

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 November 2024

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested information about a meeting between UK Ministers and the Crown Dependencies, which took place in March 2022. The Home Office refused the request, citing sections 27(1)(a) and (c) (International relations) of FOIA.
2. The Commissioner's decision is that the Home Office was entitled to rely on sections 27(1)(a) and (c) to withhold the information.
3. The Commissioner does not require steps as a result of this decision.

Request and response

4. On 27 January 2024, the complainant wrote to the Home Office and requested information in the following terms:

"On 9 March 2022, Ministers from Jersey, Guernsey and the Isle of Man met the UK's Minister of State for Security and Borders, Rt Hon Damian Hinds MP, and the Parliamentary Under-Secretary of State for Business, Energy and Corporate Responsibility, Rt Hon Lord Callanan (the "Meeting").

It is understood that the Meeting may have taken place by MS Teams and that Ian Gorst was one the [sic] Ministers from Jersey that participated in the Meeting.

The Government of Jersey has previously released a Press Release providing details of this Meeting. See:
<https://www.gov.je/News/2022/pages/jerseyresponsesanctions.aspx>

Please provide copies of:

- (a) any briefing notes or other notes prepared in advance of the Meeting; and
 - (b) any notes, records or similar (whether formal or informal) of what was discussed at this Meeting.”
5. The Home Office responded on 4 March 2024. It said the only information it held falling within scope of the request was a briefing on the meeting (which it withheld under section 27(1)(c) (which is concerned with prejudice to the interests of the United Kingdom abroad)) and administrative information (which it withheld under section 35(1)(d) (Formulation of government policy etc)).
 6. The complainant requested an internal review on 4 March 2024. He argued that in view of public statements that had been made by the other parties to the meeting, disclosure was unlikely to prejudice the interests of the UK abroad. He also argued that proper weight had not been given to the public interest in disclosing the information and suggested that the briefing could at least be disclosed in part.
 7. The Home Office provided the internal review outcome on 4 June 2024. It maintained that its response had been correct.

Scope of the case

8. The complainant contacted the Commissioner on 7 June 2024 to complain about the way his request for information had been handled. He disagreed with the application of section 27(1)(c) to withhold the briefing document. He did not challenge the application of section 35.
9. During the Commissioner’s investigation, the Home Office varied its position slightly. In addition to relying on section 27(1)(c), it said it considered that section 27(1)(a) (prejudice to relations between the UK and any other State) was also engaged. It also said that prejudice “would be likely to” occur, where previously it had told the complainant prejudice “would” occur. These late revisions have not been put to the complainant in order to forego any further delay in the investigation, but

the Commissioner does not consider the complainant has been disadvantaged by this.

10. Following the combined cases of the Home Office v Information Commissioner (GIA/2098/2010) and DEFRA v Information Commissioner (GIA/1694/2010) in the Upper Tribunal, a public authority is able to claim a new exemption either before the Commissioner or the First-tier Tribunal and both must consider any such new claims.
11. The Commissioner has viewed the withheld information, a briefing document prepared before the meeting, setting out background information on the matters to be discussed, objectives and suggested talking points.
12. The analysis below considers the citing of sections 27(1)(a) and (c) to withhold the briefing document.

Reasons for decision

Section 27 – International relations

13. The Home Office has cited sections 27(1)(a) and (c) of FOIA, which state:

“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”.

14. The Commissioner notes that section 27(1) does not necessarily focus on the importance, subject or content of the requested information, but on whether UK interests abroad, or the international relations of the UK, might be prejudiced through the disclosure of the information. In other words, section 27(1) focuses on the effects of the disclosure.
15. The Commissioner’s guidance on section 27¹ acknowledges that there is some overlap between the different provisions set out in the exemption.

