

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 May 2021

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 and Commonwealth Office (FCO now part of the Foreign, Commonwealth & Development Office, FCDO) seeking information about the publication and reception of a book published in 1979, 'Countercoup', which concerned the deposition of the Iranian Prime Minister in 1953. The FCO refused to confirm or deny whether it held any information falling within the scope of the request on the basis of section 23(5) (security bodies) of FOIA.
2. The Commissioner has concluded that the FCO was entitled rely on section 23(5) to refuse to confirm or deny whether it holds the requested information.
3. No steps are required.

Request and response

4. The complainant submitted the following request to the FCO¹ on 9 October 2019:

'I am writing to make an open government request for all the information to which I am entitled under the freedom of information act. In order to assist you with this request, I am outlining my query as specifically as possible. If however this request is too wide or too unclear, I would be grateful if you could contact me as I understand that under the act, you are required to advise and assist requesters.

I am looking for any documents relating to the publication and reception of the book "Countercoup" (McGraw Hill, 1979) written by the American writer Kermit Roosevelt Jr. in 1979. Given an earlier form of this request was submitted on the 15th August 2013 and was rejected. I should add the following:

1. Many of the FCO records concerning events in Iran that took place during 1951 to 53 are already public and which reveal British security services involvement. These can be found in FO 248-1531, FO 248-1541, FO 371-91460 and many other folders which have been declassified for least a decade, if not more.

2. Members of MI6 and the FCO have been interviewed or written about their involvements in the events of 1953. These include the memoirs and interviews of C.M Woodhouse, Sam Falle and Norman Darbyshire amongst others. Some of this information also appears in the recently released documentary, COUP' 53.

*3. Documents recently released to me by the CIA concerning their internal review of Kermit Roosevelt's book show the book underwent extensive re-writing before it was cleared for publication and this did take into account comments from their UK counterparts which led me to conclude that the FCO may have documents concerning the book. These documents can be viewed at:
<https://nsarchive2.gwu.edu/NSAEBB/NSAEBB468/>*

¹ The FCO merged with the Department for International Development on 2 September 2020 to form the FCDO. This decision notice is therefore served on the FCDO but refers to the FCO where it was the body that took certain actions in relation to the request.

- 4. Given that the subject of "Counter coup" are to events that happened sixty years ago and that Roosevelt's published account of it is more than thirty years old, any concerns relating to National Security or diplomatic relations with Iran are now too old to have any substantial impact and an admission and/or release of any relevant documents in this area will help further public understanding of a pivotal event during the early years of the Cold War.'*
5. The complainant subsequently clarified that his request was intended to cover the period 1977 to 1979.
 6. The FCO responded on 21 November 2019 and refused to confirm or deny whether it held the requested information on the basis of sections 23(5) (security bodies) and 24(2) (national security) of FOIA. The FCO also explained that to the extent that section 24(2) of FOIA applied, it was relying on section 17(4) of FOIA not to provide an explanation as to why the public interest favoured maintaining that exemption.²
 7. The complainant contacted the FCO on 28 January 2020 and asked it to conduct an internal review of this refusal.
 8. The FCO informed the complainant of the outcome of the internal review on 21 February 2020. This upheld the application of the exemptions cited in the refusal notice.

Scope of the case

9. The complainant contacted the Commissioner on 24 February 2020 in order to challenge the FCO's refusal to provide him with the information he had requested.
10. During the course of the Commissioner's investigation the FCDO explained that it was no longer seeking to rely on section 24(2) of FOIA. Therefore this notice simply considers the application of section 23(5) to the request.
11. In relation to this complaint it is important to note that the right of access provided by FOIA is set out in section 1(1) and is separated into two parts. Section 1(1)(a) gives an applicant the right to know whether

² Section 17(4) states that a public authority is not obliged to explain in a refusal notice why an exemption applies, or why the public interest favours maintaining an exemption, if the provision of such an explanation would reveal information which is itself exempt from disclosure.

a public authority holds the information that has been requested. Section 1(1)(b) gives an applicant the right to be provided with the requested information, if it is held. Both rights are subject to the application of exemptions.

12. As explained above, the FCDO is seeking to rely on section 23(5) to neither confirm nor deny (NCND) whether it holds information falling within the scope of the request. Therefore, this notice only considers whether the FCDO is entitled, on the basis of this exemption, to refuse to confirm or deny whether it holds the requested information. The Commissioner has not considered whether the requested information – if held – should be disclosed.

Reasons for decision

Section 23 – security bodies

13. Section 23(1) of FOIA states that:

'Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in sub-section (3).'

14. Section 23(5) of FOIA states that:

'The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).'

15. The full list of bodies specified in section 23(3) can be viewed online.³
16. In the Commissioner's opinion the exemption contained at section 23(5) should be interpreted so that it is only necessary for a public authority to show that either a confirmation or denial of whether requested information is held would involve the disclosure of information relating to a security body. It is not necessary for a public authority to demonstrate that both responses would disclose such information. Furthermore, the Commissioner considers that the phrase 'relates to' should be interpreted broadly. Such an interpretation has been accepted

³ <http://www.legislation.gov.uk/ukpga/2000/36/section/23>

by the First-Tier Tribunal (Information Rights) in a number of different decisions.⁴

17. Consequently, whether or not a security body was interested or involved in a particular issue is in itself information relating to a security body. Therefore, in the Commissioner's opinion section 23(5) could be used by a public authority to avoid issuing a response to a request which revealed either that a security body was involved in an issue or that it was not involved in an issue.
18. The test of whether a provision of a confirmation or denial would relate to a security body is decided on the normal civil standard of proof, that is, the balance of probabilities. In other words, if it is more likely than not that the provision of a confirmation or denial would relate to a security body then the exemption would be engaged.
19. From the above it can be seen that section 23(5) has a very wide application. If the information requested is within what could be described as the ambit of security bodies' operations, section 23(5) is likely to apply. Factors indicating whether a request is of this nature will include the functions of the public authority receiving the request, the subject area to which the request relates and the actual wording of the request.
20. The FCDO has provided the Commissioner with submissions to support its reliance on section 23(5) of FOIA. However, the FCDO explained that it considered these submissions to be confidential and therefore the Commissioner has not replicated these submissions in this decision notice. However, on the basis of these submissions the Commissioner is satisfied that on the balance of probabilities, confirming whether or not the FCDO holds information falling within the scope of this request would reveal something about the security bodies. The Commissioner is therefore satisfied that the FCDO can rely on section 23(5) to refuse to confirm or deny whether it holds any information falling within the scope of the request.

⁴ See for example *Dowling v Information Commissioner and The Police Service for Northern Ireland*, EA/2011/0118, paras 17 to 22.

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@justice.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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