

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 August 2019

Public Authority: The Foreign and Commonwealth Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant submitted a request to the Foreign and Commonwealth Office (FCO) seeking information regarding claims the UK had made about Russian disinformation following the Novichok poisoning in Salisbury. The FCO provided the complainant with information which it argued fell within the scope of his request, a position which the complainant disputed. The Commissioner has concluded that the information disclosed by the FCO does not fall within the scope of the request. The FCO therefore failed to comply with the requirements of section 1(1) of FOIA by not stating, as it should have done, then it did not hold any information falling within the scope of the request. Furthermore, the Commissioner has concluded that the FCO breached section 10(1) of FOIA by failing to provide a substantive response to the request within 20 working days.

Request and response

2. The complainant submitted the following request to the FCO on 21 March 2018:

'I am writing this email to make a freedom of information request in relation to claims your department made in the following tweet today

<https://twitter.com/foreignoffice/status/976023331873935360>

You are claiming that Russia is sending disinformation to the effect that

1) The nerve agent came from Sweden

2) Ukraine did it to frame Russia

3) It was contamination from the UK's own research facility.

Yet what I seem to recall is rather different in that Russia claimed that it was possibly the case that

1) The nerve agent could have come from Sweden.

2) (I have not seen this claim.)

3) It could have been contamination from the UK's own research facility

In particular the third point is worth highlighting, given the fact that similar problems at other government facilities of a similarly sensitive nature have been encountered as you can see in the following videos

a) Aldermaston AWE <https://www.youtube.com/watch?v=4i8moI9--j0>.

b) Sellafield <https://www.youtube.com/watch?v=t9bFHI5UbNo>

I trust the fact that these videos are from a series known as the Mark Thomas Comedy Product and are from some time back does not disprove the point made about the fact that contamination is indeed a possibility (however remote) and is one which you would of course wish to take seriously given the lamentable safety record of the above two institutions.

On the one hand, Russia claims that they are possibilities which is indeed true no matter how unlikely they might be. On the other hand, the Foreign and Commonwealth Office claims that these are statements of fact which are made as part of a Russia campaign of disinformation. This claim is perhaps true although I cannot find the source of these statements except some made on the internet by nongovernmental sources.

It seems to me to be self-evident that as per my last freedom of information request and as per statements which are made by most people, that

1) The internet is full of rubbish

2) Most if not all people get their news from the mainstream media anyway

3) There are no statements on the part of the Russian government which are in line with what you have claimed they have said.

My FOI request is therefore as follows:

Can you provide examples of where the Russian government and not someone nongovernmental actor as part of a disinformation campaign has made such statements rather than suggesting them as possibilities.'

3. The FCO contacted the complainant on 20 April 2018 and confirmed that it held information falling within the scope of the request but it considered it to be exempt from disclosure on the basis of section 27 (international relations) of FOIA and it needed additional time to consider the balance of the public interest test.
4. The FCO continued to send the complainant further public interest test extension letters until it provided him with a substantive response to his request on 19 December 2018. The FCO's response was as follows:

'Below are links to examples of where officials from the Russian government have made statements intended to spread disinformation for example that 'Terrorists did it' (Russian Ministry of Foreign Affairs spokesperson)

<https://euvsdisinfo.eu/figure-of-the-week-20/>

<https://euvsdisinfo.eu/skripal-and-the-disinformation-swamp/>

<https://euvsdisinfo.eu/salisbury-poisoning-on-russian-tv-confuse-undermine-and-ridicule/>

The Russian Government's approach is consistent with their objective to confuse audiences and distract attention from the fact that Russia has acted in flagrant breach of its international obligations. This was the same approach they took over the shooting down of Malaysian Airlines Flight MH-17.

Freedom House produces regular reports on press freedoms globally. You can find the latest report on Russia here.

<https://freedomhouse.org/report/freedom-press/2017/russia>

Russian state-controlled media outlets, such as Rossiya 1, report all of Russian Government explanations publically available on their websites.

Under section 21 of the Act, we are not required to provide information in response to a request if it is already reasonably accessible to you. Examples of statements made by Russia can be found on other sources available to you.'

