

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 15 July 2024

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

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

#### **Decision (including any steps ordered)**

---

1. The complainant submitted a request to the Foreign, Commonwealth & Development Office (FCDO) seeking briefing notes prepared for the then Prime Minister, David Cameron, for his trip to China in December 2013. The FCDO confirmed that it held some information falling within the scope of the request but it considered this to be exempt from disclosure on the basis of sections 27(1)(a), (c) and (d) (international relations), 35(1)(a) (formulation or development of government policy), 43(2) (commercial interests) and 40(2) (personal data) of FOIA. (Albeit during the course of the Commissioner's investigation, the FCDO confirmed that it was prepared to disclose some of this information.) It also relied on sections 23(5) (security bodies) and 24(2) (national security) of FOIA to refuse to confirm or deny whether it held any further information falling within the scope of the request.
2. The Commissioner's decision is that:
  - Of the information which the FCDO has confirmed it holds, this information is exempt from disclosure on the basis of section 27(1)(a) of FOIA and the public interest favours withholding this information. The only exception to this finding is the information which the FCDO has indicated it is now prepared to disclose to the complainant.

- The FCDO is not entitled to rely on sections 23(5) and 24(2) to refuse to confirm or deny whether it holds any further information falling within the scope of the request.
  - The FCDO breached section 17(3) of FOIA by failing to complete its public interest assessments in a reasonable time.
3. The Commissioner requires the FCDO to take the following steps to ensure compliance with the legislation.
- Provide the complainant with a copy of the information which it has identified to the Commissioner as material it is now prepared to release.
  - Confirm to the complainant whether it holds any further information falling within the scope of this request beyond that which it is either a) prepared to disclose to him and b) which it has withheld on the basis of sections 27(1)(a), (c) and (d), 35(1)(a), 43(2) and 40(2) of FOIA.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## **Request and response**

---

5. The complainant submitted the following request to the FCDO on 17 July 2023:
- “disclose the briefing notes prepared for prime minister David Cameron for his trip to China in December 2013, including but not limited to his meeting with Xi Jinping, President of the People's Republic of China.”
6. The FCDO contacted him on 16 August 2023 and confirmed that it held the requested information but considered section 27 (international relations) of FOIA to apply and that it needed additional time to consider the balance of the public interest test.
7. The FCDO issued similar extensions on 15 September and 13 October 2023 before providing the complainant with a substantive response to his request on 10 November 2023. This response explained that the FCDO considered the requested information to be exempt from disclosure on the basis of sections 27(1)(a), (c) and (d), 35(1)(a) (formulation or development of government policy), 43(2) (commercial

interests) and 40(2) (personal data) of FOIA. For the qualified exemptions it had concluded that the public interest favoured withholding the information. The FCDO also explained that it was relying on sections 23(5) (security bodies) and 24(2) (national security) of FOIA to refuse to confirm or deny whether it held any further information falling within the scope of the request. The FCDO explained that on the basis of section 17(4)<sup>1</sup> it was not required to explain why it had concluded that the public interest favoured maintaining section 24(2).

8. The complainant contacted the FCDO on 10 November 2023 and asked it to conduct an internal review of this refusal.
9. The FCDO informed him of the outcome of the internal review on 23 January 2024. This upheld the application of the various exemptions cited in the refusal notice.

### **Scope of the case**

---

10. The complainant initially contacted the Commissioner on 22 January 2024 in order to complain about the FCDO's decision to withhold the information falling within the scope of his request, the time taken by the FCDO to conclude public interest considerations, and its failure to complete the internal review. Following the completion of the internal review, he confirmed that he wished to continue with his complaint.
11. During the course of the Commissioner's investigation, the FCDO informed him that it had identified some information which it was satisfied could be disclosed to the complainant. The Commissioner asked the FCDO to disclose this information but to date it has not done so. Therefore, this decision notice includes a step requiring the FCDO to disclose this material.
12. The Commissioner has considered whether the remaining information falling within the scope of the request is exempt from disclosure on the basis of the exemptions cited by the FCDO.

---

<sup>1</sup> Section 17(4) of FOIA states that a public authority is not required to explain in a refusal notice why an exemption is considered to apply if to do so would result in the disclosure of exempt information.

## Reasons for decision

---

### Section 27 – international relations

13. Section 27(1)(a) of FOIA states 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”.

#### The FCDO’s position

14. The FCDO provided the Commissioner with submissions to support its application of this exemption. The FCDO indicated that parts of these submissions were considered to be sensitive and referred to the withheld information. Therefore the Commissioner has summarised these submissions below.

