Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **31 January 2019**

Public Authority: **Foreign and Commonwealth Office**
Address: **King Charles Street**
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant submitted two requests to the Foreign and Commonwealth Office (FCO) for information about its 'Head of Counter Disinformation'. The FCO sought to withhold the information falling within the scope of these requests on the basis of sections 24 (national security), 27 (international relations) and 40 (personal data) of FOIA. The Commissioner has concluded that the withheld information is exempt from disclosure on the basis of section 24 of FOIA. The Commissioner has also concluded that the FCO did not breach section 16 by failing to direct the complainant to certain information which was in the public domain. However, the Commissioner has concluded that the FCO committed procedural breaches of sections 10 and 17 in its handling of these requests.

Request and response

2. The complainant submitted the following request to the FCO on 9 April 2018:

> *'I would like to get some background on the role currently held by Andy Pryce (Head of Counter Disinformation).*
>
> *Could you tell me please the scope of the role, the size of the team Andy Pryce has working with him, and when the role was created?'*

3. The FCO contacted the complainant on 11 May 2018 and confirmed that it held some information falling within the scope of his request but it

considered this to be exempt from disclosure on the basis of section 27 (international relations) of FOIA and it needed additional time to consider the balance of the public interest.

4. The FCO provided him with a substantive response to his request on 6 June 2018. It explained that it had concluded that the information it held falling within the scope of the request was exempt from disclosure on the basis of section 24 (national security) of FOIA.

5. The complainant contacted the FCO on 26 June 2018 and asked it to conduct an internal review of this response. In doing so, he also explained that he would like be provided with additional information:

> *'as a part of the Review, there is no valid reason why the following information could not be provided by return:*
> *1. An organogram showing the structure of the department down the level of the head of the counter-disinformation department, who has already been identified,*
> *2. The date, with reasons, (documents) when the department was created,*
> *3. Who ordered the creation of the department and the authorising minister. (documents required)'*

6. The FCO informed him of the outcome of the internal review on 26 September 2018. The review upheld the decision to withhold the information falling within the scope of the request of 9 April 2018 on the basis of section 24(1) of FOIA. The review did not refer to the additional information the complainant had requested in his internal review request.

Scope of the case

7. The complainant contacted the Commissioner on 28 August 2018 in order to complain about the FCO's handling of his requests, ie both his initial request of 9 April 2018 and his further request contained in his email of 26 June 2018. More specifically, the complainant asked the Commissioner to consider the following points:

- The FCO's decision to withhold the information falling within the scope of his request of 9 April 2018 on the basis of section 24(1) of FOIA;

- Its failure to respond to the additional request contained in the internal review request dated 26 June 2018 and by implication any reliance the FCO may place on section 24(1) of FOIA to withhold this information;

- The FCO's failure under section 16(1) of FOIA to provide him with advice and assistance and direct him to the parts of the information falling within the scope of his request on the 'Government web site';

- The FCO's failure issue its public interest test extension letter of 11 May 2018 within 20 working days of his request;

- The FCO's subsequent reliance on section 24(1) to withhold the requested information despite the fact that this exemption was not cited in the public interest test extension letter; and,

- The FCO's delay in completing the internal review.

8. During the course of the Commissioner's investigation the FCO clarified its position as follows: It explained that the information falling within the scope of the complainant's initial request was considered to be exempt from disclosure on the basis of sections 24(1) and 27(1)(a) of FOIA. The FCO also confirmed that it held information falling within the scope of the complainant's follow up request but it considered this to be exempt from disclosure on the basis of sections 24(1), 27(1)(a) and 40(2) of FOIA. However, the FCO explained that it was prepared to provide the complainant with some additional background information on its Eastern Partnership programme; this was provided to the complainant on 11 January 2018.

Reasons for decision

Section 24 – national security

9. 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'.*

10. 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.

11. 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.

12. The complainant argued that the FCO's reliance on section 24(1) to withhold all of the information falling within the scope of the requests was untenable. In support of this position the complainant argued that there was already information in the public domain relevant to his requests, including documents published online by the government, a LinkedIn profile for Mr Pryce and a job description which appeared to be related to his department. The complainant also cited an Information Tribunal case concerning the application of section 24(1) which stated that *'It is not sufficient for the information sought simply to relate to national security; there must be a clear basis for arguing that disclosure would have an adverse effect on national security before the exemption is engaged'*.[1] The complainant argued that in the context of his request it was important not to lose the sense of proportionality; his request concerned 'disinformation' a subject matter a far cry from terrorist threats.

13. In its responses to the complainant the FCO simply argued that disclosure of the withheld information would undermine the effectiveness of Mr Pryce to carry out his duties and this in turn would adversely impact the UK's national security.

14. The FCO provided the Commissioner with more detailed submissions to explain why the information falling both within the scope of the complainant's initial request and information within the scope of his

[1] EA/2009/0111

following request, was exempt from disclosure on the basis of section 24(1). Such submissions referred directly to parts of the withheld information and set out why, with reference to such information, the FCO considered section 24(1) to apply. For the purposes of this decision notice the Commissioner cannot obviously set such submissions out in detail. However, the FCO's position can be summarised as follows:

15. The FCO argued that its Counter Disinformation and Media Development Programme is designed to protect national security by countering disinformation directed at the UK and its allies from Russia. The FCO explained that Russia persistently uses disinformation to target its perceived enemies. For example, the Russian disinformation campaign that followed the attack in Salisbury, which was intended to distract from Russian culpability. The FCO argued that documents about projects within the Programme – such as the information falling within the scope of both of the complainant's requests - could be used to actively attempt to disrupt and undermine the Programme's effectiveness. With regard to the information in the public domain identified by the complainant, the FCO acknowledged that although Mr Pryce's role/job title is in the public domain, the further details regarding his and his team's remit is not. It stated that the LinkedIn profile does not contain details of Mr Pryce's current duties and in any event is a private account. The FCO noted that the other sources referred by the complainant were published by organisations whose content it did not control.

