

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 January 2025

Public Authority: Executive Office Northern Ireland
Address: Castle Buildings
Stormont Estate
Belfast
BT4 3SR

Decision (including any steps ordered)

1. The complainant has requested information related to the 'Rwanda' policy and Northern Ireland. The Executive Office Northern Ireland ("the public authority") relied upon, amongst another, the exemptions at section 28(1) FOIA and s35(1)(a) to withhold the requested information.
2. The Commissioner's decision is that the section 28(1) exemption was engaged for the majority of the withheld information and that the public interest favoured maintaining the exemption.
3. Where the minority of the withheld information did not engage section 28(1), it did engaged section 35(1)(a), however the public interest did not favour maintaining the exemption.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Disclose the information identified in the confidential annex.
5. 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.

Background

6. The UK and Rwanda Migration and Economic Development Partnership¹, also known as the Rwanda asylum plan, was a policy whereby eligible people would have been relocated to Rwanda for processing, asylum and resettlement.
7. The policy was introduced between 2019 to 2022 under a Conservative government and The Safety of Rwanda (Asylum and Immigration) Act 2024 received Royal Assent and came into force on 25 April 2024.
8. The policy was revoked under the current Labour government in early July 2024.

Request and response

9. On 3 May 2024 the complainant wrote to the public authority and requested information in the following terms:

“Please release the following under FOI:

Any correspondence/minutes of meetings, between 1 January 2024 to the present, related to the 'Rwanda' policy and Northern Ireland”.
10. On 4 June 2024 the public authority refused to provide some of the requested information. It cited the following exemptions as its basis for doing so:
 - s35(1)(a) – Formulation and Development of Government Policy
 - s28(1) - Relations within the UK
 - 40(2) – Personal information
11. The complainant requested that the public authority reviewed its usage of sections 35 and 28 but did not take issue with its reliance of section 40(2). Following the internal review the public authority wrote to the complainant on 4 July 2024. It stated that it upheld its decision.

¹ [World first partnership to tackle global migration crisis - GOV.UK \(www.gov.uk\)](https://www.gov.uk/world-first-partnership-to-tackle-global-migration-crisis)

Scope of the case

12. The complainant contacted the Commissioner on 18 July 2024 to complain about the way his request for information had been handled.
13. The Commissioner considers that the scope of his investigation is to determine whether the public authority was entitled to withhold some of the requested information by reference to sections 28 and 35. As the complainant had not challenged² the use of section 40(2), this is not an issue the Commissioner need consider.

Reasons for decision

Section 28(1): prejudice to relations between UK administrations

14. Section 28(1) of FOIA states that information is exempt if its disclosure would or would be likely to prejudice relations between any administration in the UK and any other such administration. The administrations referred to are the Government of the United Kingdom, the Scottish Government, the Executive Committee of the Northern Ireland Assembly, and the Welsh Government.
15. The arrangements in place between the four UK administrations provide for the sharing of information between them in appropriate circumstances. The success of these arrangements requires the UK administrations to work together in an environment of mutual trust, cooperation and respect³.
16. The purpose of the exemption is therefore to protect good relations between the different administrations within the UK, and the Commissioner considers that the exemption will be engaged where the disclosure of the information would be likely to harm trust, openness and the free and frank exchange of views between any of the administrations.

Public Authority's Submissions

17. The public authority was in receipt of information from, and was working closely with, the Home Office on issues relating to immigration policy and specifically how the commencement of The Safety of Rwanda (Asylum & Immigration) Bill may impact on the work of the department

² Paragraph 11 above

³ [MoU between the UK and the Devolved Administrations.pdf](#)

in terms of its responsibilities around refugee and asylum seekers in Northern Ireland.

18. Immigration remains an excepted matter for the UK Government and the Devolved Administrations in the UK have no policy making responsibility in that regard. There is a Memorandum of Understanding in place between it and the Home Office dealing specifically with information supplied by the Home Office in respect of immigration matters. Should the information in scope have been released into the public domain unilaterally by it, this would have prejudiced relations between the NI Executive and the UK Government. Additionally, much of the interaction with the Home Office was on the basis that it was a reserved matter and any information provided to the department was provided on a confidential basis.
19. This would have had a particular impact on it being able to fulfil its liaison and co-ordination responsibilities in respect of refugees and asylum seekers in Northern Ireland. Disclosure would have distorted the public debate, could have given rise to unrealistic expectations that were subject to political change and had the potential to leave it vulnerable moving forward. Whilst accepting there was a public interest in disclosure, given that the Rwanda Bill was clearly a matter of public interest, the department felt that the balance was in favour of maintaining the exemption.

