

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 August 2013

Public Authority: Department for International Development
Address: 22 Whitehall
London
SW1A 2EG

Decision (including any steps ordered)

1. The complainant requested information held by the public authority in relation to plans for a major public campaign by development agencies on aid and other international development matters.
2. The Commissioner's decision is that the public authority was entitled to withhold the information within the scope of the request on the basis of the exemption at section 35(1)(a).
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 7 April 2012 the complainant wrote to the public authority and requested information in the following terms:

'.....Please provide me with all records dated since 1 January 2011 and held by DFID's Policy Division relating to plans for a major public initiative or public campaign in 2013 by development agencies on aid and other international development matters. The agencies involved are Oxfam, Christian Aid, Save the Children, CAFOD and Action Aid.

Relevant search terms would be the names of the five agencies and/or the phrases "make poverty history" or "joint campaign" or "big moment". Relevant policy staff may also be able to advise on where information would be held.

Specifically, please include any communication with those agencies (meeting notes, emails, records of phone calls and letters) and any internal discussion (including memos and emails) on the initiative.

Please provide me with copies of whole documents with exempt portions blacked out (with relevant exemptions identified), rather than as a digest of extracts.....'

5. The public authority responded on 5 July 2012. It provided the complainant with copies of the following documents: a letter dated 16 January 2012 from organisations of the British Overseas Aid Group to the Secretary of State for International Development, and a letter dated 18 January 2012 from organisations of the British Overseas Aid Group to the Prime Minister. It confirmed that it held further information considered to be exempt from disclosure on the basis of section 27(1) (a) (b) (c) and (d), section 35(1) (a) (b) and (d) and section 40(2) FOIA.
6. Following an internal review the public authority wrote to the complainant on 16 August 2012. It upheld the decision of 5 July.

Scope of the case

7. On 21 August 2012 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. He argued that if there was going to be a high-profile national campaign on food and hunger next year (i.e. in 2013) run by some of the largest aid agencies, it was a matter of the utmost public interest to know the full extent of government involvement in that campaign. This was fundamental to the integrity of the non-governmental sector in Britain. He further argued that information withheld on the basis of section 40(2) could be redacted from the rest of the information in scope.
9. The public authority withdrew its reliance on the exemptions at sections 35(1) (b) or (d) following the complaint to the Commissioner. The public authority also disclosed additional information (on 8 November 2012) within the scope of the request to the complainant. The disclosed information was provided to the complainant in the form of extracts. The public authority explained to the Commissioner that it had provided the disclosed information in extracts because the information within the scope of the request was in small amounts and dispersed across several documents. It was therefore less time-consuming and more cost effective to provide extracts rather than redacting large portions of lengthy documents to remove information which was out of scope or exempt.

10. Given the small amounts of information in scope, the Commissioner accepts that it would be disproportionate for the public authority to provide copies of whole documents as requested. That would require the public authority to redact information not within the scope of the request, and then also separately redact information it considers exempt. The Commissioner is satisfied that providing the complainant with extracts in November 2012 was a reasonable approach to take in the circumstances of this case.
11. The scope of the investigation therefore was to determine whether the public authority was entitled to withhold the information within the scope of the request (excluding the information already disclosed)¹ on the basis of the exemptions at section 27(1) (a) (b) (c) and (d), section 35(1) (a) and section 40(2).

Reasons for decision

Section 35(1)(a)

12. The Commissioner first considered whether the public authority was entitled to rely on the exemption at section 35(1)(a) to withhold all the disputed information.
13. Information held by a government department is exempt from disclosure on the basis of section 35(1)(a) if it relates to the formulation or development of government policy.
14. By way of background, the public authority explained that the United Kingdom (UK) was to assume the Presidency of the G8² forum for 12 months from 1 January 2013. Part of the programme which the UK government would like to deliver through the Presidency relates to international development, including, potentially, proposals for a major public campaign on development as referred to in the complainant's request.³ At the time of the request, the agenda for the G8 was still

¹ Hereinafter also referred to as 'the disputed information'

² Group of Eight of the world's wealthiest countries.

