

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 October 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 correspondence between Baroness Verma and parts of the FCDO. The FCDO confirmed that it held information falling within the scope of the request but considered this to be exempt from disclosure on the basis of sections 27(1)(a) and (c) (international relations), 43(2) (commercial interests) and 40(2) (personal data) of FOIA. At the internal review stage it withdrew its reliance on sections 27 and 43 and disclosed the information to which these exemptions had been applied. The complainant questioned whether the FCDO was likely to hold further information falling within the scope of his request and was dissatisfied with the FCDO's delays in providing the information it did disclose to him.
2. The Commissioner's decision is that on the balance of probabilities the FCDO has located all of the information it holds falling within the scope of the request. However, he has found that the FCDO breached section 10(1) in the handling of this request.
3. The Commissioner does not require further steps.

Request and response

4. The complainant submitted the following request to the FCDO on 7 February 2024:

“This is a request for:

1) Any correspondence held by the FCDO between Baroness Verma and the British High Commission, Kampala, covering the period 1st January 2019 to present

2) Any correspondence held by the FCDO between Baroness Verma and the ministers responsible for Africa from 1st January 2019 to present”

5. The FCDO responded on 15 March 2024 and confirmed that it held information falling within the scope of the request but considered this to be exempt from disclosure on the basis of sections 27(1)(a) and (c) (international relations), 43(2) (commercial interests) and 40(2) (personal data) of FOIA.
6. The complainant contacted the FCDO on the same day and asked it to conduct an internal review of this refusal.
7. The FCDO contacted him on 24 April 2024, and subsequently on 16 June and 18 July 2024 to explain that it needed additional time to complete the internal review.
8. The FCDO informed the complainant of the outcome of the internal review on 2 August 2024. The FCDO explained that following the passage of time that had elapsed since its original FOI response it had now concluded that the balance of public interest in respect of both section 27 and section 43 favoured disclosure of the information to which these exemptions had been applied. The information to which these exemptions had been applied was therefore disclosed to the complainant. However, it remained of the view that section 40(2) applied to parts of the information.
9. The complainant contacted the FCDO on 19 August 2024 and asked it to confirm whether it had located all of the information falling within the scope of his request. He chased this matter with the FCDO on 27 August 2024 but did not receive a response.

Scope of the case

10. The complainant initially contacted the Commissioner on 24 April 2024 in order to complain about the FCDO's handling of his request. He challenged the FCDO's decision to withhold the information falling within the scope of his request. He was also dissatisfied with the FCDO's delays in completing the internal review.
11. Following the completion of the internal review, the complainant raised his concerns directly with the Commissioner that the FCDO may not have located all of the information it held falling within the scope of his request. He explained that he was also dissatisfied with the FCDO's delays in disclosing information to him.

Reasons for decision

Section 1

12. In cases such as this where there is some dispute as to whether all of the information falling within the scope of the request has been located, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
13. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any further information which falls within the scope of the request.
14. 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 no further information is held.

The complainant's position

15. The complainant noted that the information provided to him by the FCDO covered the period September 2023 to December 2023. However, the period of time covered by his request was from January 2019 to the date of the request (February 2024). He explained that it was surprising that there are no other records from earlier in this period given that, for example, Baroness Verma invited Kate Airey (the High Commissioner to Uganda) to an event in Kampala in November 2022. He provided the Commissioner with a screenshot as evidence of this, which the Commissioner understands consists of an online post by Baroness Verma.

The FCDO's position

16. In order to consider this issue the Commissioner asked the FCDO a number of questions about the searches undertaken to locate information falling within the scope of the request. The Commissioner has reproduced these key questions below and summarised the FCDO's response to each.

17. Question: What searches have been carried out to locate information falling within the scope of this request and why would these searches have been likely to retrieve all relevant information?

Response: The FCDO explained that the relevant departments and posts had searched their records using the terms of the FOI request. It was satisfied that these searches were reasonable and likely to find all relevant information falling within the scope of the request.

18. Question: Please describe thoroughly any searches of relevant paper/electronic records and include details of any staff consultations.

Response: The FCDO explained that searches were conducted by the High Commission in Kampala, the geographical policy department (Uganda desk) as well as the Ministerial correspondence unit. It considered that if relevant information was held, it would be in these locations. The FCDO explained that the searches included the inboxes and files of past and present staff in those areas to cover the time period set out in the request.

19. Question: If searches included electronic data, which search terms were used and please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.

Response: The FCDO explained that it used the terms set out in the request to define the searches made for information.

20. Question: Was any recorded information relevant to the scope of the complainant's request deleted/destroyed?

Response: The FCDO explained that it was not unusual for information on past events, including invites, agendas and logistics to be deleted after an event had passed or as plans changed. However, it was not able to determine if any information was ever held prior to the searches that was in scope but deleted prior to the receipt of the FOI request.

The Commissioner's position

21. In view of the FCDO's response to his enquiries the Commissioner is satisfied that on the balance of probabilities it has located all of the information it holds falling within the scope of this request. He considers the searches conducted to have been logical and sufficiently focused – both in respect of the areas of the FCDO searched and the terms used – to ensure that all relevant information would be found. The Commissioner notes that such searches did locate some information falling within the scope of the request, namely about events in October 2023 and January 2024. The Commissioner appreciates that the complainant provided an example of an event from November 2022 which he would have expected the FCDO to hold information about. But in the Commissioner's view the explanation provided by the FCDO at paragraph 20 provides an acceptable rationale as to why information about this event may no longer have been held at the point the request was submitted in February 2024. In any event, the Commissioner reiterates the point that the searches conducted did locate information falling within the scope of the request albeit about more recent events and communications with Baroness Verma. In view of this the Commissioner can see no reason why the same searches would not have yielded information dating from prior to September 2023 if indeed this was held by the FCDO at the date of the request.

Procedural matters

22. Section 1(1) of FOIA:

“(1) Any person making a request for information to a public authority is entitled—

(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.”

23. Section 10(1) requires a public authority to comply with the requirements of section 1(1) within 20 working days.

24. As the FCDO disclosed information to the complainant outside of the 20 working day period the Commissioner has found that it breached section 10(1) of FOIA.

Other matters

25. 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.¹ 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 days.²
26. In this case, as noted above, the FCDO did not complete the internal review within this timeframe as it took 97 working days to issue the review. The Commissioner appreciates that this delay caused understandable frustration for the complainant.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#internal>

Right of appeal

27. 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

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

28. 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.
29. 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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