234504  
Fax: 0870 739 5836  
Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

18. 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.
19. 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**

## Annex

Text of request:

*'Please find above letter from Lord Blair to the Permanent Secretary [A copy of this can be viewed at the footnote below<sup>3</sup>]. I note from your records, as detailed below further information have been disclosed in the public interest. Therefore, as a matter of public scrutiny (serious corruption and described by National Archives as the extra-judicial execution in the form of Commander Cressida Dock) may we have the same details of the meeting between the PM and the Police Commission highlighted in the above attached document.*

*The IB letter dated 21/5/05, it is submitted explains the extent command impeded/obstructed/ and their rational behind the by pass from independent scrutiny of the IPCC organization manned by former police chiefs. In the absence and or any cause delay, it must be suggested MAY cast doubt on impartiality by an internal DPS investigation.*

*Further, such a letter must be put into context of which the PM's meeting notes are imperative to the overall story, we must ask to what;*

*-extent Blair's letter can be construed as an unlawful/undue interference in multicounter terrorism 'shoot to kill' policy, thereby absolving culpability/ complicity for the arbitrary military style execution of a known, and unarmed innocent civilian; his sick note is the mark of a terrible command- not applied since 9/11 or even at Canary Wharf.*

*-extent this is inchoate behaviour/ conscience or conjured advanced defence devised in the form of a holistic joint escape plan, the +section 3 criminal law [protection] act, as I understand it was to be applied at site. The empty bottle strikes back- abuse of due process- abuse of public office?*

*- extent was this decision under the influence namely, the 'entirely innocent killing' of an unarmed civilian firing at least seven bullets to the back of his head!! It appears there is much concern about revealing either the tactics that we have and/or the sources of information on which we are operating.*

*I therefore believe in the current urgency in a fast-moving situation facing serious corruption, there is a strong possibility, a cheat officer of the police should be able to stand to public scrutiny, which requires us to supply all information that the Independent Public Complaints Commission may require in the sense that it, itself, is under a duty to provide as much information as*

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<sup>3</sup> <http://policeauthority.org/metropolitan/downloads/scrutinities/stockwell/letter-blair2giveve.pdf>

*it can to the complainant or members of the deceased's family. This could put further lives at risk in these circumstances.*

*+ section 3 (1) CLA 1967 provides : A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or persons unlawfully at large'*

*Q was reasonable force a necessity/ justified for self protection eg being committed by an aggressor, ward off an imminent attack, deter an attacker.*

*Q sch.3 CLA 1967 'A judge of the Crown Court may, where a person appears to have been active in or towards the apprehension of a person later charged with an arrestable offence, order the sheriff of the county to pay a reward to be just and reasonable or a certificate of commendation'.*

*At least seven shoots at the back of the head against an 'all innocent civilian'- [ it is difficult to imagine circumstances today where it would be reasonable to kill (deliberately- motive, retaliation, revenge) even a trespasser or adversary'; 'what is necessary is that he should demonstrate by his actions that he does not want to fight'.*

*Fatal force may be the only way of stopping a starving man trying to steal a loaf of bread but that does not make execution in such circumstances justified (even if misjudged, the degree of force permissible and uses excessive force, he is deprived of the defence)]. Authors Blackstone's, Criminal Practice.*

#### *Addendum*

*In response to an FOI request for a copy of the letter sent by Sir Ian Blair, Metropolitan Police Commissioner to Sir John Gieve, Permanent Secretary at the Home Office, following the shooting of Mr Jean Charles de Menezes on 22 July.*

*The request outlined above resulted in the release of the information requested. For the sake of completeness, we are also publishing today, Sir John Gieve's reply of 22 July to Sir Ian Blair's letter and a letter of 22 July from Len Duvall, Chair of the Metropolitan Police Authority to Sir John Gieve.*

*NB: Sir Ian's letter was incorrectly dated 21 July but was in fact sent on 22 July.'*