

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 August 2024

**Public Authority:** Department for Business and Trade ("DBT")  
**Address:** Old Admiralty Building  
London  
SW1A 2DY

#### Decision (including any steps ordered)

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1. The complainant has requested information on meetings between Infosys and Lord Johnson, Minister of State in the DBT at the time of the request. DBT relied on FOIA section 41- information provided in confidence and section 43 – commercial interests and at internal review section 40(2) – personal information, to withhold some information within the scope of the request. In addition, during the Commissioner's investigation, DBT relied on FOIA section 27 – international relations and section 29 – the economy to redact the remaining information.
2. The Commissioner's decision is that DBT is entitled to rely on FOIA sections 27(1)(c) and (d) and section 40(2) to withhold the remaining information.
3. The Commissioner does not require further steps.

#### Request and response

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4. On 17 November 2023, the complainant wrote to DBT and requested information in the following terms:

"Under the Freedom of Information Act 2000 I wish to see full copies of all minutes, agendas, action logs and briefing materials for the following meetings with Infosys:

1) 27/04/2023 -

<https://openaccess.transparency.org.uk/?meeting=93522>

2) 08/03/2023 -

<https://openaccess.transparency.org.uk/?meeting=93421>

Please include any other materials that were handed out or received during the meetings, such as presentations, reports, etc..”

5. DBT responded on 5 December 2023 confirming that information was held in regard to the first meeting (27 April 2023) but no information was held regarding the second meeting (8 March 2023) as Infosys did not attend the meeting. The complainant did not challenge this confirmation and therefore this case focusses on DBT’s response to the meeting of 27 April 2023. The information held was withheld in reliance of FOIA sections 41 (information provided in confidence) and 43 (commercial interests).
6. Following an internal review DBT wrote to the complainant on 30 January 2024. It provided two documents, one with FOIA section 40(2) (personal information) redactions and another with redactions in reliance of sections 40(2) – personal information, 41(1) and 43(2).

## Scope of the case

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7. The complainant contacted the Commissioner on 13 February 2024 to complain about the way their request for information had been handled. They explained:

“I ask the ICO to release the information redacted under sections 35 and 27 as there is a clear public interest in knowing what was discussed with Infosys to the fullest extent possible due to as Infosys is connected to the Prime Minister because it was founded by his father-in-law, N. R. Narayana Murthy in addition Infosys has a number of high value Government contracts.”
8. The Commissioner asked the complainant to confirm whether he had cited the wrong exemptions and wished to complain about sections 41 and 43. In the absence of a response the Commissioner proceeded with the exemptions as cited by DBT.
9. However, during the Commissioner’s investigation DBT also applied FOIA section 27(1)(c) and (d) – international relations and section 29(1)(a) – the economy to the redacted information.

10. On 25 July 2024 DBT advised the complainant of its reliance on these additional exemptions and disclosed further information which had previously been redacted under sections 40(2), 41 and 43.
11. The Commissioner considers that the scope of his investigation is to consider the application of the cited exemptions to the remaining withheld information regarding the meeting of 27 April 2024.

## **Reasons for decision**

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### **Section 27 – international relations**

12. Section 27 of FOIA states that:

“(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

(c) the interests of the United Kingdom abroad, or

(d) the promotion or protection by the United Kingdom of its interests abroad.”

13. In order for a prejudice based exemption, such as section 27, to be engaged the Commissioner considers 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; and
  - 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 or ‘would’ result in prejudice. In relation to the lower threshold, the Commissioner considers that the chance of prejudice occurring must be a real and significant risk. With regard to the higher threshold, in the Commissioner’s view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
14. DBT explained that the redacted text refers to frank and confidential conversations between a UK minister and Infosys. It drew the Commissioner’s attention to the objectives of the meeting as stated at

the beginning of the briefing document, disclosed to the complainant at internal review:

- “• To understand Infosys’ future investment plans for the UK and to establish a relationship with senior leadership team.
  - Encourage them to continue to grow their business in the UK, including exporting from the UK.
  - To acknowledge & recognise that we value the relationship & their commitment to continue to invest in the UK for various Trade and Investment opportunities.
  - Reassure that the FTA [Free Trade Agreement] will further create new opportunities and investor friendly policies to support business growth.
  - Witness some of the new technology being developed by Infosys during a tour of the company.
  - Encourage Infosys to attend the Global Investment Summit, in the UK in Oct 2023, to be hosted by the Prime Minister later this year.”
15. DBT explained that its investment service team identifies and supports investment projects made by overseas headquartered companies, into the UK economy. This supports and encourages foreign direct investment flows, the creation of high-value employment and strengthens and diversifies supply chains. The meeting concerned was set up with a view to obtaining a general update from Infosys on its UK operation.
16. DBT considers that disclosure of the redacted paragraphs:
- “... would likely harm the UK’s interests in India and abroad and harm the UK’s promotion of its interests in India and abroad because it would likely undermine the trust HMG [His Majesty’s Government] has with private entities.”
17. Furthermore DBT advised:
- “The UK Government has publicly outlined its 2030 Roadmap for India-UK future relations<sup>1</sup> which includes important priorities relating to trade and prosperity and investment. The Department considers that release

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<sup>1</sup> <https://www.gov.uk/government/publications/india-uk-virtual-summit-may-2021-roadmap-2030-for-a-comprehensive-strategic-partnership/2030-roadmap-for-india-uk-future-relations#i-connecting-our-countries-and-people>

of the withheld information would likely have a broader impact on undermining UK interests in south Asia at a time when the UK is endeavouring to strengthen commercial bonds with India as outlined in the 2030 Roadmap for India-UK relations.”

