

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 June 2024

**Public Authority:** Foreign, Commonwealth & Development Office

**Address:** King Charles Street  
London  
SW1A 2AH

#### Decision (including any steps ordered)

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1. The complainant submitted a request to the Foreign, Commonwealth & Development Office (FCDO) seeking its policy or guidance for diplomatic staff concerning "illicit foreign exchange (currency) markets". The FCDO responded by stating that it did not hold the requested information.
2. The Commissioner's decision is that on the balance of probabilities the FCDO does not hold any information falling within the scope of this request.
3. The Commissioner does not require further steps.

#### Request and response

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4. The complainant submitted a request seeking the following information to the FCDO on 9 October 2023:  
  
"Your policy or guidance for (diplomatic) staff working, living and/or operating in countries where there are considerable illicit foreign exchange (currency) markets wherein the exchange rates obtained in those illicit markets diverge significantly from the official exchange rates; I'm particularly interested in this policy or guidance as it pertains to participating in the economy and commercial activity at those

exchange rates. If there is no general / overarching policy or guidance with respect to expectations of staff behaviour and conduct in situations where this bears relevance, please can you provide any available information for the following countries: Lebanon, Iran, Turkmenistan, Syria, Algeria, Argentina, China.”

5. The FCDO responded on 6 December 2023 and explained that:

“Your request as presently formulated is widely framed and the information requested is not held centrally. In order to comply with your requests, we would need to ask departments and overseas posts to carry out searches in order to locate, retrieve and extract any relevant policy or guidance.”

It therefore explained that it was refusing to comply with the request on the basis of section 12(2) (cost limit) of FOIA. Under section 16 of FOIA, the FCDO provided the complainant with some advice and assistance so that he could submit a refined request within the cost limit namely:

“ Section 16 of the Freedom of Information Act requires FCDO to provide advice and assistance to the requestor. It is worth noting that should you decide to make any follow up requests, to keep within the cost limit, you may wish to focus on a particular geopolitical region or on a specific economic or commercial activity. It would be helpful if you could be more specific. You may find the following link to the [Diplomatic Service Code](#) helpful. You may also find the following link to the [ICO guidance](#) helpful as it provides advice on how to narrow or refocus an FOI request.”

6. The complainant contacted the FCDO on 7 December 2023 and asked it to conduct an internal review of this response. He doubted that complying with the request would exceed the cost limit and argued that the advice and assistance was not sufficient to allow him to submit a refined request.
7. The FCDO informed him of the outcome the internal review on 13 February 2024. The review explained that:

“We interpreted your request as relating to diplomatic/UK-based staff working overseas using their personal funds/operating in a personal capacity, and I can confirm that there is no central FCDO policy or guidance that would meet the terms of your request. However, I consider that, before sending our initial response, we should have taken into account that your request did include some specific locations you were interested in, should no central guidance exist. I apologise that we did not do so.

I have now contacted the posts in the countries concerned (other than Syria, as our mission in Damascus is currently closed), and I can confirm that they do not hold any information in scope of your request.

I can also confirm that, in line with the overall standards of behaviour outlined in the Diplomatic Service Regulations, all diplomatic staff are expected to abide by UK law and the laws pertaining to their country of posting regarding financial issues, including those relating to currency exchange."

## Scope of the case

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8. The complainant contacted the Commissioner on 15 February 2024 in order to complain about the FCDO's handling of his request. He disputed the FCDO's position that it did not hold any information falling within the scope of his request. In his grounds of complaint he stated that:

"To the public authority's credit, they did write out to various diplomatic missions. They have further confirmed they expect people to obey the law when operating in a personal capacity with their own personal funds. However, I still find it difficult to believe that no information whatsoever is held when this is a clear concern and known attribute of various countries that FCDO diplomats are based in."

## Reasons for decision

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### Section 1

9. In cases such as this where there is some dispute as to whether information falling within the scope of the request is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
10. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.
11. In applying this test the Commissioner will consider the results of the searches undertaken by the public authority and/or other explanations offered as to why the information is not held.
12. In view of the request chronology set out above the Commissioner is satisfied that on the balance of probabilities the FCDO does not hold any information falling within the scope of this request. In reaching this conclusion he notes that the FCDO has confirmed that it does not have

any central policy to cover the specific scenario described in the request. Rather, the overall standards of behaviour are outlined in the Diplomatic Service Regulations cited in the FCDO's initial response. In the context of this case, the Commissioner notes that paragraph 2 of the DSR 2: General Principles of Conduct states that:

"Guidance governing certain specific activities is contained in individual Diplomatic Service Regulations (e.g. relating to gifts, political activities). It is not possible to cover every activity. In circumstances not specifically mentioned you should use your discretion in accordance with the above principles and follow the guidance set out at paragraphs 6-15 of DSR1, seeking advice from your managers or HRDirect or FCO Services: HR Policy if you are in doubt." (Commissioner's emphasis)

13. With regard to whether the specific locations cited in the request hold any relevant information – in the absence of any central guidance – the Commissioner notes that the locations in question have been contacted as part of the FCDO's processing of this request and all have confirmed that no information is held.
14. The Commissioner appreciates that the complainant has argued that it is likely that given the nature of the issue that information will be held, but notes that he has offered no further arguments, reasons or submissions to support this position; simply an assertion that information is likely to be held.
15. However, on the basis of the FCDO's responses to the request the Commissioner is satisfied that on the balance of probabilities no information falling within the scope of the request is held. There is no business need or logical reason to suggest that such information would be held. Moreover the Regulations provide a framework for guidance to staff which, in an overarching way, applies to the scenario described by the complainant's request, ie the use of discretion in line with the principles set out in the Regulations.

## Right of appeal

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16. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

17. 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.
18. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Jonathan Slee**  
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**Information Commissioner's Office**  
**Wycliffe House**  
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