16. Having carefully considered the withheld information falling within the scope of the complainant's requests the Commissioner is persuaded that withholding this information is necessary in order to protect national security. The Commissioner acknowledges that the FCO has sought to withhold all of the information falling within the scope of the request rather than disclosing it in a redacted form; furthermore she accepts, that on the face of it, some of the information eg an organogram, could be considered to be relatively innocuous information. However, the Commissioner considers it important to consider the broader context to which this information relates, namely the FCO's programme of countering disinformation directed at the UK and its allies from Russia. As the FCO submissions quoted above note, Russia's attempts at disinformation are clearly real and recent, eg following the Salisbury attack. In light of this and having taken into account the further submissions which the FCO has provided to her, she accepts that section 24(1) is engaged in respect of all of the withheld information because in her view it is credible to argue that such information could be used to actively attempt to disrupt and undermine the Programme's effectiveness. Moreover, the Commissioner accepts that in turn this would undermine national security given the threat to democracy that such disinformation poses. In reaching this decision, she acknowledges that there is, as the complainant identified, some information concerning

Mr Pryce's role available in the public domain. However, having carefully considered this information and compared it to the information which the FCO is seeking to withhold, the Commissioner is satisfied that there is a clear distinction between the two.

Public interest test

17. Section 24 is a qualified exemption and therefore the Commissioner must consider the public interest test and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

18. The FCO acknowledged that there was a public interest in openness and transparency. However, it argued that it was strongly in the public interest for the UK to be able to defend its own national security.

19. The Commissioner agrees that there is a public interest in government departments being open and transparent and this extends to the processes that they have in place to protect the national security of the UK. Furthermore, the Commissioner recognises that it is understandable that the public are likely to have a particular interest in the steps the UK is taking to counter disinformation used by Russia in light of such high profile incidents such as the Novichok poisoning in Salisbury. Disclosure of the withheld information would provide the public with some insight into the background of the origins of the FCO's counter disinformation programme as well as how it is structured, its role and remit. Therefore, the Commissioner recognises that there is legitimate public interest in the disclosure of the withheld information which should not be underestimated. However, she accepts that there is clearly a very significant public interest in ensuring the UK's national security is not undermined. Given that the withheld information relates to ongoing activities of the FCO to protect the UK's national security she considers that this adds further weight and therefore the balance of the public interest favours maintaining the exemption.

20. In light of her findings in respect of section 24(1), the Commissioner has not considered the FCO's reliance on the other exemptions it has cited.

Procedural matters

21. As noted above, the complainant argued that the FCO had failed to comply with a number of procedural requirements of FOIA when handling his requests.

22. Firstly, the complainant was unhappy with the FCO's failure to respond to the further request contained in his email of 26 June 2018.

23. Section 1 of FOIA states that:

> *'Any person making a request for information to a public authority is entitled—*
>
> *(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
> *(b) if that is the case, to have that information communicated to him'*

24. Section 10(1) requires a public authority to comply with the requirements of section 1 within 20 working days.

25. Section 17(1) of FOIA requires a public authority to issue a refusal notice to a requester it is seeking to rely on an exemption to withhold information.

26. By failing to respond to the complainant's request of 26 June 2018, the FCO breached section 10(1) of FOIA by failing to confirm within 20 working days of this request that it held information falling within the scope of the request. It also breached section 17(1) of FOIA by failing to provide the complainant with a refusal notice, within 20 working days, citing the exemptions on which it was relying on to withhold this information.

27. Secondly, the complainant was unhappy about the FCO's failure to issue its public interest extension letter within 20 working days of his request. The complainant submitted his original request on 9 April 2018 and the FCO did not issue its public interest extension letter until 11 May 2018, some 23 working days later. This represents a breach of section 17(1) of FOIA.

28. Thirdly, the complainant was also unhappy about the FCO's failure to cite section 24(1) of FOIA in its refusal notice, despite that fact that it subsequently sought to rely on this exemption. In line with the provisions of section 17(1) of the FCO should have informed the complainant of all the exemptions it was seeking to rely on within 20 working days of the request and its failure to do so also represents a breach of section 17(1).

29. Fourthly, the complainant argued that the FCO had failed to provide him with advice and assistance, in line with section 16(1) of FOIA, because it did not direct him to the information falling within the scope of his requests on the 'Government web site', namely a job description which the complainant suggested appeared to be that for Mr Pryce's role.

30. Section 16 of FOIA places an obligation on public authorities to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it. The Commissioner understands that the job description does not relate to Mr Pryce's current role. In light of this she is not persuaded that it would necessarily be reasonable for the FCO to have directed the complainant to this.

Other matters

31. FOIA does not contain a time limit within which public authorities have to complete internal reviews. However, the Commissioner's guidance explains that in most cases an internal review should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances. In this case the FCO took 66 working days to complete its internal review response. The Commissioner hopes that in future cases the FCO ensures that the internal reviews are completed within the timeframes set out within her guidance.

Right of appeal

32. 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

33. 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.

34. 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
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