18. DBT explained that it provides bespoke, free and confidential advice to countries abroad to enable them to grow in the UK whilst aligning the UK's own agenda of economic development with their plans. Companies share information with DBT which at times is unknown to shareholders and must therefore be handled in confidence.
19. Furthermore DBT provided the Commissioner with confidential explanations which he is unable to reproduce but which have been taken into account in reaching his decision.
20. DBT concluded by stating that disclosure of the redacted information would be likely to have a negative effect on its ability to obtain business intelligence from private internationally based organisations. It said that this is directly relevant to the UK's interests abroad and the UK's ability to promote its interests abroad.
21. DBT confirmed the threshold of the prejudice occurring as “would be likely” to cause prejudice with a real and significant risk of harm arising from disclosure.

### **The Commissioner's position**

22. With regard to the first criterion of the three limb test set out in paragraph 13 the Commissioner accepts that the prejudice described by DBT above relates to the interests which the exemptions contained at sections 27(1)(c) and (d) are designed to protect.
23. With regard to the second and third criteria, the Commissioner has viewed the redacted information and is satisfied that disclosure would be likely to harm the UK's interests abroad and the promotion of those interests by the prejudice as set out by DBT both as covered in this notice and in confidential submissions, which the Commissioner accepts is likely as a consequence of disclosure in this case. The Commissioner notes the confidential explanations provided by DBT and agrees that such harm is clearly not in the interests of the UK. He is satisfied that that there is a clear causal link between disclosure of the redacted information and harm occurring with the UK's interests abroad and the promotion and protection of those interests and relations with both Infosys and other entities in similar circumstances. Furthermore he accepts that there is a real and significant risk of that prejudice occurring.
24. On this basis the Commissioner finds that the exemptions at sections 27(1)(c) and (d) are engaged.

### **Public interest test**

25. Section 27(1) is a qualified exemption and therefore subject to the public interest test set out in FOIA section 2(2)(b). The Commissioner has therefore considered whether in all the circumstances of the case the public interest in maintaining the exemptions outweighs the public interest in disclosure.

#### Public interest in favour of disclosure

26. DBT acknowledged that there is always a public interest in transparency and accountability of government when discussing trade matters and negotiating free trade agreements with other countries. It also acknowledged the public interest which the UK-India free trade agreement has already attracted.
27. DBT accepts that further transparency could promote accountability in how public money is being spent on trade negotiations resulting in impacts on communities. It explained that DBT is committed to providing regular updates on the progress of these negotiations<sup>2</sup> and publishing details of ministerial meetings.
28. Furthermore DBT noted the public interest in understanding whether there are conflicts of interests arising from investments into the UK and the personal interests of UK ministers, members of parliament and their families.

#### Public interest in favour of maintaining the exemption

29. DBT explained:

“The effective conduct of the UK’s international relations depends upon maintaining the trust and confidence of other states and international companies. This relationship allows for the free and frank exchange of information between the UK and these private entities. In turn this allows the UK to effectively protect and promote its interests abroad which has a direct correlation to investment for UK entities in India and Indian entities in the UK.”

30. DBT added:

“The sharing of confidential information with the Department is an essential part of trade negotiations and disclosure of such documents

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<sup>2</sup><https://www.gov.uk/government/news/joint-outcome-statement-uk-india-round-thirteen-of-fta-negotiations>

would likely undermine our ability to continue achieve successful free trade agreement negotiations with India and other countries that are beneficial to UK interests. Protecting trust between the UK and private international based entities such as Infosys, is particularly important as we continue into negotiations with India. Protecting this relationship is in the utmost public interest.”

31. DBT also holds the view that disclosure of the remaining withheld information would not add further value to the public debate of the meeting.
32. In answer to its point set out in paragraph 28 above DBT advised that it considers that:

“The Department acknowledges the utmost importance in the public interest such matters. Nevertheless, the Department notes that such matters are reviewed and scrutinised through the process and principles set out in the Ministerial Code<sup>3</sup>. Therefore, the public interest in understanding whether there is a conflict of interest is served through this constitutional process and not via prejudicial and unfair disclosure through FOIA.

...public interest in conflicts of interest should not be conflated with meetings minutes held between HMG and private entities – where no conflict of interest has been identified through the correct and appropriate channels.”