15. The FCDO argued that the disclosure of the withheld information would be likely to damage the UK’s relations with China. The briefing was prepared for the Prime Minister with an expectation that it would not be shared more widely or put into the public domain. It was regarded as a private and confidential document. The document and these kinds of briefings are seen as being a safe space for matters of international significance to help with the visit. Disclosure of the information would be likely to have a negative impact on the UK’s relations with China and more widely. This is because disclosure of this information would have a damaging effect on the trust other overseas governments and international institutions have in the UK and on international relations generally. It could cause offence and could mean that they and other partners might in future be inhibited in working with, and particularly sharing information with, the UK Government in confidence or otherwise.

#### The Commissioner’s position

16. In order for a prejudice based exemption, such as section 27, to be engaged the Commissioner believes that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed 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 potential disclosure of the information being withheld and the prejudice which the exemption is

designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance.

- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., disclosure would be likely to result in prejudice or disclosure would result in prejudice. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.
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'.<sup>2</sup>
  18. With regard to the first criterion of the test set out above, the Commissioner accepts that the type of harm that the FCDO believes would be likely to occur if the information was disclosed is applicable to the interests protected by section 27(1)(a) of FOIA.
  19. With regard to the second and third criteria, having consider the nature of the document, an internal confidential briefing for the Prime Minister, and its content, in the Commissioner's view it is plausible to argue that disclosure of this under FOIA would be likely to have a negative impact on the UK's relations with China. He does not consider that the age of the information, and the passage of time since the information was created, impacts on this finding. In other words, the information remains sensitive and disclosure, in the Commissioner's view, poses a genuine and real risk to UK-Chinese relations, particularly taking into account the threshold for prejudice described in the Tribunal case quoted above. Furthermore, the Commissioner accepts the FCDO's broader point that disclosure of such information potentially risks having an impact on the FCDO's relations with other states as it could raise concerns about the UK being a trusted and confidential international partner. Section 27(1)(a) is therefore engaged.

### **Public interest test**

20. Section 27 is a qualified exemption and therefore the Commissioner must consider whether in all the circumstances of the case the public

---

<sup>2</sup> Campaign against Arms Trade v the Information Commissioner and Ministry of Defence EA/2007/0040

interest in maintaining the exemption contained at section 27(1)(a) outweighs the public interest in disclosing the information.

21. The FCDO acknowledged the public interest in raising awareness of how the UK government engages with other states, and of how it promotes and protects the interests of the UK overseas.
22. However, the FCDO argued that the effective conduct of the UK's international relations depends upon maintaining the trust and confidence of other states, which allows for the free and frank exchange of information between the UK and other governments. If the UK does not maintain this trust and confidence, its ability to protect and promote UK interests through international relations will be hampered, which will not be in the public interest. Furthermore, the FCDO emphasised that disclosing information which harms the UK's relations with China would undermine the UK's ability to promote and protect its interests in the region, and which also be firmly against the public interest.
23. The Commissioner considers there to be clear public interest in raising the awareness of how the UK government interacts with other states, particularly in the context of high profile engagements such as the one which is the focus of this request. Disclosure of the information in question would provide a detailed insight into the preparations and considerations of the visit in question by the then Prime Minister David Cameron. Disclosure would therefore provide an insight into not simply UK-China relations at the time, but also how briefings for such visits are undertaken.
24. However, the Commissioner agrees that there is a significant public interest in ensuring the UK can maintain effective relations with its international partners. In the circumstances of this case the Commissioner is satisfied that disclosure of the material presents a serious and credible risk to the UK's relation with China, an outcome which would be firmly against the public interest. The Commissioner considers that the public interest in favour of maintaining the exemption attracts further additional weight given the potential impact of disclosure on the UK's international relations more broadly.
25. Taking the above into account the Commissioner has concluded that the public interest favours maintaining the exemption contained at section 27(1)(a) of FOIA.
26. In view of this finding, the Commissioner has not considered the other exemptions cited by the FCDO to withhold the information it has confirmed it holds.