5. The complainant contacted the FCO on 20 December 2018 and asked it conduct an internal review of this request. He argued that the information the FCO had provided to him did not answer his request because:

*'You have provided a series of *claims* as to what the Russian government is supposed to have said on certain channels, without providing actual examples. An example should provide a link to the particular quotation and or article where the Russian government has made a particular statement.*

This is important because without the benefit of actual properly referenced examples, such claims can be considered to be British disinformation.

I should you therefore [sic] to provide examples (and not claims) of Russian government disinformation.'

6. The FCO informed him of the outcome of the internal review on 7 February 2019. The review concluded that section 21 had been correctly applied because the examples of information contained in its response of 19 December 2018 did fall within the scope of the request. The FCO explained that further such examples included a paper¹ published in April 2018 by The European Centre of Excellence for Countering Hybrid Threats, and an analysis² published by Stopfake in January 2019 on disinformation. The internal review also concluded that section 27 had been incorrectly applied to the request.

Scope of the case

7. The complainant contacted the Commissioner on 8 February 2019. He explained that in his view the examples provided to him by the FCO did not fall within the scope of his request and therefore section 21 of FOIA did not apply to this information.
8. In his grounds of complaint to the Commissioner the complainant noted that:
 - It is important to recognise that he requested 'examples' of statements in his initial FOI request. As he stated in his request for a review of the initial response to that request, he argued that 'claims' on the part of others as to what the Russian government has supposedly stated do not constitute examples. Rather, the complainant argued that in order to fulfil his request

¹ https://www.hybridcoe.fi/wp-content/uploads/2018/04/HybridCoE_WorkingPaper_From-NudgeToNovichok_Omand.pdf

² <https://euvsdisinfo.eu/year-in-review-1001-messages-of-pro-kremlin-disinformation/>

the FCO should provide him with examples of direct quotations from the Russian government.

- The examples provided by the FCO should pre-date the point that his request was submitted given that it would not be reasonable to make a FOI request into events which occur in the future.
9. In her initial letter to the FCO the Commissioner set out the complainant's grounds of complaint. She also explained the following to the FCO:
- (i) In considering complaints about how a public authority has handled a request the Commissioner focuses on the circumstances as they existed at the point that the request was made. This is because when responding to a request for information under FOIA the starting point for a public authority is whether the requested information is held on the date the request was submitted.
 - (ii) Practically, in terms of this case this therefore meant that in considering this complaint the Commissioner's focus would be on establishing whether, at the point that the request was submitted, the FCO held any examples as described in the complainant's request. In light of this approach, the Commissioner explained that in her view the links set out in the internal review response are irrelevant to the request because they post-date the request of 20 March 2018.
 - (iii) The Commissioner explained that at this stage her focus would therefore be on establishing whether the examples cited by the FCO in the refusal notice of 19 December 2018 fell within the scope of the request, and thus by implication, whether section 21 applied.
 - (iv) The Commissioner noted that the complainant had argued that the examples in the refusal notice did not answer his request because he asked for 'statements' made by the Russian government and therefore he expected to be provided with direct quotations from government officials.
 - (v) The Commissioner explained that in her view given the way in which the complainant's request was worded, ie seeking statements from government officials, she considered it reasonable for him to argue that in order for this request to be fulfilled he would have to be provided with statements or quotations from government officials. The Commissioner suggested that it followed that in order for section 21 of FOIA to

be applicable, the complainant would have to be provided with a links to examples of such statements or quotations.

- (vi) The Commissioner explained that having considered the website links set out in the refusal notice, at this stage she was unclear how these links could be said to contain examples which would fulfil the request. This is because, as the complainant suggested, they did not to contain statements or quotations from government officials. Rather, they simply contained summaries of what the Russian government is said to have said on certain media channels.
 - (vii) The Commissioner therefore asked the FCO to explain why it considered the links provided to complainant in the refusal notice to contain information which fulfilled his request.
 - (viii) The Commissioner also asked the FCO to confirm whether it held any *further* information – beyond that which it sought to withhold on the basis of section 21 of FOIA – that would fall within the scope of this request. That is to say, did the FCO hold further information containing statements or quotations from the Russian government constituting disinformation about the Salisbury poisoning? If this was the case the Commissioner asked the FCO to provide her with a copy of this information and confirm whether the FCO was content to release such information under FOIA. If not, the Commissioner asked the FCO to explain which exemptions within FOIA it considered to apply to such information and why.
10. In response the FCO explained to the Commissioner why it considered the examples considered in the refusal notice to fall within the scope of the request. (The FCO's explanation to the Commissioner is considered in further detail below). However, the FCO explained that in light of the complainant's dissatisfaction with the links provided both in the original response and internal review, the FCO had prepared an annex of direct statements and quotations from the Russian government, all of which were made before the request was submitted and were available in the public domain at the time of the request. The FCO also explained to the Commissioner that it did not hold any further information containing statements or quotations from the Russian government constituting disinformation about the poisonings in Salisbury.