### **The Commissioner’s view**

33. The Commissioner agrees that there is a public interest in the disclosure of information to inform public debate on the UK government’s work on negotiating trade agreements and the spending of public money in achieving those agreements.
34. The Commissioner does not accept DBT’s conclusion regarding disclosure of the remaining information as set out in paragraph 31. He considers that disclosure of the remaining information would provide further information to the public debate. However, his task is to balance the significance of this contribution against the prejudice to international relations.

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<sup>3</sup> <https://www.gov.uk/government/publications/ministerial-code/ministerial-code#ministers-private-interests>



35. As covered in paragraph 27, the Commissioner accepts that to some extent updates on negotiations with India are provided by government.
36. The Commissioner notes that DBT has addressed the complainant's comment in paragraph 7, regarding the connection between the then Prime Minister's father-in-law and Infosys with reference to the Ministerial Code. However, he considers that DBT has given insufficient weight to this factor in its deliberations. He accepts that the Code plays an important part in managing any conflicts of interest and that, to some extent, this reduces the public interest in disclosure of the specific information requested in this case. The connection nevertheless is an important factor to take into account.
37. Furthermore the Commissioner is aware of the scrutiny<sup>4</sup> in the media of Mr Sunak and his connection with Infosys. Having viewed the withheld information, the extent to which the public interest in transparency and understanding in this regard is served by disclosure of the withheld information is limited and therefore does not carry sufficient weight in the overall balancing exercise to significantly influence that balance.
38. The Commissioner considers that there is a public interest inherent in prejudice-based exemptions in avoiding the harm specified in the exemption. Therefore, in balancing the public interest some weight is automatically attributed to maintaining the exemption, when the exemption is engaged.
39. In a different case<sup>5</sup> the Commissioner found there to be significant public interest in protecting the ability of the UK to protect and promote its interests with other states such as India. His findings in that case have supported the circumstances in this case.
40. DBT is tasked with encouraging foreign businesses to invest, expand and diversify their interests in the UK. This work involves interacting with those businesses and their sharing of confidential information on their strategies and objectives. This sharing is an essential part of trade negotiations. The Commissioner accepts that disclosure of the redacted

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<sup>4</sup> <https://www.standard.co.uk/news/politics/who-owns-infosys-rishi-sunak-scheme-akshata-murty-b1076499.html>  
[https://www.theregister.com/2024/02/13/infosys\\_uk\\_government\\_contracts/](https://www.theregister.com/2024/02/13/infosys_uk_government_contracts/)  
<https://www.theguardian.com/politics/2024/feb/04/sunak-fresh-infosys-scrutiny-minister-accused-vip-access>

<sup>5</sup> <https://icosearch.ico.org.uk/s/search.html?collection=ico-meta&profile=decisions&query&query=ic-206407-M6N3>



information would be likely to undermine government's ability to achieve successful free trade agreement negotiations with India and other countries beneficial to UK interests. This would not serve the public interest.

41. The Commissioner is not persuaded that the public interest in disclosure of the redacted information carries sufficient weight to outweigh the significant public interest in the government being able to protect and promote the UK's interests abroad. He therefore finds that the balance of the public interest favours maintaining the exemptions contained at sections 27(1)(c) and (d).
42. Having reached his decision that the public interest favours maintaining the section 27 exemption the Commissioner has not proceeded to consider section 29, 41, or 43 which were applied to the same information.

### **Section 40(2) – personal information**

43. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
44. In this case the relevant condition is contained in section 40(3A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('GDPR').
45. In this case DBT has relied on section 40(2) to redact the names of three junior civil servants from the readout of the meeting attendees on 27 April 2023.
46. The Commissioner's guidance<sup>6</sup> at page 12 explains:

"It is reasonable to expect that public authorities disclose more information about senior public authority employees than more junior ones. Senior employees should expect their posts to carry a greater level of accountability, since they are likely to be responsible for major policy decisions and the expenditure of public funds. For example, a junior employee who is not accountable for their submissions to a senior

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<sup>6</sup> [https://ico.org.uk/media/for-organisations/documents/1187/section\\_40\\_requests\\_for\\_personal\\_data\\_about\\_employees.pdf](https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf)

government minister has no expectation that their name will be disclosed in response to an FOI request.”

47. The Commissioner has made determinations on this matter in many previous decisions, two of which are referenced below to illustrate the tests he applies when considering section 40(2), which he has therefore not repeated here. He is satisfied that the redactions made by DBT concern junior civil servants ie officials at Grade 6 or below. These are the ranks below Senior Civil Service and there are no factors in the circumstances of this case sufficient for disclosure to be lawful.
48. In this case the Commissioner considers that disclosing the requested information would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the GDPR. DBT was therefore correct to apply section 40(2) of FOIA to the redacted names.

### **Other matters**

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49. The Commissioner notes that DBT changed its position and was late in its application of section 27 to withhold the requested information. He would point out that it is preferable for public authorities to determine their complete position at the time of the initial refusal notice or the internal review, in advance of a complaint to the Commissioner. In that way the complainant has a clearer understanding of the public authority's position and is able to consider the application of exemptions before making a complaint.

## **Right of appeal**

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50. 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)

51. 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.
52. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Susan Hughes**  
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