

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 December 2018

Public Authority: The Cabinet Office

Address: 70 Whitehall

London

SW1A 2AS

Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office seeking information about the threat of terrorism if the UK intervened in Libya in 2011. The Cabinet Office confirmed that it held information falling within the scope of the request but sought to withhold this on the basis of sections 23(1) (security bodies), 24(1) (national security) and 27(1)(a) and (c) (international relations) of FOIA. The Commissioner has concluded that the information is exempt from disclosure on the basis of sections 23(1) and 24(1) of FOIA and in respect of section 24(1) the public interest favours maintaining this exemption.

Request and response

2. The complainant submitted the following request to the Cabinet Office on 18 June 2016:

'I wish to make a freedom of information request regarding the intervention in Libya. We have learnt with the Chilcot Report that the advice before the illegal Iraq war an increase in terrorism was highlighted as a danger. Was there a warning advising that the threat of an increase in terrorism was possible if we intervened in Libya?'

3. The Cabinet Office responded on 12 August 2016 and explained that complying with the request would exceed the appropriate cost limit and therefore the request was refused on the basis of section 12 of FOIA.

4. The complainant contacted the Cabinet Office on 15 August 2016 and asked it to conduct an internal review of this response.
5. The Cabinet Office informed him of the outcome of the internal review on 13 March 2018. The response confirmed that some information falling within the scope of the request was held but it considered this to be exempt from disclosure on the basis of section 23(1) (security bodies) and section 24(1) (national security) of FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 11 June 2018 about the Cabinet Office's handling of his request. He explained that he disagreed with the Cabinet Office's reliance on sections 23(1) and 24(1) of FOIA to withhold information falling within the scope of his request. He was also unhappy with the time it took the Cabinet Office to complete its internal review in relation to his request.
7. During the course of the Commissioner's investigation, the Cabinet Office also explained that it considered all of the withheld information to be exempt from disclosure on the basis of sections 27(1)(a) and (c) (international relations) of FOIA.

Reasons for decision

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

8. The Cabinet Office withheld some of the information falling within the scope of the request on the basis of section 23(1) of FOIA. This 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).¹ It is an absolute exemption and therefore it is not subject to the public interest test section set out at section 2 of FOIA.

10. The Commissioner has examined the parts of the withheld information which the Cabinet Office is seeking to withhold on the basis of section 23(1) and she is satisfied that it clearly falls within the scope of this exemption. She cannot explain why this is the case in this notice without revealing the content of the information itself.

Section 24(1) – national security

11. The Cabinet Office sought to withhold the remainder of the information on the basis of section 24(1) of FOIA. This 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'.

12. 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

¹ 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>

- reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.
13. 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.
 14. The Cabinet Office provided the Commissioner with submissions which explained why, in its view, withholding the information exempt on the basis of section 24(1) was necessary to protect national security. These submissions made direct reference to the content of the withheld information itself and therefore the Commissioner cannot refer to these submissions in this notice. However, the Commissioner has carefully considered them, alongside the withheld information itself, and she is satisfied that disclosure of this information would undermine national security. Section 24(1) is therefore engaged.

Public interest test

15. The exemption is however subject to the public interest test set out in section 2 of FOIA. The Commissioner has therefore also considered whether in all the circumstances of this case, the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.
16. The Cabinet Office acknowledged that there is a general public interest in disclosure of information and it recognised that openness in government may increase public trust in, and engagement with, the government. It also acknowledged that there is a public interest in members of the public being able to understand the defence of the country. However, the Cabinet Office argued that there is very strong public interest in protecting sensitive information that might damage national security and taking all of the factors into account it had concluded that the public interest favoured maintaining the exemption in this case.
17. The Commissioner agrees that there is public interest in the disclosure of information which concerns how the government responds to international crises, including how the options considered by government may have an impact on the domestic security of the UK. Disclosure of the withheld information would provide the public with an insight into the issues considered by the government in respect of the situation in Libya and the public interest in disclosing this information should not be underestimated. However, the Commissioner agrees with

the Cabinet Office that there is a very strong public interest in protecting national security. Having considered all of the circumstances of this case, and taking into account the Cabinet Office's submissions to her, the Commissioner has concluded that the balance of the public interest favours maintaining the exemption.

18. In light of this decision the Commissioner has not considered the Cabinet Office's reliance on sections 27(1)(a) and (c) of FOIA.

Other matters

19. Although there is no statutory time limit for a public authority to complete its internal review, as a matter of good practice, the Commissioner expects internal reviews to take no longer than 20 working days and 40 working days in exceptional circumstances.
20. In this case the complainant submitted a request for an internal review on 15 August 2016 and the Cabinet Office informed him of the outcome of the internal review on 13 March 2018. The Cabinet Office explained to the Commissioner that this delay was due to an administrative error; although the internal review response was drafted between September and December 2016 it was not issued. This omission was not identified until March 2018 following further communications with the complainant. In the circumstances of this request the Commissioner accepts that the Cabinet Office's failure to complete the internal review in a timely fashion was simply due to an administrative error.

Right of appeal

21. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

22. 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.
23. 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
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