11. The FCO provided the complainant with a copy of this annex on 26 April 2019.³
12. Further to this the Commissioner contacted the complainant in order to establish whether he wished to continue with his complaint. The complainant explained that he did. He argued that:
 - He remained of the view that the examples cited in the FCO's initial response did not fall within the scope of his request;
 - Nor did he accept that that the examples provided to him by the FCO on 26 April 2019 fell within the scope of his request;
 - Consequently, he asked the Commissioner to adjudicate as to whether either set of examples fell within the scope of his request; and
 - The complainant explained that he was also dissatisfied with the fact the FCO extended the time it needed to consider the public interest for a considerable period of time only to disclose information, or point him to, information which was already in the public domain.
13. The focus of this decision notice is therefore to determine whether the examples cited in the FCO's initial response fell within the scope of the request (and thus whether section 21 had been correctly applied) and also to determine whether the examples provided to the complainant on 26 April 2019 fell within the scope of the request. The Commissioner has also considered the time FCO took to respond to the request.

³ The six examples contained in the annex in question are reproduced at the end of this notice.

Reasons for decision

Section 1 – Right of access to information

14. Section 1(1) of FOIA states that:

'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.'

15. In cases such as this where there is some dispute as to whether information falling within the scope of the request is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

16. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request. Or, more accurately in the terms of this request, whether on the balance of probabilities the information provided to the complainant by the FCO falls within the scope of the request.

17. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches, or as in the circumstances of this complaint, other explanations offered as to why the information falls – or alternatively – does not fall within the scope of the request. Furthermore, also central to her considerations in this case, for the reasons discussed below, is how the request should be interpreted.

The FCO's position

18. With regard to the links set out in the initial response the FCO explained that it had judged at the time that they were sufficient to provide the complainant with examples of when the Russian Government made disinformation statements following the attack in Salisbury. The FCO explained both its analysis, and independent analysis, had shown that the Russian Government also uses State TV and other Kremlin-linked media outlets to spread disinformation. The FCO suggested that this was evident in the sustained Russian disinformation campaigns that followed Russia's illegal annexation of Crimea and destabilisation of east Ukraine. The FCO explained that EUvsDisinformation links provided in the original reply outline the context and detail of the Russian disinformation campaign on Salisbury, along with referenced links to the sources. The

FCO noted that although the complainant did not consider these links to be relevant as they are non-government state actors, it judged that statements made by Russian State and Kremlin controlled media to be part of Russia's overall disinformation campaign, which was intended to distract from Russian culpability.

19. Furthermore, the FCO argued that the examples provided to the complainant in April 2019 gave him clear and referenced examples of Russian Government disinformation about Salisbury.

The complainant's position

20. With regard to the links provided in the FCO's original response, the complainant provided the Commissioner with detailed submissions to support his view that they did not fall within the scope of his request. For the purposes of this notice, the key point from the complainant's submissions mirrors the one he made in his request for an internal review quoted above. That is to say he requested 'examples' of statements in his initial FOI request. He argued that 'claims' on the part of others as to what the Russian government has supposedly stated do not constitute examples. Rather, the complainant argued that in order to fulfil his request the FCO should provide him with examples of direct quotations from the Russian government.
21. Similarly, with regard to the links provided to him by the FCO in April 2019 the complainant also provided the Commissioner with detailed submissions to support his view that these did not fulfil his request. These submissions set out in detail why each of the six examples cited by the FCO did not fulfil his request. The Commissioner has considered these submissions carefully as part of her investigation. However, for the reasons that will become apparent below, she has decided it is not necessary for the purposes of this notice to include these in this notice.

