



**FREEDOM OF INFORMATION ACT 2000 (SECTION 50)  
ENVIRONMENTAL INFORMATION REGULATIONS 2004**

**DECISION NOTICE**

**Dated: 11 April 2006**

**Name of Public Authority:** UK Trade & Investment

**Address of Public Authority:** Kingsgate House,  
66- 74 Victoria Street,  
London SW1E 6SW

**Summary Decision**

The Commissioner's decision in this matter is that UK Trade & Investment (UKTI) has dealt with the complainant's request in accordance with Part 1 of the Freedom of Information Act 2000 – 'the Act' - and Parts 2 & 3 of the Environmental Information Regulations 2004 – 'the Regulations'. He is satisfied that the requested information has been appropriately withheld under sections 27 and 40 of the Act. He is also satisfied that environmental information falling within the request has been appropriately withheld under 12(5)(a) of the Regulations.

The Commissioner finds that UKTI failed to comply with section 17(1)(b) of the Act in that it failed to specify the exemption in question when it requested an extension to its time to respond.

**He does not require any steps to be taken by UKTI.**

**1. Duty of the Commissioner**

Under section 50(1) of the Freedom of Information Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of

Part 1 of the Act or Parts 2 and 3 of the Regulations and to issue a Decision Notice to both the complainant and the public authority.

## **2. The Complaint**

UK Trade & Investment (UKTI) is a government section sponsored by the Department of Trade and Industry and the Foreign and Commonwealth Office. ITDG1c is the Sub Saharan Africa Unit of UKTI.

On 5 January 2005 the complainant requested the following information from the UKTI:

'Please would you let us know whether you ITDG1c hold any information concerning either the West Africa Gas Pipeline project or the Chad/Cameroon Petroleum Development and Pipeline project. If you do hold such information please would you describe that information to us and provide us with the names of files (and file details) in which such information is held'.

On 16 February 2005 several documents were disclosed by UKTI with some of the information redacted under section 40 of the Act (personal information). Other documents which fell within the complainant's request were withheld. The withheld information was considered by UKTI to be exempt from disclosure under section 27 of the Act (international relations). The complainant appealed against the decision on 17 February. He also indicated that much of the withheld information should be considered under EIR. On 30 March 2005 the public authority's review under both FOI and EIR resulted in the disclosure of further documents but other information was still withheld.

## **3. Review of the Case**

The complainant asked the Commissioner to investigate UKTI's decision to withhold information contained within four documents. The documents comprised:

- a) Telegram No 26, July 03. 'World Bank – Cameroon: Petroleum Development Pipeline and Petroleum Environment Capacity Enhancement – Inspection Panel Management Report'
- b) DFID email 9 March 2001. 'Chad/Cameroon: Petroleum Development and Pipeline Project Report to the EDs'
- c) Document 1, 18 May 2001. 'Cameroon/Chad Oil Pipeline'
- d) FCO internal email dated 23 January 2003. Subject 'West Africa Gas Pipeline Joint Seminar: postponement of'.

Accordingly, UKTI's application of the exemptions under section 27 and 40 of the Act and the application of regulation 12(5)(a) as the basis for withholding the information was examined.

Secondly, the complainant considered that one of the documents (document A) and possibly elements of the other requested documents was likely to be environmental information and therefore section 27(1) of the Act could not be applied.

Thirdly, the complainant asked the Commissioner to note the way in which UKTI sought to extend time in response to the original request as he considered this to be in breach of the legislation.

The Commissioner requested copies of the documents from the public authority. He examined these in order to ascertain the appropriateness of the exemptions / exception that were engaged by UKTI to withhold the requested information.

#### **4. The Commissioner's Decision**

In reaching his decision in this matter the Commissioner has looked closely at the arguments put forward by both UKTI and the complainant.

He is satisfied that the information withheld by the public authority is caught by the Act. Some of the requested information is 'environmental information' as defined in regulation 2 of the Regulations. UKTI was entitled by virtue of section 27(1) and section 40 of the Act and the exception at regulation 12(5)(a) to withhold the information requested by the complainant.

#### **Section 27(1) (international relations)**

UKTI relied upon section 27(1) of the Act which states that:

**27. - (1) 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.*

Section 27 is a prejudice-based exemption and as such it is necessary to establish whether disclosure of the requested information would, or would be likely to, prejudice relations between the United Kingdom and any other state / international organisation.

The withheld information contains candid assessments of other administrations that were clearly made with the expectation that they would not be disclosed. The Commissioner is unable to cite specific examples within this Decision Notice as to do so would disclose that information. He is satisfied that release of the information would be likely have a detrimental effect on relationships between the United Kingdom and other states. Such administrations would be reluctant to share sensitive information in the future with the UK. This would affect the government's ability to protect and promote the UK's interests overseas.

