

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 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 the FCDO in London and the British High Commission in Sri Lanka concerning David Cameron's involvement with the Colombo Port City. The FCDO disclosed some information in response to the request but sought to withhold further information on the basis of sections 27(1)(a), (c) and (d) (international relations) and 40(2) (personal data) of FOIA.
2. The Commissioner's decision is that these exemptions provide a basis upon which the FCDO can withhold the undisclosed information falling within the scope of the request. However, the Commissioner has concluded that the FCDO breached sections 10(1) and 17(1) of FOIA by failing to respond to the request within 20 working days.
3. The Commissioner does not require further steps.

Request and response

4. The complainant submitted the following request to the FCDO on 30 October 2023:

"Please provide a copy of any correspondence between the Foreign and Commonwealth Office and the British High Commission in Sri Lanka related to David Cameron's involvement with the Colombo Port City, from 1st January 2023 to date.

If this would breach the cost limit, please limit the search to diplomatic telegrams ("diptels")."

5. The FCDO responded on 5 January 2024 and confirmed that it held information falling within the scope of the request but it considered this to be exempt from disclosure on the basis of sections 21 (information reasonably accessible to the applicant), 27(1)(a), (c) and (d), and 40(2) of FOIA.
6. The complainant contacted the FCDO on 10 January 2024 and asked it to conduct an internal review of this response.
7. The FCDO informed him of the outcome of the internal review on 21 June 2024. The FCDO explained that it had concluded that some information could be released and it provided a digest of the information as a result. (The review also noted that further searches conducted during the course of the internal review process had identified further additional information falling within the scope of the request.) With regard to the application of section 21(1), the FCDO explained that this related to a news article, and whilst it was satisfied that this was reasonably accessible to the complainant, in order to assist him it provided him with a copy of this. With regard to the remaining information which was not being disclosed, the FCDO explained that it remained of the view that this was exempt from disclosure on the basis of one of sections 27(1)(a), (c) and (d), or 40(2) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 2 May 2024 in order to complain about the FCDO's decision to withhold information falling within the scope of his request. He was also dissatisfied with the FCDO's delays in responding to the request and its failure to, at that point, complete the internal review in a timely manner.
9. During the course of the Commissioner's investigation the FCDO explained that it had established that there was an inconsistency with the way section 40(2) had been applied to a particular name in the previously disclosed digest provided to the complainant and it no longer considered section 40(2) to apply to this individual's name. It also explained that it was no longer seeking to rely on section 21(1) to further information which had not previously been released to the

complainant. This information also related to news articles and it was prepared to now release such information to the complainant. In view of this amended position the FCDO provided the complainant with a revised version of the digest of disclosable information on 10 October 2024.

10. Consequently, this decision notice focuses on the remaining information which the FCDO is seeking withhold. The exemptions applied to such information are sections 27(1)(a), (c) and (d), or 40(2).

Reasons for decision

Section 27(1) – international relations

11. The FCDO redacted some information from the disclosed digest on the basis of sections 27(1)(a), (c) and (d) of FOIA. These state 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...
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad.”

12. 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.

13. 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'.¹

14. The FCDO argued that disclosure of the information which it had withheld on the basis of sections 27(1)(a), (c) and (d) would be likely to prejudice its relations with Sri Lanka, and in turn harm its ability to protect and promote the UK's interests in the region. In support of this position the FCDO provided the Commissioner with submissions which focused on the specific content of the withheld information, and why in its view, given this content and the context of the UK's relations with Sri Lanka, disclosure of this information would be prejudicial. Clearly, the Commissioner cannot outline these submissions in this notice as to do so would reveal the content of the withheld information itself.
15. 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 sections 27(1)(a), (c) and (d) of FOIA.
16. With regard to the second and third criteria, the Commissioner is satisfied that based on the FCDO's submissions to him, the content of the withheld information, and taking into account the broader context of the UK's relations with Sri Lanka, he is satisfied that there is a real and genuine risk of relations between the two countries being harmed if the information was disclosed. In reaching this decision the Commissioner has taken into account the comments of the Tribunal above in respect of the threshold for prejudice in the context of this exemption. Furthermore, as a result of such an impact on the UK's relations with Sri Lanka, the Commissioner is also satisfied that there is a real and genuine risk of the UK's ability to protect and promote its interests in the region being harmed. The Commissioner is therefore satisfied that sections 27(1)(a), (c) and (d) are engaged.