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-27-international-relations/>

It recognises that the term "state" includes the Crown Dependencies² and that the interests of the UK abroad covers a broad range of issues; it lists some examples, including:

- communications between public authorities in the UK and other states, international organisations or organs of other states;
 - UK policy and strategic positioning in relation to other states or to international organisations; and
 - diplomatic matters between states.
16. The Home Office told the complainant that the meeting with Crown Dependencies took place under an expectation of confidentiality. Disclosure of the information, which it considered sensitive, would prejudice the interests of the UK abroad, making sensitive information-sharing and effective co-operation markedly more difficult, both now, and in the future.
 17. The Home Office told the Commissioner that the briefing note sets out, in general terms, the UK Government's position on, and approach to, a meeting about an important 'live' policy issue. It believed disclosure would be likely to prejudice the UK's relationship with the Crown Dependencies and adversely impact the Crown Dependencies' cooperation and engagement with the UK Government on other sensitive policy issues, currently and in the future, thereby also prejudicing the UK's interests abroad.
 18. It said the UK and the Crown Dependencies share a long-standing constitutional relationship, based on mutual respect and support for each other's interests. The Crown Dependencies are responsible for their own domestic affairs, and for the purposes of FOIA are recognised as "states" other than the UK.
 19. The effective conduct of the UK's international relations depends on maintaining trust and confidence between the UK Government and other states – in this case, the Crown Dependencies. This trust and confidence facilitates an environment conducive to the free and frank exchange of views, advice and information on a wide variety of issues such as trade, commerce and security. This trust and confidence would be compromised by the release of the requested information, which contains confidential policy information relating to the Crown Dependencies.
 20. With regard to the risk of prejudice occurring as a result of disclosure, the Home Office confirmed the lower threshold, ie that release of this

² ie the Channel Islands and the Isle of Man

information 'would be likely to' prejudice relations between the UK and the Crown Dependency governments, and also would be likely to prejudice the UK's interests abroad.

21. In order for a prejudice based exemption such as section 27 to be engaged, the Commissioner considers that three criteria must be met:
 - First, 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 – ie, 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.
22. 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 particular diplomatic response to contain or limit damage which would not otherwise have been necessary."³.
23. With regard to the first criterion of the test set out above, the Commissioner accepts that the type of harm that the Home Office believes would be likely to occur if the information was disclosed is applicable to the interests that sections 27(1)(a) and (c) are designed to protect.
24. With regard to the second criterion, having considered the content of the withheld information and taking into account the Home Office's submissions to him, the Commissioner is satisfied that there is a causal link between disclosure of this information and harm occurring to the interests identified by the Home Office.

³ Campaign against Arms Trade v the Information Commissioner and Ministry of Defence EA/2007/0040 (26 August 2008)

25. With regard to the third criterion, having considered the arguments put forward by the Home Office, the Commissioner's view is that it has demonstrated that the lower level of prejudice 'would be likely to' occur. The risk of prejudice occurring is one that is clearly more than hypothetical and the Commissioner accepts that disclosure of the withheld information risks not only directly impacting on the UK's diplomatic relations with the Crown Dependencies, but also, on a broader basis, on the trust and confidence that other international partners have in the UK.
26. The Commissioner is therefore satisfied that sections 27(1)(a) and (c) are engaged by the withheld information.

Public interest test

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

Public interest arguments in favour of disclosure

28. In his internal review request, the complainant referred to media releases issued by each of the Crown Dependencies following the meeting. He noted that the UK Government appeared to be the only participant that had not publicly commented on the meeting and he argued that greater transparency was required, particularly in view of the stable relationship the UK enjoys with the Crown Dependencies. He set out the following arguments:

"Given that all other participants have not only released, but actively publicised and briefed out details of the meeting, it cannot be reasonably maintained that release of the Briefing would prejudice the interests of the UK abroad.

Whilst the arguments against release of the Briefing are (at best) flimsy, there are strong arguments in favour of disclosure. In circumstances where other governments participating in the meeting have given accounts of the meeting, it is in the public interest that the UK Government records of the meeting are also available for scrutiny. The initial response did not give consideration to this factor.

The initial response also failed to acknowledge, amongst other things, the specific public interest in the subjects discussed in the meeting and covered in the Briefing. The Economic Crime (Transparency and Enforcement) Act 2022 has been the subject of extensive media coverage in UK; there is a clear public interest in transparency around these subjects.

There is also public interest in transparency around how the UK Government interacts with the Governments of the Crown Dependencies (Jersey, Guernsey and the Isle of Man) in relation to these subjects.

The Governments of Jersey, Guernsey and the Isle of Man each separately recognised the public interest in the meeting, given that they each published and distributed press releases noting the fact of the meeting and containing details about it."

