

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

### **Decision notice**

**Date:** 28 September 2018

**Public Authority:** Cabinet Office

**Address:** 70 Whitehall  
London  
SW1A 2AS

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

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1. The complainant asked the public authority to confirm whether there were any agreements to support any rebel group prior to the overthrow of the Charles Taylor led Liberian government and for a copy of any document setting out the terms of such support. Relying on sections 27(4), 23(5) and 24(2) FOIA, the public authority neither confirmed nor denied whether it held any information within the scope of the request.
2. The Commissioner's decision is that the public authority was entitled to rely on the provisions in sections 23(5) and 24(2) FOIA.
3. No steps required.

## Request and response

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4. The public authority received the following request from the complainant on 26 May 2017:

"I am researching the Second Civil War in Liberia. I would like to know about the relationship between the UK government and LURD (one of the Liberian rebel groups) and/or the Guinean government with respect to supporting LURD.

I have discovered a reference to a Memorandum of Understanding between the UK and the US and LURD (<http://allafrica.com/stories/200107180346.html>)

Specifically:

1. Can you confirm or otherwise whether there were any agreements (formal or informal) to support LURRD or other Liberian rebel group in the period 1997-2003.
  2. Could I have a copy of any document which sets out what support and under what terms support might be given to any such rebel group referred to above."
5. The public authority provided its response on 14 August 2017. Relying on sections 27(4), 23(5) and 24(2) FOIA, it neither confirmed nor denied whether it held any information within the scope of the request.
6. On 14 August 2017 the complainant requested an internal review of the public authority's decision.
7. The public authority wrote to the complainant on 12 March 2018 with details of the outcome of the internal review. The review upheld the original decision.

## Scope of the case

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8. The complainant contacted the Commissioner on 13 March 2018 to complain about the public authority's handling of his request, specifically the decision to rely on sections 27(4), 23(5) and 24(2) FOIA. The Commissioner has addressed the complainant's submissions further below.
9. Nothing in this decision notice should be construed as confirming or denying that the public authority holds the requested information.

## Reasons for decision

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### The duty in section 1(1)(a) FOIA

10. Under section 1(1)(a) FOIA, any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request. This requirement to inform an applicant whether information matching their request is held by the public authority is commonly referred to as the duty to confirm or deny.
11. Part II of the FOIA however contains a number of exclusions from the duty to confirm or deny. Sections 27(4), 23(5) and 24(2) are three of those exclusions.

### Background

12. The Liberians United for Reconciliation and Democracy (LURD) was an active rebel group with the stated objective of removing the then President of Liberia Charles Taylor from office. The group was based in neighbouring Guinea and received support from the Guinean government. During the second Liberian civil war the group successfully occupied parts of the country and attacked the capital Monrovia eventually forcing Charles Taylor to resign and go into exile in August 2003.

### Section 23(5)

13. The Commissioner first considered whether the public authority was entitled to rely on this exclusion from the duty in section 1(1)(a).

14. Section 23(1) FOIA states:

'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 sub-section (3).'

15. Section 23(5) FOIA states<sup>1</sup>:

'The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any

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

information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).'

#### Public authority's submissions

16. The public authority explained that it was relying on this exclusion from the duty in section 1(1)(a) to avoid revealing one way or the other that a security body was or was not involved in the matter to which the request relates.
17. It argued that whether or not information is held within the scope of the request that was directly or indirectly supplied by, or relates to, any of the bodies specified in section 23(3) is not in the public domain. It pointed out that the UK Government does not disclose details of the role of the intelligence agencies. If a confirmation or denial was issued in response to the request, this would reveal information relating to the presence or absence of the intelligence agencies interest in LURD – ie – the fact of whether there was or was not any involvement.

#### Complainant's submissions

18. The complainant's submissions are summarised below.
19. Given the "well documented" crimes of LURD, I believe any such support might be a war crime and involve crimes against humanity and the British public have a right to know if they had in effect supported such actions.
20. Refusing to "answer my query" might wrongfully allow the UK Government agencies to avoid public accountability for actions of the most serious kind.
21. Charles Taylor is presently incarcerated in the UK for war crimes including terrorism, murder, rape, enlisting children as soldiers and enslavement. It is "well documented" that the LURD rebels committed exactly these same atrocities in Liberia while ousting Taylor and were armed and supported by or via Guinea. This documentation of LURD's crimes includes the extensive Liberian Truth and Reconciliation Commission witness reports of 2005-09.
22. The "information I request" would not deny the Government the safe space to further and protect UK interests. For example, the Chilcot Inquiry into Iraq or the Foreign Affairs Select Committee findings on Libya did not curtail the UK's later involvement in Syria. Broad ranging revelations about Western involvement in various coups over many decades have not prevented similar interventions today.

Commissioner's determination

23. The Commissioner considers that the exemption contained at section 23(5) should be interpreted so that it is only necessary for a public authority to show that either a confirmation or denial of whether requested information is held would involve the disclosure of information relating to a security body. It is not necessary for a public authority to demonstrate that both responses would disclose such information. Furthermore, the Commissioner considers that the phrase 'relates to' should be interpreted broadly. Such an interpretation has been accepted by the First-Tier Tribunal (Information Rights) in a number of different decisions.
24. Consequently, whether or not a security body is interested or involved in a particular issue is in itself information relating to a security body. Therefore, in the Commissioner's opinion, section 23(5) could be used by a public authority to avoid issuing a response to a request which revealed either that a security body was involved in an issue or that it was not involved in an issue.
25. The test of whether a disclosure would relate to a security body is decided on the normal civil standard of proof, that is, the balance of probabilities. In other words, if it is more likely than not that the disclosure would relate to a security body then the exemption would be engaged.
26. From the above it can be seen that section 23(5) has a very wide application. If the information requested is within what could be described as the ambit of security bodies' operations, section 23(5) is likely to apply. Factors indicating whether a request is of this nature will include the functions of the public authority receiving the request, the subject area to which the request relates and the actual wording of the request.
27. The Commissioner is satisfied that on the balance of probabilities, confirming whether or not the public authority holds information falling within the scope of this request would reveal something about the security bodies.
28. The request is for information in relation to an internal armed conflict which eventually led to the overthrow of the Head of the Liberian Government by LURD, a rebel group. Prior to been overthrown Charles Taylor the Liberian President had lost the support of some of the major powers including the United States. Therefore, the Commissioner accepts the inference that the question of whether or not there were any agreements to support LURD or any other Liberian rebel group in the

period in question would have involved one or more of the security bodies.

29. Consequently, the Commissioner is satisfied that on the balance of probabilities, confirming or denying whether the public authority holds information falling within the scope of this request would reveal something about the security bodies.
30. The exclusion at section 23(5) is an absolute one which means it is not subject to the public interest test set out in section 2(1)(b) FOIA. Consequently, the Commissioner has not been able to consider the complainant's submissions in the context of the application of section 23(5).

### Section 24(2)

31. In light of her finding in relation to section 23(5), there is no need – in terms of the outcome of this decision notice – for the Commissioner to also consider the public authority's reliance on section 24(2) FOIA. This is because, even if the Commissioner rejected the public authority's reliance on section 24(2), the public authority would not have to comply with the requirements of section 1(1)(a) in light of the Commissioner's finding in relation to section 23(5).
32. However, as the Commissioner has made clear in her guidance on the use of these exclusions, she recognises that some public authorities are concerned that inferences would be drawn if they were to rely on only one exclusion. As a consequence some public authorities consider it prudent to apply both provisions and in such scenarios the Commissioner will consider the application of both exclusions in a decision notice.
33. Section 24(1) states:  
  
'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.'

34. Section 24(2) states<sup>2</sup>:

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<sup>2</sup> The full text of section 24 is available here:  
<http://www.legislation.gov.uk/ukpga/2000/36/section/24>

'The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.'

#### Public authority's submissions

35. The public authority considers that neither confirming nor denying whether information is held in order to ensure the protection of national security can extend to ensuring that matters which may be of interest to the security bodies are not revealed. The disclosure of whether or not such information is held in this case would prejudice national security. It is not simply the consequences of revealing whether such information is held in respect of a particular request that is relevant to the assessment as to whether the application of the exclusion is required for the purposes of safeguarding national security, but the need to maintain a consistent approach to the application of section 24(2).
36. With respect to the balance of the public interest, the public authority acknowledged that there is a general public interest in openness in government because this increases public trust in and engagement with the government.
37. However, it argued that there was a much stronger public interest in safeguarding national security.

#### Commissioner's determination

38. Section 24(2) provides an exemption from the duty to confirm or deny where this is required for the purpose of safeguarding national security. The approach that the Commissioner takes to the term required as it is used in this exemption is that this means 'reasonably necessary'. In effect this means that there has to be a risk of harm to national security for the exemption to be relied upon, but there is no need for a public authority to prove that there is a specific, direct or imminent threat.
39. Therefore, section 24(2) is engaged if exemption from the duty to confirm or deny is reasonably necessary for the purpose of safeguarding national security. Moreover, as with section 23(5), the Commissioner considers section 24(2) should be interpreted so that it is only necessary for a public authority to show that either a confirmation or a denial of whether requested information is held would be likely to harm national security.
40. In the context of section 24, the Commissioner accepts that withholding information in order to ensure the protection of national security can extend to ensuring that matters which are of interest to the security bodies are not revealed. She also accepts that it is not simply the consequences of revealing whether such information is held in respect of

a particular request that is relevant to the assessment as to whether the application of the exemption is required for the purposes of safeguarding national security, but the need to maintain a consistent approach to the application of section 24(2).

41. Section 24(2) was therefore correctly engaged.

#### Public interest test

42. Section 24(2) is a qualified exemption which means that it is subject to the public interest test set out in section 2(1)(b). Therefore, the Commissioner is required to consider whether, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in confirming whether the public authority holds the requested information.

43. The Commissioner acknowledges that the complainant has argued that there is a clear interest in the public being better informed about UK Government's relationship with LURD and/or other Liberian rebel groups in period leading up to the overthrow of the Charles Taylor led government. The Commissioner does not dispute this argument. However, in her opinion there is a significant, and ultimately compelling, public interest in protecting information required for the purposes of safeguarding national security. She has therefore concluded that the public interest in maintaining section 24(2) outweighs the public interest in the public authority confirming whether or not it holds information falling within the scope of this request.

#### **Procedural matters**

44. A public authority is required by virtue of section 10(1) FOIA to respond to an applicant's request for information promptly and in any event no later than 20 working days following receipt of the request.

45. The request was received by the public authority on 26 May 2017. The public authority provided its response on 14 August 2017, taking a total of 56 working days. The Commissioner therefore finds the public authority in breach of section 10(1).

## **Other Matters**

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53. Although there is no statutory time limit to complete internal reviews, the Commissioner expects most internal reviews to take no longer than 20 working days and in exceptional circumstances 40 working days.
54. The public authority took 147 working days to complete its internal review. The Commissioner is concerned at the length of time taken to complete the internal review in this case. It is also concerning that the public authority has not provided any explanation for the delay.

## Right of appeal

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56. 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)

57. 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.
58. 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** .....

**Terna Waya**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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**SK9 5AF**