**Section 23 – security bodies**  
**Section 24 – national security**

27. The FCDO also explained that it was relying on sections 23(5) and 24(2) of FOIA as a basis to refuse to confirm or deny whether it held any further information falling within the scope of the request other than the information which it is prepared to disclose to the complainant or which it already sought to withhold on the basis of section 27(1)(a) (and the other exemptions cited at paragraph 7).
28. Sections 23(5) and 24(2) exclude the duty of a public authority to confirm or deny whether it holds information which, if held, would be exempt under section 23(1) or 24(1) respectively.
29. Information relating to security bodies specified in section 23(3) is exempt information by virtue of section 23(1). Information which does not fall under section 23(1) is exempt from disclosure under section 24(1), if it is required for the purpose of safeguarding national security.
30. By virtue of section 23(5) the duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in section 23(3).
31. By virtue of section 24(2) the duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.
32. The Commissioner does not consider the exemptions at sections 23(5) and 24(2) to be mutually exclusive and he accepts that they can be relied on independently or jointly in order to conceal whether or not one or more of the security bodies has been involved in an issue which might impact on national security. However, each exemption must be applied independently on its own merits. In addition, the section 24 exemption is qualified and is therefore subject to the public interest test.
33. The test as to whether a disclosure would relate to a security body is decided on the normal standard of proof, that is, the balance of probabilities. In other words, if it is more likely than not that the disclosure would relate to a security body then the exemption would be engaged.
34. From the above it can be seen that section 23(5) has a very wide application. If the information requested is within what could be described as the ambit of security bodies' operations, section 23(5) is likely to apply. This is consistent with the scheme of FOIA because the security bodies themselves are not subject to its provisions. Factors



indicating whether a request is of this nature will include the functions of the public authority receiving the request, the subject area to which the request relates and the actual wording of the request.

35. With regard to section 24(2), the Commissioner again considers that this exemption should be interpreted so that it is only necessary for a public authority to show either a confirmation or a denial of whether requested information is held would be likely to harm national security.
36. In relation to the application of section 24(2) the Commissioner notes that the First tier Tribunal (Information Rights) has indicated that only a consistent use of a 'neither confirm nor deny' (NCND) response on matters of national security can secure its proper purpose. Therefore, in considering whether the exemption is engaged, and the balance of the public interest, regard has to be given to the need to adopt a consistent NCND position and not simply to the consequences of confirming whether the specific requested information in this case is held or not.
37. In the context of section 24, Commissioner accepts that withholding information in order to ensure the protection of national security can extend to ensuring that matters which are of interest to the security bodies are not revealed. Moreover, it is not simply the consequences of revealing whether such information is held in respect of a particular request that is relevant to the assessment as to whether the application of the exemption is required for the purposes of safeguarding national security, but the need to maintain a consistent approach to the application of section 24(2).
38. As part of his investigation of this complaint the Commissioner asked the FCDO to explain why it had applied sections 23(5) and 24(2) in the manner which it had to this request. In response the FCDO simply explained that it remained of the view that it was appropriate for it to confirm that it held some information (which it considered to be exempt) and then refuse to confirm or deny on the basis of sections 23(5) and 24(2) whether it held any further information. The FCDO noted that in its view explaining why this was the case would involve the disclosure of withheld information (hence the Commissioner understands its reference to section 17(4) in the refusal notice). However, as part of its submissions to him the FCDO did not provide the Commissioner with any further explanation as to why it had relied on these exemptions.
39. In the absence of such submissions the Commissioner has concluded that the FCDO has no basis to rely on sections 23(5) and 24(2), and therefore it should confirm to the complainant whether it holds any further information falling within the scope of this request beyond that a) which it is prepared to disclose to him and b) which it has withheld on the basis of sections 27(1)(a), (c) and (d), 35(1)(a), 43(2) and 40(2).



## Procedural matters

---

40. Section 1(1) of FOIA provides that any person making a request for information to a public authority is entitled, subject to the application of any exemptions:

'(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.'

41. Section 10(1) of FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt. Under section 17(3) a public authority can, where it is citing a qualified exemption, have a 'reasonable' extension of time to consider the balance of the public interest.

42. The Commissioner considers it reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days, which would allow a public authority 40 working days in total. The Commissioner considers that any extension beyond 40 working days should be exceptional and requires the public authority to fully justify the time taken.

43. In this case the complainant submitted his request on 17 July 2023 and the FCDO issued its substantive response on 10 November 2023. The Commissioner does not consider this to be a reasonable amount of time in the circumstances of this case and this delay therefore represents a breach of section 17(3).

## Other matters

---

44. FOIA does not impose a statutory time within which internal reviews must be completed, albeit that the section 45 Code of Practice explains that such reviews should be completed within a reasonable timeframe.<sup>3</sup> The Commissioner expects that most internal reviews should be completed within 20 working days, and even for more complicated requests, reviews should be completed within a total of 40 working

---

<sup>3</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

days.<sup>4</sup> In this case, as noted above, the FCDO did not complete the internal review within this timeframe.

---

<sup>4</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#internal>

## Right of appeal

---

45. 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)

46. 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.
47. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**