Public interest test

17. Section 27 is a qualified exemption and therefore the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemptions contained at sections 27(1)(a), (c) and (d) outweigh the public interest in disclosing the information.

¹ Campaign against Arms Trade v the Information Commissioner and Ministry of Defence EA/2007/0040

18. The complainant argued that there was a clear public interest in revealing what information the FCDO recorded about Mr Cameron's trips to Sri Lanka and Dubai to promote the Colombo Port City.
19. In support of this position the complainant argued that the project was a controversial one to build a low tax development and investment zone near the Sri Lankan capital of Colombo. He also highlighted that the project was part of China's "belt and road" plans through the state-owned firm, China Communications Construction, and ties in to China's plans to invest in strategically important partners. The complainant argued that this strategy is a major part of China's strategic positioning to challenge Western influence in international affairs by building a network of Chinese dependencies.
20. The complainant noted that Mr Cameron was paid to promote this project. He highlighted that whilst Mr Cameron had denied through a spokesperson that he had any links with the Chinese company behind the project, media reporting had found pictures that clearly showed him engaging closely with a senior China Communications Construction official during the site trip. Consequently, the complainant argued that "[Mr] Cameron clearly therefore has questions to answer on this matter".
21. Furthermore, the complainant argued that the withheld information could provide an insight into whether concerns had been raised within the FCDO about Mr Cameron's role with the Port City at the time. Disclosure could also inform current public debate on Britain's links to a rising autocratic China, what roles it is appropriate for former Prime Ministers to accept, and how such conflicts are managed within government.
22. The complainant also emphasised the unique position of this request. It was about an individual, who following the request being submitted, was then appointed as Foreign Secretary. The complainant argued that given the role of minister's special advisers in screening of FOI requests, this created a conflict of interest, which strongly supported maximum transparency to avoid any suggestions of inappropriate interference.
23. The FCDO argued that it was clearly in the public interest for the UK to maintain the trust and confidence of other governments. If it were not able to do so its ability to protect and promote the UK's interests, through effective relations with such countries, would be harmed. With regard to the specific circumstances of this case, the FCDO provided the Commissioner with submissions – again focusing on the content of the withheld information and the UK's relations with Sri Lanka – which in its view supported its position that the public interest favoured maintaining the exemptions contained at section 27(1). It emphasised that in view of

these points, the public interest firmly favoured maintaining the exemptions.

24. The Commissioner acknowledges that Mr Cameron's involvement with the Colombo Port City has generated particular interest given, as the complainant noted, the controversial nature of the project itself and suggestions of links between Mr Cameron and Chinese investors.² In view of this the Commissioner accepts that there is a genuine and legitimate interest in understanding the role of an ex-Prime Minister in such a project.
25. As a consequence the Commissioner considers the complainant's arguments around the need for transparency in order to inform the public's understanding of what, if any concerns, had been raised about Mr Cameron's involvement with the project, and his broader point about the need for disclosure to inform debate about appropriate roles for ex-Prime Ministers, are clearly very valid ones.
26. However, having considered the content of the withheld information, in the Commissioner's view the extent to which this would actually meet or inform such interests is, in his view, arguably very limited. Without reference to the content of the information itself, the Commissioner is unable to elaborate on this further, but he would emphasise that in contrast to the amount of information which has been released, minimal information has been redacted on the basis of sections 27(1)(a), (c) and (d).
27. With regard to the public interest in maintaining the exemptions, the Commissioner considers there to be a significant public interest in ensuring the UK can maintain effective relations with its international partners. Furthermore, in contrast to the limited weight he would afford the arguments in favour of disclosure given the content of the information, the Commissioner is satisfied that disclosure of this information clearly risks having a direct, and potentially wide ranging, impact on the UK's relations with Sri Lanka. In the Commissioner's view such an outcome would be firmly against the public interest.
28. In conclusion, whilst the Commissioner acknowledges the complainant's point regarding maximum transparency, in view of the above he has concluded that the public interest for each of the three separate

