

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 29 March 2021

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

Decision (including any steps ordered)

1. The complainant requested information relating to a meeting between the UK Prime Minister and the Dalai Lama in May 2008. The Cabinet Office refused the request, citing section 27 (prejudice to international relations), section 40 (third party personal data) and section 41 (information provided in confidence).
2. The Commissioner's decision is that the exemption at section 27 is engaged in respect of the requested information, and the public interest in maintaining the exemption outweighs the public interest in disclosing the information. No steps are required.

Request and response

3. The complainant submitted the following request to the Cabinet Office on 19 February 2019:

Please can you send me all documents and information that you have relating to Gordon Brown's meeting with the Dalai Lama in May 2008. I would like briefing documents, correspondence and all other related information relevant to this meeting.

4. The Cabinet Office responded on 6 March 2019. It withheld the requested information in reliance on the exemption at sections 27(1)(a) and (c), 40(2) and 41 of the FOIA.
5. The complainant requested an internal review on 19 March 2019 and the Cabinet Office communicated the outcome of that review on 12 December 2019. The internal review upheld the original refusal.

Scope of the case

6. On 8 January 2020 the complainant wrote to the Commissioner to complain about the Cabinet Office's response to his request. He argued that the requested information ought to have been disclosed and asked the Commissioner to issue a decision notice.
7. The complainant specifically referred the Commissioner to his request for internal review, which he did not believe the Cabinet Office had properly considered. The complainant was of the view that the Cabinet Office had failed to engage with any of his arguments, and had failed to engage with the specifics of the case.

Reasons for decision

Section 27: prejudice to international relations

8. Section 27(1) provides 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,*
- (b) relations between the United Kingdom and any international organisation or international court,*
- (c) the interests of the United Kingdom abroad, or*
- (d) the promotion or protection by the United Kingdom of its interests abroad."*

9. 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 or prejudice which the public authority alleges would, or would be likely to, occur 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 confirmation or denial 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 on by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.

10. In relation to the threshold of "would be likely to prejudice" 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. However the anticipated prejudice does not need to be more probable than not.
11. The Cabinet Office confirmed that it had relied on the exemptions at section 27(1)(a) and section 27(1)(c) of FOIA in respect of all the requested information. The Commissioner is of the opinion that these exemptions do not necessarily focus on the importance, subject or content of the requested information, but on whether UK interests abroad, or the international relations of the UK would be prejudiced through the disclosure of the information. The timing of the request will also affect the sensitivity of that information.
12. With regard to section 27(1)(a) the Cabinet Office argued that disclosure of the requested information would be likely to prejudice relations between the UK and China. It referred to a contemporary Reuters report¹ of 27 May 2008 which stated that China had been strongly opposed to the meeting since it was perceived as interference in China's internal affairs.
13. With regard to section 27(1)(c) the Cabinet Office argued that disclosure of the requested information would be likely to prejudice the interests of the UK more generally. It set out that that the UK Government worked in partnership with other nations in the interest of ensuring international stability, and that this required reliance on the confidence of international partners. The Cabinet Office argued that disclosure of the requested information in this case would be likely to damage the relationship of trust and goodwill with these partners, which would have an adverse impact on diplomatic relations. If the UK was perceived to be indiscreet or unreliable it would make it more difficult to pursue the UK's national interests.
14. The Commissioner can confirm that she has inspected the requested information in this case. Since the Commissioner must be careful not to disclose information that would defeat the purpose of relying on an exemption, she cannot include details of the requested information in this publicly available decision notice.

¹ <https://www.reuters.com/article/us-china-britain-tibet/china-rebuked-uks-brown-for-meeting-dalai-lama-idUSPEK13091920080527?sp=true>

15. With regard to the first criterion of the prejudice test, the Commissioner accepts that the prejudice indicated by the Cabinet Office clearly relates to the interests which sections 27(1)(a) and 27(1)(c) are designed to protect.
16. With regard to the second criterion, the Commissioner is satisfied that the Cabinet Office has described a causal link between disclosure of the requested information and prejudice occurring to the UK's international relations. Furthermore, having inspected the requested information the Commissioner accepts the Cabinet Office's assessment as to the likelihood of such prejudice. Accordingly the third criterion is met.
17. 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"*.²
18. On this basis the Commissioner finds that the exemptions at section 27(1)(a) and section 27(1)(c) are engaged in respect of the requested information, and she has gone on to consider the balance of the public interest.

Public interest arguments in favour of disclosure

19. The Cabinet Office recognised a general public interest in openness in order to ensure that the public is able to scrutinise the way decisions are made. It also identified a general public interest in being able to evaluate the foreign policy of the government.
20. The complainant acknowledged that the taking place of the meeting itself was seen as contentious. He referred the Commissioner to a media article³ which reported that the then chief executive of Barclays Bank had expressed concern about the meeting with the Dalai Lama in 2008. This concern came to light in 2019 in the course of a prosecution brought by the Serious Fraud Office, and the media report was published a short time before the complainant made his request. The complainant was of the opinion that this demonstrated a clear public interest in

² Campaign Against the Arms Trade v the Information Commissioner and Ministry of Defence, appeal no EA/2007/0040

³ <https://www.theguardian.com/uk-news/2019/feb/01/ex-barclays-chief-fretted-over-gordon-brown-dalai-lama-meeting>

showing the public any advice that was offered to the Prime Minister in relation to the meeting.