³ On 23 January 2013, more than 100 aid organisations came together to launch 'The Enough Food For Everyone IF' campaign to coincide with the UK's Presidency of the G8. See, <http://www.bbc.co.uk/news/uk-21158288> The Commissioner's investigation was however limited to circumstances as they were at the time of the request, i.e. prior to the launch of the campaign.

being finalised and options were still being considered for how best to progress the proposals. This included seeking agreement and participation from other G8 members (and other non-G8 members) who may have different views.

15. According to the public authority, the disputed information concerns the extent to which the government will engage with the public campaign proposed by the development agencies mentioned in the request. It also concerns the extent to which the UK should seek to use its forthcoming Presidency of the G8 forum to seek international agreement on food security (one of the proposed campaign themes). Proposals were put to the public authority by various representatives of the agencies. It then conducted some analysis of the likely direction of travel of the agencies' public initiative or campaign in order to determine whether, to what extent, and how it could contribute or interact with the campaign. Discussions were still ongoing at the time of request and no final decisions had been taken regarding the proposals. In summary, the disputed information relates to the formulation or development of government policy on the extent to which the government should participate in or support the proposed development campaign by development agencies.

Is the exemption engaged?

16. Section 35(1)(a) is a class based exemption, which means there is no need to show any harm in order to engage the exemption. The disputed information simply has to fall within the class described. In the case of section 35(1)(a) it is sufficient that the disputed information *relates to the formulation or development of government policy*.
17. It is clear that from the public authority's explanation above that the information was produced pursuant to the goals that the government was seeking to achieve during the UK's Presidency of the G8. When finalised, those objectives would become part of the government's policy during the course of (and possibly beyond) the UK's Presidency of the G8. The Commissioner therefore accepts that internal and external discussions in the context of the government's aims and objectives during the UK's Presidency of the G8 relate to the formulation or development of government policy.
18. The Commissioner accepts that the disputed information relates to the formulation or development of the government's policy on international aid during the UK's Presidency of the G8. It is primarily records of discussions between officials, and externally with stakeholders, on proposals in relation to the government's international aid agenda (primarily in relation to food security) during the UK's Presidency of the G8. The Commissioner therefore finds that the disputed information

relates to the formulation or development of government policy on international aid.

19. The exemption at section 35(1)(a) was therefore correctly engaged.

Public Interest Test

20. As mentioned, the exemption at section 35(1)(a) is qualified. The Commissioner must therefore also consider whether in all the circumstances of the case, the public interest in maintaining the exemption at section 35(1)(a) outweighed the public interest in disclosing the disputed information.

Public authority's arguments

21. The public authority acknowledged the general public interest in openness and transparency, and in public access to the evidence which form the basis of the government's decisions.
22. It recognised the strong public interest in knowing whether Ministers have been fully informed of the impact of particular strategies and in being reassured that they are given appropriate priority in formulating or developing policy.
23. It also recognised the significant public interest in increasing the public's ability to contribute more effectively to debate which is high in the public consciousness, as is the case with international development in times of austerity.
24. It noted that there is a strong public interest in understanding how the government carries out its responsibilities in raising awareness of international development issues and in how it interacts with other interested parties, including non-governmental organisations and overseas governments. It shared the complainant's view that the integrity of the non-governmental sector in the UK is a matter of public interest.
25. The public authority, however, argued also that there is a very strong public interest in ensuring that the government's ability to discuss matters of national concern fully is not compromised. Effective policy formulation and development requires that Ministers and officials are able to consider different approaches and options in confidence and that their ability to fully and freely discuss matters of international interest is not compromised.
26. There is a very real public interest in allowing government to have a clear space, immune from exposure to public view, in which it can take

advice and debate matters with candour, free from the pressures of public political debate.