The Commissioner is also satisfied that disclosure of information in two of the documents (A & B) would affect the willingness of the World Bank and International Monetary Fund to share information with the UK in the future. This in turn would affect the UK's ability to promote its interests abroad.

The Commissioner believes that disclosure of the requested information in a redacted form would serve little purpose as the scale of redaction necessary would render the residual information meaningless.

### **Regulation 12(5)(a) (international relations)**

UKTI also relied upon regulation 12(5)(a) which states that:

**12 (5)** ... *a public authority may refuse to disclose information to the extent that its disclosure would adversely affect -*

**(a)** *international relations, defence, national security or public safety*

Regulation 12(5)(a) is subject to the adverse affect test which in this case requires the establishment of whether disclosure of the requested information would prejudice international relations. The Commissioner has examined the information and is satisfied that its disclosure would adversely affect relations between the United Kingdom and other states. As above, redaction would make the information meaningless.

Both section 27 of the Act and regulation 12(5)(a) are subject to the public interest test.

There are two possible arguments which could be deployed in favour of disclosure:

1. Access to environmental information enables the participation of people in the decision making process and allows decision makers to be held to account. Disclosure of information in this case would allow transparency of UK governmental involvement in the West Africa Gas Pipeline project and the Chad/Cameroon Petroleum Development project. It would allow the public to understand how the UK government approaches issues of economic development in environmentally sensitive areas.

2. Much of the information about the project has already entered the public domain, apparently without any detrimental effect. Information has been published in the international media and by organisations such as the Centre for International Environmental Law, Friends of the Earth International, the World Bank and the Centre for Environment and Development.

There are clearer arguments in favour of maintaining the exemptions:

1. The requested information contains appraisals of foreign states, the disclosure of which would prejudice or adversely affect relations between these and the UK government.

2. The disclosure of some of the information would prejudice working relationships between the UK government and international financial institutions. This could affect the UK government's credibility in future international and financial negotiations, its ability to promote its interests abroad and its influence in assisting the social and economic development of developing countries.

**The Commissioner has weighed the competing public interest arguments as outlined above and has concluded that in all the circumstances of this case, the public interest in maintaining the section 27 exemption and the exception in regulation 12(5)(a) is not outweighed by the public interest in disclosure.**

### **Section 40 (personal data)**

Section 40(2) of the Act was applied by the public authority to withhold information in one of the documents (document C). Section 40 states that:

**40.** - (1) *Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.*

(2) *Any information to which a request for information relates is also exempt information if-*

- (a) *it constitutes personal data which do not fall within subsection (1), and*
- (b) *either the first or the second condition below is satisfied.*

(3) *The first condition is -*

- (a) *in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-*
  - (i) *any of the data protection principles, or*
  - (ii) *section 10 of that Act (right to prevent processing likely to cause damage or distress), and*
- (b) *in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.*

Section 40(2) is engaged by virtue of satisfying the condition of section 40(3)(a)(i). It is an absolute exemption and as such is not subject to the public interest test.

**The Commissioner is satisfied that the information withheld under section 40(2) constitutes personal data relating to a living individual and that its disclosure would be unfair and involve contravention of the First Data Protection Principle.**

The Commissioner considered whether the extension of time sought by the public authority to respond to the complainant's request was reasonable.

**Section 17** provides that –

**S17.** – (1) *'A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which-*

- (a) states that fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies.*

(2) *Where-*

*(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-*

- (i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or*
- (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and*

*(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,*

*the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.'*

The complainant's original request for information was made on 5 January 2005 and was acknowledged by UKTI on 6 January. On 2 February 2005 UKTI requested an extension of time to determine the public interest in relation to one of the exemptions. On 16 February 2005 UKTI issued its refusal notice to the complainant.

Section 10(1) of the Act gives a public authority 20 working days to

respond to a request for information. In fact it took the public authority 30 working days to respond. The Commissioner has looked carefully at the circumstances and does not consider the extension of 10 days to be unreasonable in this instance. Therefore he does not uphold the complaint in this respect.

However, the public authority failed to state which exemption applied when it requested an extension of time to respond.

**The Commissioner's decision is therefore that UKTI breached section 17(1)(b) of the Act.**

## **5. Specified steps**

**In view of the Commissioner's decision that UK Trade & Industry was entitled to rely upon section 27, section 40 and regulation 12(5)(a) to withhold all the requested information, he does not require any steps to be taken.**

## **Right of appeal**

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

Information Tribunal                      Tel: 0845 6000 877  
Arnhem House Support Centre      Fax: 0116 249 4253  
PO Box 6987                              Email:  
informationtribunal@dca.gsi.gov.uk  
Leicester  
LE1 6ZX

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 11th day of April 2006.

Signed: .....

Graham Smith  
Deputy Information Commissioner

Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF