

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 February 2025

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

Decision (including any steps ordered)

1. The complainant requested correspondence between the then Secretary of State, Lord Cameron, and the Permanent Secretary to the Foreign, Commonwealth and Development Office (FCDO) regarding potential conflicts of interest. The FCDO refused to confirm or deny that it held information in scope of the request on the basis of sections 40(5B) (third party personal data) and 41(2) (information provided in confidence) of FOIA.
2. The Commissioner's decision is that the FCDO was not entitled to rely on section 40(5B) or section 41(2) to refuse to confirm or deny that it held the requested information. The Commissioner also finds that the FCDO failed to comply with sections 10(1) and 17(1) of FOIA by failing to respond to the request within 20 working days.
3. The Commissioner requires the FCDO to take the following steps to ensure compliance with the legislation.
 - Confirm or deny whether the requested information is held.
 - To the extent that the requested information is held, either disclose it to the complainant or in respect of any information the FCDO wishes to withhold, issue a refusal notice that meets the requirements of section 17 of FOIA.
4. 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 5 February 2024, the complainant requested the following information from the FCDO:

“Please provide a copy of any correspondence between the secretary of state, David Cameron, and the department’s permanent secretary, setting out any matters from which Cameron should recuse himself from owing to a conflict of interest.

Please provide information from 1st November 2023 to date.

Please include all forms of communication (letters, emails, messaging, etc)”.

6. The complainant contacted the Commissioner on 11 March 2024 since they had not received a response and the 20 working day time for compliance had been exceeded.
7. Following the Commissioner’s intervention the FCDO responded on 20 April 2024, refusing to confirm or deny that it held information in scope of the request on the basis of sections 40(5) and 41(2) of FOIA.
8. The complainant requested an internal review on 22 April 2024, and contacted the Commissioner again on 19 June 2024 since they had not received the outcome of that review.
9. The Commissioner again reminded the FCDO of its obligations under FOIA, and the FCDO provided the complainant with the outcome of the internal review on 22 August 2024. The FCDO upheld its neither confirm nor deny (NCND) response.

Scope of the case

10. The complainant contacted the Commissioner on 2 September 2024, having now received the outcome of the internal review. The complainant remained of the view that the FCDO ought not to have refused their request and asked that the Commissioner issue a decision notice.
11. The Commissioner wishes to emphasise that the scope of his investigation is to examine whether the FCDO was entitled to refuse to

confirm or deny that it holds the requested information, in reliance on sections 40(5) and 41(2) of FOIA. He has not sought to establish whether or not the FCDO in fact holds the requested information.

Reasons for decision

Section 40 - personal information

12. Section 40(5B) of FOIA allows a public authority to refuse to confirm or deny that particular information is held. It will apply where the mere act of confirming or denying would itself reveal the personal data of an individual other than the requester and that revelation would contravene any of the principles relating to the processing of personal data (the DP principles), as set out in Article 5 of the UK General Data Protection Regulation (the UK GDPR).
13. The first step for the Commissioner is to determine whether just confirming or denying that the information is held would reveal personal data as defined by the Data Protection Act 2018 (the DPA). Secondly, and only if the Commissioner is satisfied that confirming or denying would reveal personal data, he must establish whether that revelation would breach any of the DP principles.

Would confirmation or denial reveal personal data?

14. Section 3(2) of the DPA defines personal data as:

“any information relating to an identified or identifiable living individual”.

15. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
16. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
17. In the circumstances of this case the Commissioner is satisfied that providing a confirmation or a denial that the requested information is held would reveal personal data. This is because it would reveal whether Lord Cameron had received advice from the FCDO Permanent Under Secretary (PUS) regarding a possible conflict of interest.

18. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
19. The fact that confirming or denying that information is held would reveal the personal data of an identifiable living individual does not automatically prevent the public authority from doing so. The second element of the test is to determine whether confirming or denying that the information is held would contravene any of the DP principles.
20. The most relevant DP principle in this case is principle (a), set out at Article 5(1)(a) of the UK GDPR.

Would confirming or denying that the information is held contravene principle (a)?

21. Article 5(1)(a) states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

22. In the case of an FOIA request, the personal data is processed when the confirmation or the denial is provided. This means that confirmation or denial can only be provided where it would be lawful, fair and transparent to do so.
23. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the UK GDPR

24. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child".¹

¹ Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

25. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - ii) **Necessity test:** Whether confirming or denying that the information is held is necessary to meet the legitimate interest in question;
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
26. The Commissioner considers that the necessity test under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

27. In considering any legitimate interest(s) in confirming or denying that the information is held, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.
28. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
29. In this case the FCDO acknowledged a general legitimate interest in ensuring transparency and accountability in relation to how ministerial interests are handled. It did not provide details of any legitimate interest identified in the specific requested information.
30. The complainant identified what they considered to be a more specific legitimate interest in disclosure:

“[Lord] Cameron is one of the government's most senior ministers, with a track record of concerning use of his influence for personal gain, both in his lobbying activity for Greensill, for his work

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the confirming or denying that the information is held of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

supporting the Chinese backed Port Colombo project in Sri Lanka, and his acceptance of significant China-linked monies whilst out of government.

There is therefore a very clear public interest in understanding whether Cameron has had to recuse himself on any significant parts of his portfolio.”

31. In addition the complainant referred to the Commissioner’s decision in a separate case, in which the Commissioner ordered the disclosure of a declaration of interest involving a recruitment campaign for non-executive directors of the Office for Students. That case involved a link between one of the panel members and the husband of one of the successful candidates.²
32. The complainant also advised the Commissioner that the issue of Lord Cameron’s interests had been raised by MPs in the House of Commons. During Topical Questions debated on 25 April 2024, it was asked whether Lord Cameron had “recused himself from parts of his role as Foreign Secretary, given his previous well-paid work in promoting the China-backed Port City Colombo.” Oliver Dowden MP responded as follows:

“...the Foreign Secretary not only had all his interests properly reviewed by the propriety and ethics team in my Department [the Cabinet Office], but went through them with the independent adviser on ministers’ interests. The independent adviser set out all relevant interests, and those have been published, so the information is transparently out there for people to be able to judge for themselves.”³

33. The Commissioner notes that the House of Commons debate above occurred after the request had been submitted, so the information published in Hansard was not in the public domain at the time of the request. Nevertheless he observes that there has been substantial media scrutiny regarding Lord Cameron’s links with China, following his appointment as Foreign Secretary on 13 November 2023.⁴ In the Commissioner’s opinion the legitimacy of such scrutiny is enhanced by

² <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4022481/ico-181449-w3f0.pdf>

³ <https://hansard.parliament.uk/commons/2024-04-25/debates/3063F676-90D1-442C-901C-035BEB717F05/TopicalQuestions>

⁴ For example, <https://www.bbc.co.uk/news/uk-politics-67517955>; <https://www.bbc.co.uk/news/uk-politics-67425481> and <https://www.politico.eu/article/the-smiling-new-face-of-chinas-belt-and-road-program-david-cameron/>

the fact that Lord Cameron is a former Prime Minister and there was a period of over seven years between him resigning his seat as an MP and returning to government during which time it was not expected that he would return to front line service in government. Furthermore, Lord Cameron was elevated to the House of Lords specifically to enable his appointment as Foreign Secretary. He was therefore not elected as an MP and in this senior government role cannot answer questions in – or otherwise be accountable to – the elected House of Commons.

34. The Commissioner further notes the scope of the complainant's request, in that they specifically asked for correspondence setting out any matters from which Lord Cameron should recuse himself, owing to a conflict of interest. The requested information, if held, would not therefore extend to details of matters which were raised but which did not result in such correspondence.
35. The Commissioner is mindful that what interests the public is not necessarily what is in the public interest. However he agrees that there is a legitimate interest in the public being informed as to how ministerial interests are considered and dealt with, both in general and specific terms. The Commissioner recognises a particular legitimate interest in the requested information in this case. He has taken account of the context of Lord Cameron's position as Foreign Secretary, Lord Cameron's well-reported business dealings, and the complex and sensitive nature of UK-China relations in particular.

Is confirming or denying that the information is held necessary?

36. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make confirming or denying that the information is held unnecessary. Confirming or denying that the information is held must therefore be the least intrusive means of achieving the legitimate aim in question.
37. The FCDO set out that it was not necessary to confirm or deny that the requested information was held in order to meet the legitimate interest identified above. It referred the Commissioner to section 7 of the Ministerial Code, which outlines a transparent process for declaring ministerial interests. Such interests are published biannually, and in the FCDO's view it was not therefore necessary to go further and confirm whether there was related correspondence.
38. The Commissioner observes that, at the time of the request, the Independent Adviser was required by their Terms of Reference to publish information:

"1.6 At least twice a year the Independent Adviser must prepare and publish a statement covering the relevant interests of Ministers (7.5). The statement must set out such information about those relevant interests as the Independent Adviser considers appropriate".

39. In the Commissioner's opinion this is a broad provision which allows the Independent Adviser a considerable degree of discretion in deciding what information should be published. It is entirely for the Independent Adviser to determine what is considered appropriate. The Commissioner further observes that the Independent Adviser has equally extensive discretion to require a minister to publish information relating to their adherence to the Ministerial Code.
40. The Commissioner has examined the information published in line with the Ministerial Code referred to by the FCDO.⁵ Again, he notes that it was not in the public domain at the time of the complainant's request. It was not published until 28 November 2024 because of the general election held on 4 July 2024, but was completed on 31 May 2024 so would not have been available at the time of the request even if the general election had not been held.
41. The published information relating to Lord Cameron states that he "resigned from all previous remunerated roles and a number of unremunerated roles". However, there is no indication from the published information whether Lord Cameron resigned from these roles proactively, or having received advice from the PUS or indeed from the Independent Adviser. The Independent Adviser considered five "recent remunerated and unremunerated roles" relevant for publication. However no details were published in respect of any of these five roles.
42. When considering the question of necessity the Commissioner has carefully considered the complainant's arguments as well as those put forward by the FCDO. As set out above the Commissioner agrees that there is a clear, legitimate interest in informing the public about the way Lord Cameron's position as Foreign Secretary was considered in light of potential conflicts of interest, particularly involving his business interests and those involving China.

⁵ <https://www.gov.uk/government/publications/previous-lists-of-ministers-interests/80160bbf-df09-4f73-a11d-10d1a7de5e86#foreign-commonwealth-and-development-office> and [https://assets.publishing.service.gov.uk/media/67483a102ac8a6da30723929/Independent Adviser on Ministers Interests - Annual Report 2023-2024 - FINAL.pdf](https://assets.publishing.service.gov.uk/media/67483a102ac8a6da30723929/Independent_Adviser_on_Ministers_Interests_-_Annual_Report_2023-2024_-_FINAL.pdf)

43. The Commissioner has considered the Terms of Reference of the Independent Adviser on Ministers' Interests, as was in effect at the time of the request.⁶ The Terms of Reference require Ministers to provide the Independent Adviser with a list of interests which might be thought to give rise to a conflict with the Minister's public duties, within 14 days. In addition, the paragraph 7.5 of the Ministerial Code explicitly states that:

"The personal information which Ministers disclose to those who advise them is treated in confidence. However, a statement covering relevant Ministers' interests will be published twice yearly".

