

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 17 June 2020

Public Authority: The Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested a report provided to the Cabinet Office by the Intelligence and Security Committee to Parliament (ISC).
2. The Commissioner's decision is that the requested information is exempt from disclosure under section 23(1) (security bodies) of the Act.
3. The Commissioner does not require the Cabinet Office to take any steps.

Request and response

4. On 13 December 2019, the complainant wrote to the Cabinet Office and requested information in the following terms:
"Please provide a copy of the Intelligence and Security Committee's 2019 report into allegations of Russian interference in British politics, including alleged Russian interference in the 2016 Brexit referendum."
5. The Cabinet Office responded on 19 December 2019 and confirmed that it was relying on section 22(1) of the Act to refuse to provide the requested information. The Cabinet Office confirmed that section 22(1) protects information intended for future publication. The Cabinet Office confirmed that it considered the balance of the public interest lay in maintaining the exemption.
6. On 19 December 2019, the complainant wrote to the Cabinet Office to request an internal review of the handling of his request for information. The complainant disputed the Cabinet Office's reliance on section 22(1)

to refuse his request for information and provided detailed arguments regarding this.

7. Following an internal review the Cabinet Office wrote to the complainant on 10 January 2020. It upheld its reliance on section 22(1).

Scope of the case

8. The complainant contacted the Commissioner on 13 January 2020 to complain about the way his request for information had been handled.
9. During the course of the investigation, the Commissioner confirmed to the Cabinet Office that section 22 applies to information held within documents rather than the document as a whole and therefore if any of the information within the document is subject to redaction before publication, section 22 cannot apply to the redacted information.
10. The Cabinet Office confirmed to the Commissioner that it was also relying on section 23(1) of the Act and that section 23(1) applied to the entirety of the requested information.
11. The Commissioner's approach when considering multiple exemptions in relation to the same withheld information is to consider absolute exemptions in the first instance and then only consider qualified exemptions should the absolute exemption not be engaged.
12. The Commissioner will therefore consider the Cabinet Office's reliance on section 23 first. Should she determine that section 23 is not engaged, she will consider whether section 22(1) is engaged.

Reasons for decision

Section 23: Information supplied by, or relating to, bodies dealing with security matters.

13. Section 23(1) of the Act 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 subsection (3)."

14. 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 of the Act.
15. This means that if the requested information falls within this class, it is absolutely exempt from disclosure under the Act. There is no requirement on the public authority to demonstrate that disclosure of the requested information would result in harm. This exemption is not subject to a balance of public interests test.

The Cabinet Office's position

16. The Cabinet Office confirmed that the requested report was created and provided to the Cabinet Office by the Intelligence and Security Committee of Parliament (ISC). The Cabinet Office set out that the ISC is one of the Security Bodies listed at section 23(3), specifically section 23(3)(o).
17. The Cabinet Office also provided the Letter of Assurance from a senior official within the Cabinet Office with the experience and authority to validate the provenance of the withheld information. This official assured the Commissioner that section 23(1) applied to the entirety of the withheld information.

The Commissioner's position

18. The Commissioner's approach to investigating cases involving the application of section 23(1) is set out in a Memorandum of Understanding².
19. This explains that a public authority will provide the Commissioner with a reasoned explanation to justify the application of section 23(1). The MoU also explains that in all but exceptional cases, it is envisaged that such a reasoned explanation will be sufficient for the Commissioner is satisfy herself that section 23(1) has been correctly applied.
20. The Commissioner has considered the submissions made by the Cabinet Office in this case in respect of the application of section 23(1). She accepts that in the circumstances of this case, the requested report has

¹ <http://www.legislation.gov.uk/ukpga/2000/36/section/23>

² <https://ico.org.uk/media/about-the-ico/documents/1042533/mou-national-security-cases-foia-eir.pdf>

clearly been provided to the Cabinet Office by one of the security bodies named in section 23(3). She also accepts the assurances of the official at the Cabinet Office that the entirety of the requested information was provided by the named security body.

21. As set out above, there is no requirement to demonstrate that disclosure would prejudice any party. Therefore, the Cabinet Office's reliance on section 22, information intended for future publication, does not alter the Cabinet Office's ability to also rely on section 23(1).
22. The Commissioner therefore concludes that the requested information is exempt from disclosure by virtue of section 23(1).
23. Section 23(1) is an absolute exemption which means that there is no requirement to carry out a public interest test following the exemption being engaged.
24. As the entirety of the requested information is exempt under section 23(1), the Commissioner has not gone on to consider whether section 22(1) is engaged as to do so would be academic.

Other matters

25. Whilst the Commissioner has not formally considered the Cabinet Office's application of section 22(1) to the requested information, in light of the Cabinet Office's amended position, she has concerns regarding whether the Cabinet Office was able to identify with any certainty the information that would be published.
26. As set out in the Notice above, section 22(1) can only apply to information that is intended for future publication. Where information will be redacted, this information cannot be exempt under section 22(1).
27. In this case, when questioned, the Cabinet Office appeared unable to confirm whether the information would be published in its entirety.
28. The Commissioner expects the Cabinet Office to ensure that it is able to confidently identify the specific information intended for publication when considering section 22(1) in future.
29. The Commissioner is also disappointed at the tone of the correspondence received from the Cabinet Office. The Cabinet Office initially responded to the Commissioner's request for submissions by simply stating that it had issued an internal review. When the Commissioner asked the Cabinet Office whether it wished to rely on its internal review in response to her questioning, the Cabinet Office stated

that it could not provide the requested submissions as the report was the property of the ISC and therefore the Commissioner had directed her questions to the wrong body.

30. The Cabinet Office only provided sufficient submissions after the Commissioner confirmed that she would have no option but to proceed to decision notice ordering disclosure if the Cabinet Office continued to refuse to provide submissions.
31. The Commissioner does not expect to have her request for submissions dismissed by a public authority and she is concerned that the Cabinet Office appears ignorant of its obligations to justify its handling of a request for information, regardless of where the information originated.
32. The Cabinet Office, as the department responsible for government Freedom of Information policy, is well aware of its obligations to provide detailed submissions when its use of an exemption is challenged under section 50 of the Act.
33. The Commissioner expects to see an improvement in the level of engagement with her officers and the quality of submissions provided.

Right of appeal

34. 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@justice.gov.uk

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

35. 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.
36. 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
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