Public interest in maintaining the exemptions

21. The Cabinet Office maintained that there was a strong public interest in the UK being able to pursue its national interest. This requires ensuring that the UK retains the trust of international partners. A loss of trust would be likely to jeopardise and make more difficult future co-operation.
22. The Cabinet Office described the requested information as being relatively recent in the diplomatic context, and argued that significant remedial measures would be required to offset the prejudice caused by disclosure.
23. The Cabinet Office argued that damage to UK relations with other States would make it more difficult for the UK government to fulfil its foreign policy objectives.
24. Finally, the Cabinet Office maintained that inhibiting the UK Government's ability to engage in promoting stability would be likely to have an adverse impact on the security of the region.

Balance of the public interest

25. The Commissioner acknowledges that there is a legitimate public interest in disclosing information relating to meetings involving the UK Prime Minister. This is particularly the case in respect of informing the public about meetings that may be perceived as controversial by other States. In this case the Commissioner notes that the meeting with the Dalai Lama was a matter of public record⁴ and the Prime Minister's spokesman provided brief comments on its content. The Commissioner does not consider that the publication of these comments has significant influence as to whether or not the requested information ought to be disclosed.
26. The Commissioner accepts that there is a considerable public interest in protecting the ability of the UK to protect and promote its interests with other States such as China. In accepting that the exemptions at section 27 are engaged the Commissioner has accepted that disclosure of the requested information would be likely to prejudice UK-Sino relations.

⁴ <http://news.bbc.co.uk/1/hi/uk/7417604.stm>

Having particular regard to the content of the information in question, the Commissioner is not persuaded that the benefit of disclosure would justify or mitigate this prejudice.

27. The Commissioner has given careful consideration to the arguments put forward by the complainant in this case. However, she does not agree that the concerns attributed to the then chief executive of Barclays Bank constitute a weighty public interest in favour of disclosure, especially given the strength of the public interest in favour of maintaining the exemption.
28. For the reasons set out above the Commissioner finds that the public interest in maintaining the exemptions at section 27(1)(a) and section 27(1)(c) clearly outweigh the public interest in disclosure of the requested information.
29. Since the Commissioner finds that all of the requested information is exempt under section 27(1)(a) and section 27(1)(c), she is not required to consider the other exemptions cited.

Procedural requirements

Section 17: refusal notice

30. Section 17(1) of FOIA states that if a public authority wishes to refuse any part of a request, it must issue a valid refusal notice. This must specify the exemption or exemptions relied upon, and explain why the exemption or exemptions apply.
31. In this case the refusal notice issued by the Cabinet Office specified the exemptions claimed. However it merely reproduced the wording of the exemptions, and did not to any degree explain how they applied in this particular case. This deficiency was not rectified at internal review stage.
32. Accordingly the Commissioner finds that the Cabinet Office failed to comply with section 17(1)(c) in that its refusal notice was inadequate.
33. The Commissioner appreciates the fact that the Cabinet Office provided her with a detailed submission in support of its position. It is therefore unfortunate that the complainant was not provided with any explanation as to why his request was refused. The Commissioner expects public authorities to ensure that they communicate effectively the reasons for their decisions to applicants when refusing a request. This allows the applicant to understand the decision, and offers an opportunity to for the applicant to submit a meaningful request for internal review. It may also reduce the chance of a complaint to the Commissioner, but in any event it is a requirement of FOIA and good customer service.

Other Matters

34. Although it does not form part of the decision the Commissioner also wishes to comment on the internal review conducted by the Cabinet Office. The complainant requested an internal review on 19 March 2019 but did not receive the outcome until 12 December 2019.
35. FOIA does not require a public authority to offer an internal review, but good practice recommendations are set out in the Code of Practice issued under section 45 of FOIA. The Code of Practice was updated and reissued by the Cabinet Office in 2018.⁵
36. There is no statutory time limit for internal reviews, but the Commissioner would refer the Cabinet Office to paragraphs 5.4 and 5.5 of the Code of Practice. Paragraph 5.4 sets out that public authorities should normally complete the outcome of the internal review within 20 working days. Paragraph 5.5 recognises that authorities may require longer if the internal review is complex, requires consultation with third parties or if the relevant information is voluminous. The Code of Practice advises that it is best practice for this additional time to be no more than 20 working days, equating to 40 working days in total.
37. In this case the Cabinet Office took nine months to advise the complainant of the outcome of the internal review. The Commissioner considers this to be unreasonable on two grounds. Firstly, nine months greatly exceeds even the 40 working day recommendation set out in the Code of Practice. Secondly, the letter advising the outcome of the internal review did not address the points made by the complainant, or provide any further explanation. It merely reaffirmed the Cabinet Office's decision to refuse the request.
38. There is therefore no evidence to explain why the Cabinet Office required so much time to conduct the review. Nor is there any evidence that the internal review conformed to the recommendations set out in the Code of Practice. However, the Commissioner is mindful that this request was handled in 2019, and understands that the Cabinet Office is reviewing its processes. The Commissioner hopes that this review will assist in avoiding such delays and handing inadequacies in future.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

39. 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 123 4504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

40. 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.
41. 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

Sarah O’Cathain
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