44. In the Commissioner's opinion this sets a clear expectation that information disclosed by a Minister would be kept confidential, although the expectation of confidence does not explicitly extend to advice provided by the PUS on the basis of such disclosures. Equally, it provides assurance to the public that relevant information will be made publicly available on a regular basis, albeit that it is for the Independent Adviser to determine what is relevant and there are no published criteria in this regard.
45. The Terms of Reference also give the Independent Adviser the power to instigate and conduct an investigation into an alleged breach of the Ministerial Code. The Commissioner is mindful of his analysis in a previous decision notice⁷ which considered a request for information relating to the peerage awarded to Lord Cameron. The Commissioner commented on the Independent Adviser's role as follows:

"110. Again, the importance and legitimacy of the complainant's public interest arguments can be seen by the changes which Sir Laurie Magnus introduced in the wake of Lord Cameron's appointment as Foreign Secretary. On 15 December 2023, the i reported that the Prime Minister's ethics adviser had created a 'Cameron clause' after the concerns raised about lobbying. The newspaper stated that:

'In the first register of ministerial interests since July, Sir Laurie Magnus introduced a new clause stating that ministers should "provide additional information in a number of areas", including, "recent previous

⁶ <https://www.gov.uk/government/publications/terms-of-reference-for-the-independent-adviser-on-ministers-interests--2/52a56d54-5d6a-4962-89f7-894607fbab8c#further-advice-on-ministerial-code>

⁷ <https://ico.org.uk/media/action-weve-taken/decision-notice/2024/4031917/ic-289075-d4y0.pdf>

employment that may be perceived to have a bearing on their ministerial portfolio'.

111. Sir Laurie stated that the requirement for ministers to provide details of recent paid and unpaid work was important for "assessing the experience and connections of ministers which may have relevance to their roles". He said that this was, "particularly pertinent" for ministers whose appointment to the Cabinet, "occurs simultaneously with their elevation to the House of Lords".

46. In light of the above the Commissioner is persuaded in this case that confirmation or denial that the requested information is held is necessary in order to meet the legitimate interests identified. The Commissioner accepts that these legitimate interests are significant, and cannot be met by any other, less intrusive, means such as the information published by the Independent Adviser. Only confirming or denying that the requested information is held will properly inform the public as to whether or not Lord Cameron received advice from the PUS that he should recuse himself from any matters in case of a conflict of interest. The Commissioner emphasises that his conclusion has been reached having taken account of the specific circumstances of this particular case. Accordingly the Commissioner has gone on to consider the balance between legitimate interests and the data subject's interests or fundamental rights and freedoms.

Do the legitimate interests in providing a confirmation or denial override the legitimate interests or fundamental rights and freedoms of the data subject?

47. As set out in the decision notice, the public authority must balance the legitimate interests in providing a confirmation or denial against the data subject's interests or fundamental rights and freedoms. In considering this balancing test, the Commissioner has taken into account the following factors:

- the potential harm or distress that this may cause;
- whether the information is already in the public domain;
- whether the information is already known to some individuals;
- whether the individual has expressed concern about the disclosure; and
- the reasonable expectations of the individual.

48. The Commissioner considers a key issue to be the extent to which the data subject has a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as:

- the individual's general expectation of privacy;
 - whether the information relates to an employee in their professional role or to them as a private individual; and
 - the purpose for which they provided their personal data.
49. There is no obligation to consult the data subject, and the decision remains to be made by the public authority. However it is also important to consider whether confirmation or denial would be likely to result in unwarranted damage or distress to that individual. Disclosure under FOIA (and in this case confirming or denying that information is held) is to the world at large. The Commissioner must therefore balance the legitimate interests against the data subject's interests when determining whether it is appropriate to place confirmation or denial that information is held, into the public domain, and not just to the complainant.
50. Having taken into account all the circumstances of this case, and having considered the reasonable expectations of the data subject, as well as the potential consequences of disclosure, the Commissioner is satisfied that the legitimate interest in confirming or denying whether the requested information is held outweighs the rights and freedoms of the data subject.
51. The Commissioner is mindful that the Ministerial Code provides an indication of confidentiality regarding information provided by the minister. However, in his opinion this does not override the obligation for a public authority to consider all the circumstances of a case when dealing with a request for information under FOIA.
52. The Commissioner is of the view that a senior, experienced politician and public servant such as Lord Cameron should reasonably be expected to anticipate that there will be a compelling public interest in being able to scrutinise the way in which potential conflicts of interest are identified and managed. This is especially weighty in the context of Lord Cameron being appointed to the post of Foreign Secretary, one of the Great Offices of State, when he was not an elected MP. Consequently the Commissioner is of the opinion that Lord Cameron could not reasonably expect that the FCDO could maintain a refusal to confirm or deny that it held the requested information in this case.
53. Furthermore the Commissioner is not persuaded that confirmation or denial would result in any real harm or detriment to Lord Cameron. Any interference with privacy rights and expectations can be anticipated to cause some degree of distress, but as set out above the Commissioner considers that such distress would be limited, and would be proportionate to the disclosure, ie the confirmation or denial that information is held.

