

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 December 2018

Public Authority: Department for International Development
Address: 22 Whitehall
London
SW1A 2EG

Decision (including any steps ordered)

1. The complainant submitted a request to the Department for International Development (DFID) for information about work commissioned by the then Secretary of State, Priti Patel, about a humanitarian and development partnership between Israel and the UK. DFID confirmed that it held information falling within the scope of the request but sought to withhold it on the basis of the following sections of FOIA: 27(1)(a), (b), (c) and (d) and 27(2) (international relations), 35(1)(a) (formulation and development of government policy), 35(1)(b) (Ministerial communications) and 40(2) (personal data). The Commissioner has concluded that the requested information is exempt from disclosure on the basis of sections 27(1)(a), (b), (c) and (d) and that in all of the circumstances of this case the public interest favours maintaining these exemptions.

Request and response

2. The complainant submitted the following request to DFID on 20 November 2017:

'According to a DFID statement, "On her return from Israel, the Secretary of State commissioned Departmental work on humanitarian and development partnership between Israel and the UK, and on disability."

[Link: <https://www.gov.uk/government/news/statement-from-internationaldevelopment-secretary-priti-patel>]

I would like to be provided with:

1) Copies of any and all instructions given commissioning this work (i.e. briefings from Ms Patel or her advisors, or any other individual, setting out what work is being commissioned by Ms Patel).

2) Copies of any and all documents drafted or compiled in response to the work commissioned by Ms Patel.'

3. DFID contacted the complainant on 18 December 2017 and explained that it held information falling within the scope of the request but it considered this to be exempt on the basis of section 27 (international relations) FOIA and it needed additional time to consider the balance of the public interest.
4. DFID issued the complainant with further public interest test holding letters until it provided him with a substantive response to his request on 29 March 2018. The response explained that DFID had concluded that all of the information it held falling within the scope of the request was exempt from disclosure on the basis of the exemptions contained at sections 27(1)(a), (c) and (d) and 35(1)(a) (formulation and development of government policy) of FOIA and that the public interest favoured maintaining these exemptions.
5. The complainant contacted DFID on 3 April 2018 and asked it to conduct an internal review of this decision.
6. DFID informed him of the outcome of the internal review on 5 July 2018. The review upheld the application of the exemptions cited in the refusal notice and also explained that sections 27(2) and 40(2) (personal data) also applied to some of the withheld information.¹

¹ During the course of the Commissioner's investigation, DFID also explained that it considered section 27(1)(b) of FOIA to apply.

Scope of the case

7. The complainant contacted the Commissioner on 18 June 2018 in order to complain about DFID's decision to withhold the information falling within the scope of his request.

Reasons for decision

Section 27 – international relations

8. Section 27(1) of FOIA states 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*
- (b) relations between the United Kingdom and any international organisation or international court*
- (c) the interests of the United Kingdom abroad, or*
- (d) the promotion or protection by the United Kingdom of its interests abroad.'*

DFID's position

9. DFID argued that disclosure of the withheld information would be particularly likely to prejudice the UK's relations with Israel and also with other states and international organisations.
10. In support of this position DFID explained in its internal review response that it depends very heavily on maintaining good relationships with its international partners to deliver its poverty focussed objectives. It argued that disclosure of the withheld information was likely to have an adverse effect on the UK's ability to conduct international relations. For example, it was likely to be viewed by the Government of Israel as a lack of discretion and undermine confidence in the UK's ability to conduct international relations in an appropriate manner. DFID emphasised that the information was prepared in what was intended to be a protected space, and not for public release. It argued that the trust and confidence in the UK Government to be able to protect discussions with, or information provided by, overseas governments, are critical in maintaining good international relations. DFID explained that the nature of the information relevant in the scope of the request, which relates to early thinking on developing a partnership between the UK and Israel (and includes information given to the UK by Israel in confidence), makes it particularly sensitive. As such, DFID argued that premature

disclosure could easily cause offence to Israel and so prejudice the UK's international relations. More broadly, DFID argued that disclosure of such information would have a corrosive effect on the trust overseas governments and international organisations have in the UK and could mean that they might not in the future be willing to work or share information in confidence, or otherwise, with the UK government.