The Commissioner's position

22. In the Commissioner's view, in order to determine this complaint it is essential to focus on exactly what information the complainant's request of 21 March 2018 sought. The request itself was as follows:

*'Can you provide examples of where **the Russian government and not someone nongovernmental actor** as part of a disinformation campaign has **made such statements rather than suggesting them as possibilities.**' (emphasis added).*

23. The statements in question, which were set out earlier in the complainant's email of 21 March 2018 which included the request, were as follows:

'You are claiming that Russia is sending disinformation to the effect that

1) The nerve agent came from Sweden

2) Ukraine did it to frame Russia

3) It was contamination from the UK's own research facility.'

24. As the Commissioner's guidance makes clear, public authorities must interpret a request objectively.
25. In the circumstances of this request, the Commissioner considers an objective reading of this request means that in order for a statement to fall within the scope of the request, such a statement would have to fulfil *all* of the following criteria:
- a) It would concern the three claims listed above at 1) to 3);
 - b) It would have been made by the Russian government; and
 - c) It would be a definitive statement rather than simply a suggestion as to the possible cause of the poisoning.
26. With regard to the examples cited by the FCO in its initial response, the Commissioner notes its position that its view (and the view of independent analysts) is that the Russian government uses State TV and other Kremlin-linked media outlets to spread disinformation. However, for the purposes of this request, in her view it is clear that the complainant's request sought examples made by the Russian government. Based on an objective interpretation of the request, the Commissioner does not think that the examples can be said to have been made by the Russian government; rather the examples contained in the links only include quotes made by Russian media outlets. For this reason, the Commissioner has concluded that the links contained in the FCO's original response do not fall within the scope of the request. It follows that the FCO was incorrect to argue that section 21 applied to such information. In reaching this conclusion the Commissioner wishes to emphasise that she is not seeking to dispute, or indeed comment on, the FCO's views as to how the Russian government uses the media to spread disinformation. Rather, for the reasons set out above, when interpreted objectively, for the purposes of FOIA, the examples cited in the refusal notice do not fulfil the request.
27. With regard to the examples cited by the FCO in its response of April 2019, the Commissioner accepts that they were made by the Russian government. However, having examined each of the six statements made in the examples given by the FCO in the Commissioner's view none of these fulfil the request. For all of the examples, with the

exception of the third one, this is because they do not contain examples supporting the specific allegations of disinformation sought by the complainant's request. That is to say, the nerve agent came from Sweden; the Ukraine did it to frame Russia; or the contamination came from the UK's own research facility.

28. In terms of the first example, this relates to complicating the organisation of the 2018 World Cup; the second example suggests that the Skripal case has been used to divert attention from Brexit; the fourth example suggests that the West's reaction to the incident is connected to the war in Syria; the fifth example suggests that it was not a military grade nerve agent; and the sixth suggests that terrorists did it. In the Commissioner's opinion none of these examples could be said to objectively fall within the scope of the complainant's request.
29. In relation to the third example, the Commissioner does accept that it relates to the specific allegation that the nerve agent came from Sweden and that a potential source was the UK's own research facility. However, in the Commissioner's view whilst the example does address two of the specific claims identified in the complainant's request, it is important to remember that the request sought definitive statements of such claims, rather than statements suggesting them as possibilities. Having considered it carefully, in the Commissioner's opinion, the third example only suggests such sources or causes of the poisoning as possibilities rather than as definitive statements. For this reason she has concluded that the third example cited by the FCO also fails to fulfil the request.
30. In summary, the Commissioner has therefore concluded that the information identified by the FCO as falling within the scope of the request, both in its initial refusal, and in the response provided to the complainant in April 2019, does not fulfil the request.
31. Technically, in order to comply with section 1(1) of FOIA, the FCO should have confirmed to the complainant that it did not hold any information falling within the scope of the request.