54. The Commissioner is satisfied that confirmation or denial would be limited to informing the public as to whether or not Lord Cameron corresponded with the PUS regarding matters from which Lord Cameron should recuse himself from owing to a potential conflict of interest. He is further satisfied that such confirmation or denial would go some way towards informing the public without disproportionately interfering with Lord Cameron's reasonably held privacy rights. The Commissioner would emphasise here that his decision in this case is not about disclosing information; he has not investigated whether the requested information is in fact held. The Commissioner is assisted in his consideration by his analysis in a previous decision notice which dealt with a request for similar information (albeit not relating to a named individual). In that case the public authority initially refused to confirm or deny that it held the requested information, but resiled from this position at internal review.⁸
55. The Commissioner therefore finds that the FCDO was not entitled to rely on section 40(5) to refusing to confirm or deny that the requested information is held. He is satisfied that the FCDO could rely on Article 6(1)(f) as a lawful basis for confirming or denying in this instance.
56. Even though it has been demonstrated that confirming or denying that the information is held under FOIA would be lawful, it is still necessary to show that it would be fair and transparent under principle (a), as set out at paragraph 22 above. These are that processing (and in this case confirmation or denial to the public) must be generally fair and transparent.
57. In relation to fairness, the Commissioner considers that if the confirmation or denial passes the legitimate interest test for lawful processing, it is highly likely that it will be fair for the same reasons. Having examined the legitimate interest assessment the Commissioner is accordingly satisfied that confirmation or denial in this case would be fair. The requirement for transparency is met because as a public authority, the FCDO is subject to FOIA.
58. Consequently the Commissioner finds that the FCDO was not entitled to rely on section 40(5B) of FOIA to refuse to confirm or deny that the requested information was held. The Commissioner has therefore gone on to consider whether the FCDO was entitled to rely on section 41(2) of FOIA.

⁸ <https://ico.org.uk/media/action-weve-taken/decision-notice/2024/4029332/ic-229622-t9h4.pdf>

Section 41 – information provided in confidence

59. The FCDO also sought to rely on section 41(2) of FOIA to refuse to confirm or deny that it held the requested information. Section 41(1) states that a public authority is entitled to withhold information if (a) the information was obtained from another person, and (b) disclosure would constitute a breach of confidence.
60. Section 41(2) states that a public authority may refuse to confirm or deny if any recorded information is held if to do so would itself constitute an actionable breach of confidence.
61. When considering whether confirmation or denial would constitute an actionable breach of confidence, the Commissioner follows the test of confidence set out in *Coco v A N Clark (Engineering) Ltd* [1968] FSR 415. This judgment suggested that the following three-part test should be considered in order to determine if information was confidential (or would be, if it were held):
- whether the information had the necessary quality of confidence;
 - whether the information was imparted in circumstances importing an obligation of confidence; and,
 - whether an unauthorised use of the information would result in detriment to the confider.
62. However, further case law has argued that where the information is of a personal nature it is not necessary to establish whether the confider will suffer a detriment as a result of disclosure (or in this case, confirmation or denial that it is held).

Would the information have been obtained from another person?

63. With regard to the requirements of section 41(1)(a), the Commissioner accepts that the requested information, if held, would have been provided to the FCDO, ie the PUS, by a third party, ie Lord Cameron. Lord Cameron, whilst in post as Foreign Secretary, would be considered a third party for the purposes of the request because the requested information, if held, would relate to Lord Cameron's personal interests, rather than FCDO business. The Commissioner notes that the scope of the request includes correspondence from the PUS to Lord Cameron, but the substance of any such correspondence would comprise information provided by Lord Cameron. Therefore the Commissioner is satisfied that the first test, ie that set out at section 41(1)(a) of FOIA, is met.