11. DFID provided the Commissioner with further detailed submissions, which made direct reference to the content of the withheld information itself, to support its reliance on these exemptions. Clearly, the Commissioner cannot include such submissions in this decision notice. However, DFID's overarching argument that the exemptions were engaged was based upon the rationale set out in the internal review.

The Commissioner's position

12. In order for a prejudice based exemption, such as section 27(1) 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 – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there 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.
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*'.
14. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by DFID clearly relates to the interests which the exemptions contained at sections 27(1)(a), (b), (c) and (d) are designed to protect. With regard

to the second criterion, having considered the withheld information, and taken into account DFID's submissions to her, the Commissioner is satisfied that there is a causal link between disclosure of this information and prejudice occurring to the UK's international relations. Furthermore, she is satisfied that the resultant prejudice would be real and of substance. Moreover, the Commissioner is satisfied that there is a more than hypothetical risk of prejudice occurring and therefore the third criteria is met. The Commissioner cannot elaborate in detail on why she has reached this view without referring to the content of the withheld information itself. However, the Commissioner is clear that DFID's argument that in order for the UK to maintain effective relations with international partners it needs to enjoy their trust, is a compelling one. In the circumstances of this case she is persuaded that the information is particularly sensitive given that it reflects early thinking between developing a partnership between the UK and Israel and also includes, in part, information provided to the UK in confidence by Israel. The Commissioner therefore has no hesitation in concluding that disclosure of the withheld information would be likely to prejudice the UK's relations with Israel. Furthermore, given the sensitivity of this information the Commissioner also accepts DFID's argument that disclosure of it risks having broader prejudicial consequences in terms of undermining the confidence of other states and international organisations in how DFID, and the UK, would treat their information.

15. Sections 27(1)(a), (b), (c) and (d) are therefore engaged.

Public interest test

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

17. The complainant argued that there was a public interest in the disclosure of the information concerning the work that Priti Patel commissioned, following her return from Israel, because the visit itself was controversial given that it was conducted without the oversight of the government or Foreign and Commonwealth Office, and the motivations for the trip remained obscure. The complainant noted that Ms Patel was ultimately sacked by the Prime Minister for the controversy.

18. DFID accepted that there is a clear public interest in releasing information to provide transparency and accountability for the way in which it engages with partner governments and how it spends considerable amounts of public money promoting international development.

19. However, DFID emphasised that disclosure of the withheld information would have a corrosive effect on the trust overseas governments and international organisations have in the UK and on international relations generally which would be contrary to the public interest. It also argued that it was firmly against the public interest that the government's ability to promote international development and protect UK interests abroad was not undermined. DFID also emphasised that the UK government had invested a great deal in international development in the wider Middle East and in building key relationships with partner governments to help support humanitarian and development needs.
22. The Commissioner agrees that there is a clear public interest in DFID being open and transparent about the way it engages with partner governments and organisations. Furthermore, the Commissioner acknowledges that as Ms Patel's trip to Israel ultimately resulted in her departure as Secretary of State and there is a legitimate interest in understanding the nature of that trip and the work that Ms Patel commissioned her then department to undertake as a result of it. Disclosure of the withheld information would provide a clear and direct insight into the work that Ms Patel commissioned as a result of this trip and as a result the Commissioner agrees that there is strong public interest in the disclosure of the withheld information. However, the Commissioner agrees with DFID that there is strong public interest in ensuring that the UK can enjoy effective relations with its international partners. Furthermore, in the circumstances of this case the Commissioner considers that public interest in maintaining the exemption attracts particular weight given the sensitivity of the information – relating as it does to early thinking on a potential partnership – and because disclosure would not only harm the UK's relations with Israel, but also with a number of other partners. The Commissioner has therefore concluded that the public interest favours maintaining the exemptions contained at sections 27(1)(a), (b), (c) and (d) of FOIA.
20. In light of this decision, the Commissioner has not considered the other exemptions cited by DFID.

Right of appeal

21. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

22. 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.
23. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jonathan Slee
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