Time taken to respond to the request

32. With regard to the FCO's initial citing of the section 27 exemption and the extension of the time it needed to consider the public interest test, section 10(1) of FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
33. Section 17(3) states that a public authority can, where it is citing a qualified exemption, have a 'reasonable' extension of time to consider the balance of the public interest. The Commissioner considers it reasonable to extend the time to provide a full response, including public

interest considerations, by up to a further 20 working days, which would allow a public authority 40 working days in total. The Commissioner considers that any extension beyond 40 working days should be exceptional and requires the public authority to fully justify the time taken. In the circumstances of this case, the FCO ultimately decided not to rely on section 27 of FOIA and thus did not need to consider the balance of the public interest test. (And moreover, as the chronology above notes, in any event it failed to conclude these deliberations within 40 working days). Therefore, in the circumstances of this request, the FCO was under an obligation to respond to the request within 20 working days and its failure to do so represents a breach of section 10(1) of FOIA.

Right of appeal

34. 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@justice.gov.uk

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

35. 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.
36. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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Annex

The six examples provided to the complainant by the FCO in April 2019 were as follows:

- (1) Spoiling 2018 FIFA World Cup could be a motive in ex-spy's poisoning case

Russian Foreign Minister Sergei Lavrov said: *"The motive can be found with those, who keep exerting pressure on us and keep looking for new reasons to complicate the organization of the World Cup. If, speaking hypothetically, we take into account this sick and perverted logic of western colleagues - who would in common sense assume that Russia shortly before the presidential election and shortly before the World Cup would suddenly decide to create problems for itself? There is no motive at all".*

Source: 15 March 2018 - <http://tass.com/politics/994323>

- (2) UK using Skripal case to divert attention from Brexit setback

Russian Ambassador to the UK Alexander Yakovenko said: *"In order to divert attention from Brexit, the UK has to present something to the public to move a little bit to the other side. This is a scenario that was written in London but it's a short-sighted scenario because, in the long run, Britain will have to explain what is behind all these things in Salisbury".*

Source: 16 March 2018 - <https://www.rt.com/news/421473-uk-skripal-brexit-yakovenko-rt/>

- (3) UK, Slovakia, Sweden, Czech Republic among most probable sources of 'Novichok'

Foreign Ministry spokeswoman Maria Zakharova said: *"The most likely source of origin of the toxin are the countries which have been carrying out intense research on the substances from the 'Novichok' program, approximately since the end of the 1990s until the present time, and this project is not the creation of Russia or the Soviet Union".*

Source: 17 March 2018 - <https://www.rt.com/news/421591-uk-produce-novichok-agent/>

- (4) West's angry reaction to a nerve agent attack in Britain is connected to the war in Syria

Foreign Ministry spokeswoman Maria Zakharova said: *The West is trying to "distract attention from what they did in Syria and Iraq"*

and that Britain "needs to somehow show the world that Russia is not in fact a peacekeeper but is playing its own game".

Source: 17 March 2018 -

<https://www.usnews.com/news/world/articles/2018-03-17/the-latest-russia-expels-23-uk-diplomats-in-spy-spat>

- (5) If it was military people they would have died on the spot. We destroyed all of our chemical weapons

Russian President Vladimir Putin said: *"The first thing that entered my head was that if it had been a military-grade nerve agent, the people would have died on the spot. Secondly, Russia does not have such agents. We destroyed all our chemical weapons under the supervision of international organisations, and we did it first, unlike some of our partners who promised to do it, but unfortunately did not keep their promises".*

Source 18 March 2018 - <https://uk.reuters.com/article/uk-britain-russia-putin/putin-says-nonsense-to-think-russia-would-poison-spy-in-britain-idUKKBN1GU0Z9>

- (6) Terrorists did it

Director of the Foreign Ministry Department for Non-Proliferation and Arms Control Vladimir Yermakov said: *"Logic suggests two possible variants. Either the British authorities are unable to ensure protection against such terrorist attacks on their territory, or they were directly or indirectly involved in the preparation of this attack on a Russian citizen. There is no other alternative".*

Source: 21 March 2018 - http://www.mid.ru/en/diverse/-/asset_publisher/zwI2FuDbhJx9/content/brifing-direktora-departamenta-po-voprosam-nerasprostranenia-i-kontrola-nad-vooruzheniami-mid-rossii-v-i-ermakova-moskva-21-marta-2018-goda?_101_INSTANCE_zwI2FuDbhJx9_redirect=http%3A%2F%2Fwww.mid.ru%2Fen%2Fdiverse%3Fp_p_id%3D101_INSTANCE_zwI2FuDbhJx9%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_pos%3D2%26p_p_col_count%3D6