Commissioner's Reasonings

20. In order for a prejudice based exemption, such as section 28(1), to be engaged the Commissioner considers that three criteria must be met:
 - Firstly, the actual harm or prejudice which the public authority alleges would, or would be likely to, occur 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 disclosure 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 on by the public authority is met – i.e., disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.
21. In terms of the first criterion set out above, the Commissioner accepts that the type of harm that the public authority believes would occur if the information was disclosed is applicable to the interests protected by section 28(1) of FOIA.

22. Furthermore, with regard to the second and third criteria, the Commissioner accepts that if the majority of this information was disclosed it would undermine the relationship of trust and confidence between the UK and the public authority given the content of the information and the basis upon which it was exchanged. The Commissioner also accepts that disclosure of that information could impact on the free flow of information between the UK Government and other administrations if it was assumed that information of this nature would be disclosed in the future. The Commissioner has therefore concluded that the exemption contained at section 28(1) is engaged as regards the majority of the withheld information. However, the Commissioner has also concluded that for a minority of the withheld information the exemption is not engaged, as this information is already in the public domain and/or is not sensitive. Its disclosure would not or would not be likely to prejudice relations between any administration in the UK and any other such administration. This "minority information" is laid out in the confidential annex (which is only to be served on the public authority) to this decision notice.
23. The Commissioner concurs with the arguments put forward by the public authority for the majority of the withheld information, having considered them carefully in the context of the withheld information. The Commissioner therefore finds that the exemption at section 28(1) of FOIA is engaged on the higher level of prejudice, i.e. that disclosure would harm relationships and make co-operation more difficult.
24. Section 28 provides a qualified exemption and therefore, in respect of the information to which he accepts the exemption is engaged, the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest in favour of disclosing the information

25. There is a general public interest in disclosure. Disclosure may promote greater accountability and transparency and increased levels of public trust in the asylum process in NI.
26. The information, if disclosed, could help further the understanding of, and participation in, public debate and enable the public to have a more effective contribution to the (sensitive) policy-making process surrounding asylum.
27. Disclosure would provide the opportunity to help individuals understand decisions made by public authorities which affect their lives, and to assess the quality of decisions taken as well as understand the extent to which various factors influenced certain decisions.

Public interest in favour of maintaining the exemption

28. As set out above the Commissioner has accepted that disclosure of the withheld information would be likely to prejudice relations between the NI Executive and the UK Government.
29. The Commissioner considers that there is a significant public interest in ensuring that effective relations exist between the UK administrations. The Commissioner considers that disclosure of the withheld information would be likely to harm those relations, particularly in the circumstances as in those at the time of the request. In that the policy was at the time of the request still "live" and there was to be a high degree of cooperation between the United Kingdom government and the public authority to implement the policy. In such circumstances it was not in the public interest that such cooperation be stymied or hamstrung by the fear that confidential information between the two would be made public.
30. On balance, after considering all the factors the Commissioner finds that the public interest in maintaining the exemption at section 28 outweighs the public interest in disclosure of the withheld information.
31. As regards the minority of the withheld information that does not engage section 28, the Commissioner next considers the applicability of section 35(1)(a).

Section 35(1)(a): formulation and development of government policy

32. Section 35(1)(a) FOIA provides an exemption from the duty to disclose information to the extent that it requires the disclosure of information relating to the formulation or development of government policy. The Commissioner understands 'formulation' to broadly refer to the design of new policy, and 'development' to the process of reviewing or improving existing policy.
33. The purpose of subsection 35(1)(a) is to protect the integrity of the policymaking process, and to prevent disclosures which would undermine this process and result in less robust, well-considered policy options.
34. The exemption is class based and so it is only necessary for the withheld information to 'relate to' the formulation or development of government policy for the exemption to be engaged – there is no need to consider its sensitivity. However, the exemption is subject to the public interest test.
35. In accordance with the Tribunal decision in *DfES v Information Commissioner and the Evening Standard* (EA/2006/0006, 19 February 2007) the term 'relates to' is interpreted broadly. Any significant link between the information and the process by which government either formulates or develops its policy will be sufficient to engage the exemption.

36. Having viewed the withheld information (and mindful of the purpose of the exemption) the Commissioner is satisfied that it relates to the formulation and development of the Rwanda asylum plan policy.
37. Therefore, the Commissioner finds that the exemption at section 35(1)(a) of FOIA is engaged
38. However, section 35 is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.
39. In general, there is often likely to be significant public interest in disclosure of policy information, as it is likely to promote government accountability, increase public understanding of the policy in question, and enable greater public debate and scrutiny of both the policy itself and how it was arrived at.
40. The Commissioner considers that any public interest in maintaining the exemption in relation to the specific information in question is so weak that it does not equal, let alone outweigh, the public interest in disclosure. This is since this information is already in the public domain and/or is not sensitive.
41. Given the non-sensitive nature of the minority information the Commissioner is satisfied that, in the circumstances of this case, the public interest clearly does not favour maintaining the exemption and the information should be released.

Right of appeal

42. 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

43. 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.
44. 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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