Would the information have the necessary quality of confidence?

64. In the Commissioner's view information will have the necessary quality of confidence if it is not otherwise accessible and it is more than trivial.
65. The FCDO explained that the information, if held, would be sensitive and personal in nature (since it would by necessity relate to potential conflicts of interest). It maintained that there was no expectation that the FCDO would confirm or deny that it held the information, nor was this in the public domain or otherwise accessible. Therefore the FCDO maintained that confidentiality had not been waived.
66. In view of the above the Commissioner accepts that the requested information would, if held, possess the quality of confidence.

Would the information have been imparted in circumstances importing an obligation of confidence?

67. As set out in the section 40(5) analysis above the Commissioner accepts that information provided by Lord Cameron relating to his personal interests would, if held, have been communicated with an expectation of confidence informed by the Ministerial code. Accordingly he also accepts that this test is met.

Would confirming or denying be of detriment to the confider?

68. The FCDO maintained that confirming or denying that the requested information is held would be an unauthorised action and of potential detriment to Lord Cameron. The Commissioner notes that identifying a detriment will not always be a prerequisite to an actionable breach of confidence.
69. In the Commissioner's view the detriment resulting from confirming or denying that the requested information is held is likely to be limited. This is because it would only disclose whether or not Lord Cameron had corresponded with the PUS regarding a potential conflict of interest for which he had been advised to recuse himself from certain matters. If information is held, being informed of that fact alone would not provide any explanation of the nature or extent of any recusal. Similarly, if information is not held, being informed of that fact would not inform the public as to whether advice was sought. It would merely inform the public that the PUS did not correspond with Lord Cameron regarding advice to recuse himself from matters. However, as noted, the Commissioner has accepted that identifying a detriment will not always be a prerequisite to an actionable breach of confidence.

Is there a public interest defence to confirming or denying that the information is held?

70. Section 41(2) provides an absolute exclusion from the duty to confirm or deny: there is no requirement for an application of the conventional public interest test. However, the common law duty of confidence contains an inherent public interest test. This test assumes that confirmation or denial should not be provided unless the public interest in doing so outweighs the public interest in maintaining the duty of confidence (and is the reverse of that normally applied under FOIA). British courts have historically recognised the importance of maintaining a duty of confidence, so it follows that strong public interest grounds would be required to outweigh such a duty.
71. However, an overriding public interest is a defence to an action for breach of confidentiality. The Commissioner is therefore required to consider whether the FCDO could successfully rely on such a public interest defence to an action for breach of confidence in this case.

The FCDO's position

72. The FCDO did not consider that any public interest in confirmation or denial overrides the competing public interest in maintaining the duty of confidence. It set out to the Commissioner that the balancing of rights and interests would involve similar considerations to those set out above under section 40(5).
73. The FCDO set out that the confidentiality of the ministerial interests declaration process is paramount. It ensures that ministers can disclose their interests fully and frankly, without concern that these details will be disclosed. The FCDO maintained that such confidentiality is crucial for maintaining the integrity of the process.
74. It further argued that ministers and their families have a right to privacy, and that the established process for declaring interests is designed to balance transparency with respect for privacy.
75. The FCDO emphasised that maintaining trust in the system by both the public and ministers is essential. If ministers believe that their declarations could be disclosed outside of the established process, it could deter them from making full disclosures, which would undermine the system's effectiveness.
76. It further set out that by adhering to a consistent and predictable process for the disclosure of ministerial interests, the government can uphold public confidence in the management of conflicts of interest and the overall integrity of public life.

77. Finally, the FCDO reiterated that section 41 of FOIA recognises the importance of confidentiality for certain types of information. This legal framework supports the broader public interest in maintaining a functional and fair government system.

