

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 September 2018

**Public Authority:** Foreign and Commonwealth 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 and Commonwealth Office (FCO) for copies of diplomatic telegrams and briefings sent by the FCO in Moscow regarding the football World Cup held in Russia in 2018. The FCO disclosed some information but sought to withhold further information on the basis of section 27(1)(a) (international relations) of FOIA. The Commissioner is satisfied that the withheld information is exempt from disclosure on the basis of this exemption and that in all the circumstances of the case the public interest favours withholding the information.

#### Request and response

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2. The complainant submitted the following request to the FCO on 8 January 2018:  
  
*'Please provide copies of all diplomatic telegrams and briefings from Russia from August 1, 2017, to today's date which relate to the 2018 World Cup.'*
3. The FCO responded on 5 February 2018 and confirmed that it held information falling within the scope of the request but it considered this to be exempt from disclosure on the basis of section 27(1)(a) (international relations) of FOIA.
4. The complainant contacted the FCO on the same day and asked it to conduct an internal review.

5. The FCO informed him of the outcome of the review on 9 March 2018. The review concluded that some of the previously withheld information could be released, however the remainder of the information was exempt for the reasons set out in the refusal notice.

## Scope of the case

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6. The complainant contacted the Commissioner on 15 March 2018 in order to complain about the FCO's decision to withhold information falling within the scope of his request.<sup>1</sup>

## Reasons for decision

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7. Section 27(1) of FOIA 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 FCO's position

8. In its refusal notice the FCO argued that the effective conduct of international relations depends upon maintaining trust and confidence between governments and that if the UK does not maintain this trust and confidence then its ability to protect and promote UK interests through international relations will be hampered. In its submissions to the Commissioner the FCO provided more detailed arguments to support its reliance on section 27(1)(a) in the particular circumstances of this case. The Commissioner cannot refer to the entirety of these submissions in this decision notice as part of them refer to information which is itself sensitive. However, in summary the FCO confirmed that in its view disclosing the withheld information would be likely to harm the UK's relations with the Russian Federation, including the organs responsible for co-operating on the policing of the World Cup football tournament. The FCO explained that in reaching this decision it acknowledged that in response to a previous similar request submitted

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<sup>1</sup> It is important to note that the Commissioner's role in considering a complaint submitted to her under section 50 of FOIA is limited to considering the circumstances of the request at the point it was submitted to the public authority.

by the complainant it had disclosed all of the requested information but in the circumstances of this present request it had concluded that section 27(1)(a) applied to the withheld information.<sup>2</sup> The FCO's rationale for this position form part of the submissions which the Commissioner cannot include in this decision notice.

### The complainant's position

9. The complainant emphasised that in response to his similar previous request the FCO had disclosed all of the information it held. He also argued that there is simply no evidence that any harm would come to Britons travelling to Russia by the FCO being open and transparent about the information it has on the World Cup. Moreover, he argued that it was hard to believe that the FCO is genuinely concerned about offending Russia when the UK government ministers have recently spoken about the threats from Russia, particularly in relation to cyber-crime.

### The Commissioner's position

10. In order for a prejudice based exemption, such as section 27(1) to be engaged the Commissioner considers 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; and
  - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure '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

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<sup>2</sup> This request, submitted on 29 June 2017, sought the following information '*Please provide copies of all briefings and diplomatic telegrams from Russia from September 5, 2016, to today's date which relate to the 2018 World Cup.*' Copies of the information disclosed by the FCO in response to this request are available here: <https://www.gov.uk/government/publications/foi-release-diplomatic-telegrams-from-russia-about-world-cup-2018>

places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.

11. 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'*.
12. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the FCO clearly relates to the interests which the exemption contained at section 27(1)(a) is designed to protect. With regard to the second criterion having considered the withheld information, and taken into account the FCO's submissions to her, the Commissioner is satisfied that there is a causal link between disclosure of this information and prejudice occurring to the UK's international relations with Russia. Furthermore, she is satisfied that the resultant prejudice would be real and of substance. Moreover, the Commissioner is satisfied that there is a more than hypothetical risk of prejudice occurring and therefore the third criteria is met. The Commissioner cannot elaborate in detail on why she has reached this view without referring to the sensitive parts of the FCO's submissions. However, the Commissioner would emphasise that she has fully taken into account the fact that the FCO disclosed information in response to a previous request seeking similar information. Nevertheless, despite this previous disclosure, she is satisfied that disclosure of the information which the FCO has withheld in this case would be likely to prejudice the UK's relations with Russia.
13. Section 27(1)(a) is therefore engaged.

### **Public interest test**

14. However, section 27(1) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of the FOIA. The Commissioner has therefore considered whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.
15. The complainant noted that in relation to his previous request, the FCO clearly felt on that occasion that transparency about the diplomatic telegrams (or 'diptels') sent about the World Cup outweighed any notion of harm to its relationship with Russia. He also argued that disclosure would improve public confidence in the FCO and the British government and it would show the FCO was willing to be open and transparent about the information it has shared with London ahead of the World Cup. The complainant also argued that disclosure of the withheld information would demonstrate any areas of concern and show those Britons

travelling to Russia for the event that they are aware of difficulties and problems and are working hard to address them to ensure the safety of Britons in Russia. He also argued that non-disclosure, on the other hand, dents public confidence and suggests the FCO has something to hide.

16. The FCO argued that there was a strong public interest in ensuring that the UK can enjoy effective relations with its international partners. More specifically, the FCO argued that there was a clear public interest in ensuring that the UK's relations with Russia were not damaged, particular in relation to the run-up to the World Cup in order to ensure the safety and security of Britons travelling to the tournament.
17. The Commissioner recognises that the disclosure of the withheld information would result in further transparency in respect of the UK's discussions with Russia in relation to preparations for the World Cup. Such a disclosure could, as the complainant suggests, increase public confidence in the steps the FCO was taking as part of its preparations for the Britons travelling to the tournament. However, the Commissioner would emphasise that the amount of information that has been withheld is limited and furthermore in her view given the content of the information, the extent to which it would actually increase the public's understanding of the FCO's liaisons with the Russian authorities about this issue is also negligible. In contrast, the Commissioner agrees with the FCO that there is strong public interest in ensuring that the UK can enjoy effective relations with its international partners. In the context of this case, the Commissioner agrees that there is a significant public interest in ensuring that the UK can continue to work effectively with Russia in respect of preparations for the World Cup to ensure the safety and security of Britons. Consequently, in the Commissioner's view there is a significant public interest in maintaining the exemption. In light of this, and given the limited public interest in disclosure of the withheld information, the Commissioner has concluded that in all of the circumstances of the request the public interest favours maintaining the exemption contained at section 27(1)(a) of FOIA.

## Right of appeal

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18. 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)

19. 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.
20. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**