² See for example <https://www.politico.eu/article/david-cameron-uk-faces-fresh-scrutiny-over-chinese-built-sri-lankan-city/>

exemptions cited by the FCDO favours maintaining the exemption in question.

Section 40(2) – personal data

29. The FCDO explained that on the basis of section 40(2) it had redacted the names and contact details of junior officials and third parties. It also explained that on the basis of section 40(2) it had withheld correspondence sent from an individual containing his views of the visit.
30. 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.
31. In this case the relevant condition is contained in section 40(3A)(a).³ 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 ('UK GDPR').
32. It is common practice for a public authority to argue that the names and contact details of junior officials are exempt from disclosure under FOIA on the basis of section 40(2) as disclosure would contravene the principles set out in Article 5 of the GDPR. Furthermore, unless there are very case specific circumstances, the Commissioner accepts that the names and contact details of the junior officials are exempt from disclosure on the basis of section 40(2) of FOIA. This is in line with the approach taken in the Commissioner's section 40 guidance.⁴
33. Therefore, the Commissioner accepts that such information is exempt from disclosure on the basis of the reasoning set out in these previous decision notices which found that the personal data of junior officials was exempt from disclosure on the basis of section 40(2) of FOIA.⁵ He notes that the contact details of some senior officials (ie email addresses) have also been redacted, but again this in line with the

³ As amended by Schedule 19 Paragraph 58(3) DPA.

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https://ico.org.uk/media/fororganisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf - see page 12

⁵ IC-114449-B7P7 <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022310/ic-114449-b7p7.pdf> paragraphs 49-71 and IC-110922-T9R1 Paragraphs 49-71 and IC-110922-T9R1 <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022447/ic-110922-t9r1.pdf> paragraphs 39-62

approach of previous disclosures where the names of senior officials are disclosed, but their contact details are not.

34. Furthermore, the Commissioner is also satisfied that disclosure of similar information about the representatives from the third parties would be a breach of data protection principles as it would result in the disclosure of personal information about them that they would not necessarily expect to be made public. In addition, disclosure of such information would not contribute to or significantly meet the public interests considered above. Such information is therefore also exempt from disclosure on the basis of section 40(2) of FOIA.
35. Finally, with regard to the correspondence from the individual which had been withheld, the Commissioner is satisfied that the opinions expressed are clearly the personal data of the individual in question. Furthermore, the Commissioner is satisfied that the individual would have no reasonable expectations that such correspondence would be disclosed under FOIA, and that to do so would be likely to invade their privacy. The Commissioner is therefore satisfied that such information is exempt from disclosure on the basis of section 40(2) of FOIA.

Procedural matters

36. 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.”

37. Section 10(1) requires a public authority to comply with the requirements of section 1(1) within 20 working days. If a public authority is seeking to withhold information, section 17(1) requires a public authority to issue a refusal notice stating which exemptions apply within the same timeframe.
38. In this case the FCDO's initial response was not issued until 46 working days after the request. It therefore breached section 10(1) in respect of the information that was disclosed as part of its initial response and section 17(1) in relation to the delay in issuing its refusal notice in respect of the information it was seeking to withhold.

Other matters

39. 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.⁶ 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.⁷
40. In this case the FCDO did not complete the internal review within this timeframe as it took 114 working days to issue the review.

⁶ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

⁷ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#internal>

Right of appeal

41. 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

42. 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.
43. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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