The complainant's position

78. The Commissioner has taken account of the arguments put forward by the complainant as set out at paragraphs 30-33 above.
79. The complainant also argued that there was a clear public interest in disclosure of the requested information before the next election (which had not been called at the time the request was submitted, but which was consequently called and held on 4 July 2024, ie before the internal review was completed). They submitted that:

"If [Lord] Cameron has had to recuse himself from key policy areas due to his conflicts, that is information important to hold him and the government to account, and ultimately, something the voting public deserve to know before the election".

The Commissioner's consideration

80. The Commissioner is of the opinion that much of his analysis in respect of section 40(5) is transferable to section 41(2), but to avoid repetition he has not repeated it here. In summary, the Commissioner is satisfied that there is a compelling public interest in confirming or denying that the requested information is held, and that confirmation or denial is necessary to meet this interest. This is primarily because of the importance of Lord Cameron's position as Foreign Secretary, his elevation to the House of Lords in order to be appointed to this position, and his well-documented business interests since serving as Prime Minister, including those involving China. Consequently the Commissioner is satisfied that the FCDO would be able to claim a public interest defence to an action for breach of confidence.
81. The Commissioner does not accept that confirmation or denial in this particular case constitutes disproportionate interference with Lord Cameron's (or his family's) privacy rights. This finding is informed by the fact that confirmation or denial would not in itself disclose any detail of any correspondence between Lord Cameron and the PUS; it would merely confirm whether advice was provided regarding recusal. The Commissioner sees no reason to depart from his analysis of Lord Cameron's privacy rights as set out above.
82. The Commissioner acknowledges the FCDO's arguments set out above but is of the opinion that they are insufficiently focused on the anticipated consequences of confirming or denying that information is

held. The Commissioner is not persuaded that confirmation or denial that correspondence took place would have the inhibiting or undermining effects on ministers described by the FCDO in this particular case. The Commissioner has considered whether confirmation or denial may nonetheless have a similar inhibitory or undermining effect on the willingness of permanent secretaries to provide advice in such circumstances. However, he is of the opinion that senior officials considering ministerial conflicts of interest are under a clearly understood public duty which they should be expected to follow. In any event the Commissioner would reiterate that his decision and the analysis supporting it is restricted to the circumstances of this particular case.

83. For the reasons set out above the Commissioner is satisfied that the FCDO would be able to avail of a public interest defence to an action for breach of confidence. He therefore concludes that the FCDO was not entitled to rely on section 41(2) of FOIA in the circumstances of this particular case.

Procedural matters

Time for compliance

84. Section 1(1)(a) of FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued. Section 1(1)(a) and section 1(1)(b) are both subject to exclusions.
85. Section 17(1) requires that, if a public authority wishes to refuse to comply with section 1(1)(a) or section 1(1)(b) it must issue a refusal notice stating which exclusions apply, no later than 20 working days after the date of receipt of the request.
86. In this case the request was submitted on 5 February 2024. The FCDO did not issue a refusal notice until 20 April 2024, and only then after the Commissioner's intervention. Consequently the Commissioner finds that the FCDO failed to comply with section 17(1) of FOIA in issuing a late refusal notice.

Other matters

Internal review

87. Although it does not form part of the decision the Commissioner wishes to comment on the time taken by the FCDO to conduct an internal review.
88. FOIA does not impose a statutory time within which internal reviews must be completed, albeit that the Code of Practice issued under section 45 of FOIA⁹ explains that such reviews should be completed within a reasonable timeframe. The Commissioner expects that most internal reviews should be completed within 20 working days, unless there are legitimate reasons why a longer extension is necessary.¹⁰
89. In this case the complainant requested an internal review on 22 April 2024, and the FCDO did not provide the outcome of the review until 22 August 2024, four months later. The Commissioner considers this excessive, especially given that the FCDO only issued its initial response following his intervention.

⁹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

¹⁰ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#internal>

Right of appeal

90. 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

91. 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.
92. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Sarah O'Cathain
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Wycliffe House
Water Lane
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