27. Furthermore, disclosing the disputed information would likely inhibit free and frank discussions as officials may be reluctant to place on record a whole range of arguments, judgements and ideas. This would undermine the very strong public interest in government policy decisions being based on the fullest and most open sharing of advice and information.
28. The necessary safe space for policy formulation or development in relation to international aid was particularly relevant at the time when the UK was meant to assume the Presidency of the G8. The government should be able to develop and pursue policy options in a timely and measured way free from the effects premature disclosure would have on planning, deliberations and relations with other countries and international relations.
29. The public authority further argued that the subject matter of the request, which in its view is determining the extent to which it becomes involved with or develops a major public initiative on international development, was not a matter of any degree of public controversy or very wide public interest (as opposed to the private or professional interests of the requester). Therefore, little weight should be given to the public interest in premature disclosure before the policy formulation or development process is complete.
30. In summary, at the time of the request, there was a very strong public interest in ensuring safe space for Ministers and officials to consider all options in relation to the government's policy on international aid during the UK's Presidency of the G8. Furthermore, given the lack of very wide public interest in the subject matter of the request, there was hardly any public interest in premature disclosure of the disputed information before the policy formulation or process was complete.

Balance of the public interest

31. The Commissioner agrees with all of the public authority's arguments in favour of disclosure. However, he disagrees with the suggestion that the strength of the public interest is measured by the number of people interested in a particular issue or the degree of public controversy it generates. He agrees with the complainant that there is a strong public interest in knowing the full extent of the government's involvement in a high profile campaign on aid and international development. It is irrelevant what the complainant's own motives or intentions are. There

is a public interest in transparency in relation to the activities of the non-governmental sector (i.e. charities) given the influence they can have on government policy. At a time of austerity, there is also a strong public interest in understanding the full extent of the government's involvement in an international aid campaign run by the non-governmental sector.

32. However, the timing of the request is crucial. Therefore, the public interest in disclosure has to be balanced against the very strong public interest in ensuring that the government is allowed safe space, free from the pressures of political debate to consider all options with a view to formulating or developing its policy on international aid in the context of the proposed campaign by the development agencies. At the time of the request, the public authority was still engaged in serious discussions internally, and also externally with stakeholders. The Commissioner accepts that disclosure whilst discussions were ongoing could have resulted in Ministers and officials becoming more circumspect in expressing their views for fear that they could be exposed to premature scrutiny – i.e. before they had taken a more concrete position. It was therefore important for Ministers and officials to have private thinking space to consider all possible options during the discussions without premature exposure to the pressures of political debate. The nature of the matter under consideration – i.e. the extent to which the government should use the UK's Presidency of the G8 to seek international consensus on the food security campaign by the largest international agencies – is one which was likely to generate a range of opinions by different commentators. It was therefore important that Ministers and officials were not placed in the position of having to constantly defend every option considered regardless of whether or not it was the government's final position. That would not be in the public interest because they are likely to become less candid with their views and also less willing to discuss options that might be considered unpalatable to some for fear of being criticised prematurely.
33. The Commissioner acknowledges that greater public scrutiny during the ongoing discussions might increase the options available to the government as well as the rigorous consideration of options already available. However, a balance has to be struck to prevent public scrutiny during ongoing discussions from also becoming an impediment to a thorough and rigorous consideration of the issues. The Commissioner is satisfied that in the circumstances of this case, Ministers and officials needed to have that private thinking space required for them to discuss all options candidly without having to worry about how to defend views which were expressed as part of a dialogue to find the best possible option for the government. The Commissioner also considers that there was a public interest in protecting the confidentiality of discussions with

other G8 partners who may/may not have different views to the government on the extent of the G8's commitment to the campaign.

34. The Commissioner therefore finds that, on balance, in all the circumstances, the public interest in maintaining the exemption outweighed the public interest in disclosing the disputed information.
35. In view of his decision, the Commissioner did not consider the applicability of the exemptions at sections 27(1) and 40(2).

Procedural Breaches

36. By virtue of section 10(1) FOIA, a public authority is required to respond to a request for information within 20 working days following the request.
37. By virtue of section 17(1), a public authority is required to issue a refusal notice within 20 working days following the request.
38. The Commissioner therefore finds the public authority in breach of sections 10(1) and 17(1). It issued a refusal notice on 5 July 2012 in response to the request which was made on 7 April 2012.

Right of appeal

39. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

40. 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.
41. 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

Graham Smith
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