29. The Home Office provided the following arguments:

"There is a general public interest for HM Government to be open and transparent to maintain public trust. Such openness and transparency improve [sic] accountability and helps public engagement with HM Government. Release of the requested information may help increase public knowledge and awareness of UK Government co-ordination with the CDs [Crown Dependencies]".

Public interest arguments in favour of maintaining the exemption

30. Noting the likely "limiting and negative effect on the interests of the UK abroad and its relations with other international organisations, courts or states", the Home Office told the complainant that there is a public interest in ensuring that the UK enjoys effective international relations with other states, organisations and courts in order to further its foreign and domestic policy aims.

31. In the internal review, it further argued:

"The ability of Ministers and officials to communicate candidly is a crucial aspect of the safe space required for effective international discussion. Without the protection afforded by this safe space, sensitive information-sharing and discussion, and in general, effective co-operation between the UK and other states would be markedly more difficult, both now, and in the future."

32. The Home Office told the Commissioner:

"Disclosure...could deter future open and honest communications – the so-called 'chilling effect' - between the UK and the CDs (and by extension with other jurisdictions and countries), thereby hindering the UK's ability to conduct its foreign policy effectively.

Furthermore, disclosure risks not only undermining trust and confidence between UK and the CDs, but also risks undermining the effective implementation of...a government foreign policy priority.

...

Timing is also an important factor in this case. The meeting for which the briefing was drafted took place in March 2022 – a little over two and a half years ago – still relatively recent, while conversations between the UK and CD governments [on the same matters] remain very much live. Therefore in our view, it is not in the wider public interest to prejudice those sensitive conversations by disclosing the withheld information at this time.”

Balance of the public interest

33. The Commissioner acknowledges that there will always be a general public interest in transparency for its own sake.
34. The Commissioner considers that there is also a public interest in the disclosure of information which provides an insight into the UK's relations with other states, including the Crown Dependencies. In the specific circumstances of this request, he accepts that there is a general public interest in adding to the public's understanding of how the UK approached discussions on an important policy issue with the Crown Dependencies. Disclosure would provide an insight into the UK Government's position on the matters to be discussed, going into the meeting.
35. However, it should be borne in mind that, as the withheld information was created by way of preparation for the meeting, it is not a summary of the meeting itself, and so it would not provide any insight into what was actually discussed.
36. There is a very strong public interest in ensuring that the UK's relationships with other states are not harmed or made more difficult and less effective. This is to ensure that the UK can protect and promote its relations and interests abroad and it goes to the heart of the purpose of the exemption.
37. In the context of this request, the Commissioner accepts that disclosure of the withheld information would be likely to have a chilling effect on the UK's relations with the Crown Dependencies, as the information divulges confidential information about them which, as far as he has been able to ascertain, is not in the public domain. In his view, such an outcome would be firmly against the public interest, not only in the context of relations between the UK and the Crown Dependencies, but potentially more broadly. He is satisfied that the disclosure of the information would risk the UK's relations with other states, damaging the trust and confidence with which the UK is viewed by other international partners.
38. While the complainant has cited a public interest in disclosure stemming from the amount of information placed in the public domain by the other parties to the meeting, those disclosures are concerned with

summarising the meeting that had just occurred. The Commissioner notes that the withheld information does not add anything that would directly inform the public in that regard, because it was prepared prior to the meeting taking place. The Home Office does not hold a note of the meeting itself.

39. As set out in paragraph 14, sections 27(1)(a) and (c) are concerned with the effect that disclosing information would have on UK interests abroad, and its relationship with other states. Having accepted the Home Office's submissions on that point, the Commissioner considers that the public interest in maintaining good international relations between the UK and the Crown Dependencies, and other states, is greater than the public interest in transparency regarding the requested information.
40. The Commissioner has therefore concluded that the balance of the public interest favours maintaining the exemption contained at sections 27(1)(a) and (c) of FOIA.

Procedural matters

Time for compliance

41. The Home Office breached sections 1 and 10 of FOIA by failing to issue a valid response within the 20 working day statutory time for compliance. The Commissioner has made a note of this for monitoring purposes.

Other matters

Internal review

42. The Commissioner considers that internal reviews should be completed within twenty working days of receipt, or in exceptional cases, a maximum of 40 working days. In this case, the Home Office failed to keep to this timescale.
43. The Commissioner has made a note of this for monitoring purposes.

Right of appeal

44. 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

45. 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.
46. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF