

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 12 February 2009

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

Summary

The complaint requested information concerning allegations of impropriety by Prince Jefri of Brunei. The matter was referred to the Foreign and Commonwealth Office (FCO) who told the complainant that they held information that was exempt from disclosure under section 27(1)(a) of the Act and that the balance of the public interest was in favour of maintaining the exemption.

The Commissioner decided that the section 27(1)(a) exemption was engaged and that the public interest in maintaining the exemption outweighed the public interest in disclosing the information which had therefore been withheld correctly. Accordingly the Commissioner decided that the public authority had dealt with the request for information in accordance with the Act.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 12 December 2006, the complainant asked for information concerning allegations of impropriety by Prince Jefri of Brunei. The Foreign and Commonwealth Office (FCO) responded on 30 January 2007. On 21 February 2007 FCO told the complainant that they held information that came within the scope of the request but that it was exempt from disclosure under section 27(1)(a) of the Act and that the public interest in maintaining the exemption outweighed the public interest in its disclosure.

3. On 5 March 2007 the complainant asked FCO to review the decision to withhold the information. On 25 April 2007 FCO confirmed that the information was exempt from disclosure.

The Investigation

Scope of the case

4. The Commissioner considered application of the section 27(1)(a) exemption, and then proceeded to consider the balance of the public interest.

Chronology

5. On 25 April 2007 the complainant contacted the Commissioner to complain that FCO had declined to provide the information requested.
6. On 21 May 2007 the Commissioner told FCO that the complaint had been made. On 14 October 2008 the Commissioner put the complaint formally to FCO who responded on 12 November 2008, providing him with copies of seven documents that fell within the scope of the request and which were being withheld, together with a statement of FCO's reasons for withholding the information.

Findings of fact

7. The Commissioner has seen, from both law and media reports extending over more than 10 years, that Prince Jefri of Brunei, the third and youngest brother of the Sultan of Brunei, and a former Finance Minister of Brunei, has been accused over a long period of time, of financial wrongdoing on a massive scale, as well as other mischief. The Commissioner saw evidence in a House of Lords Judgment that Prince Jefri has not always been in favour with the Bruneian authorities. In his judgment Lord Millett said: "[the Prince] is the third and youngest brother of the Sultan of Brunei. Until March 1998 he enjoyed a very close relationship with the Sultan ... He is, however, no longer in favour." (*House of Lords Judgments – Prince Jefri Bolkiah v KPMG (A Firm) 18 December 1998*).
8. The Commissioner accepted as fact FCO's clear evidence that the Bruneian royal family and government are discreet about details of the royal wealth and the country's economy. He also accepted that the release of information about Bruneian finances by the UK government would cause serious offence, make the Bruneians reluctant to share sensitive information with the UK in the future, and inhibit frankness and openness in diplomatic matters. He also found persuasive FCO's evidence that the Bruneian Royal family would find deeply offensive disclosure of the information contained in the documents that are within the scope of the request.
9. Brunei is a small country but is a significant purchaser of UK goods and services and an investor in and through the City of London. The UK has significant investments in Brunei, notably within the local oil industry. Brunei's oil wealth and

international partnerships, within South-east Asia, and beyond, give it a voice in international affairs that is disproportionate to its size.

Analysis

Exemption

10. Section 27(1) of the Act provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

(a) relations between the United Kingdom and any other State, ... “.

The Commissioner has seen that in the case of *Hogan v Oxford City Council & The Information Commissioner* (EA/2005/0026, EA/2005/0030) the Information Tribunal found that the “prejudice test is not restricted to “would be likely to prejudice”. It provides an alternative limb of “would prejudice””. This second limb of the test places a much stronger evidential burden on the public authority to discharge. For “would prejudice” to apply, whilst it would not be possible to prove that prejudice would occur beyond any doubt whatsoever, prejudice must be at least more probable than not (*Hogan*).

11. The Information Tribunal had recently acknowledged the validity of the sorts of concerns raised by FCO in relation to Brunei in the case of *CAAT v ICO & Ministry of Defence* EA/2006/0040. In the CAAT case – which related to relationships with Saudi Arabia - the Tribunal had interpreted ‘prejudice to international relations’ broadly, accepting that prejudice:

“can be real and of substance if it makes relations more difficult or calls for particular diplomatic response to contain or limit damage which would not otherwise have been necessary” (paragraph 81).

12. The Commissioner has seen that the information within the scope of the request is embedded within seven documents and that the release by the UK government of information about Bruneian finances would be particularly unwelcome to the Bruneian authorities. He also noted (paragraph 8) that disclosure would or would be likely to cause serious offence and make the Bruneians reluctant to share sensitive information with the UK in the future, inhibiting frankness and openness in diplomatic matters, and has seen that release would cause serious offence to the Bruneian government and royal family. The Commissioner accepts that the relationship with the government of Brunei is important to the commercial and political interests of the UK both within the region and beyond (paragraph 9). He therefore decided that the section 27(1)(a) exemption in the Act was engaged and proceeded to consider the public interest.

Public interest

13. The complainant told the Commissioner that it was in the public interest for the information to be given to him in order to: uphold public confidence that the UK kept records of concerns about powerful public figures from overseas; to provide assurance that the UK government maintained effective relations with Brunei; and to ensure that public funds were spent correctly when dealing with allegations of impropriety against individuals in the UK accused over a long period of time of significant financial wrongdoing.
14. FCO told the Commissioner that the discreet nature of the Bruneian royal family made it particularly likely that release of the disputed information would expose the UK to the risk of an adverse reaction from the Bruneian authorities and that it was not in the public interest to expose the UK to that risk. FCO added that the Information Tribunal had recently acknowledged the validity of these sorts of concerns in the case of *CAAT v ICO & Ministry of Defence EA/2006/0040*. In the CAAT case, the Tribunal had interpreted 'prejudice to international relations' broadly, accepting that prejudice:

"can be real and of substance if it makes relations more difficult or calls for particular diplomatic response to contain or limit damage which would not otherwise have been necessary" (paragraph 81).
15. FCO stated that the decision in the CAAT case had also said:

"We do not consider that prejudice necessarily requires demonstration of actual harm to the relevant interests in terms of quantifiable loss or damage. For example, in our view there would or could be prejudice to the interests of the UK abroad or the promotion of those interests if the consequence of disclosure was to expose those interests to the risk of an adverse reaction from the KSA or to make them vulnerable to such a reaction, notwithstanding that the precise reaction of the KSA would not be predictable, either as a matter of probability or certainty. The prejudice would lie in the exposure and vulnerability to that risk" (paragraph 81).
16. Accordingly, and in part by analogy with the CAAT case, FCO had concluded that it would not be in the public interest to expose the UK to the risk of the consequences of an adverse reaction from the Bruneian authorities to possible publication.
17. The Commissioner recognises the force of the arguments put forward by the complainant about public confidence regarding visiting public figures from overseas, maintaining effective relations with Brunei, and public assurance that allegations of impropriety conducted within the UK are addressed by using public funds correctly. He has also had regard to the FCO's evidence of high sensitivity for the Bruneian authorities, and the royal family in particular, of the issues covered within the information being withheld.
18. In reaching his decision, the Commissioner has noted the CAAT case, which he sees as readily applicable to the current matter and which concerned information about the Saudi Arabian royal family, some of which would, or

would be likely to, have caused offence and therefore have been likely to prejudice the interests of the UK. He also had regard for a further, more recent, decision by the Information Tribunal in the *Gilby v Information Commissioner and FCO (EA/2007/ 0071, 0077, 0079)* cases. This matter, like the CAAT case, also concerned information relating to Saudi Arabia, including members of the Saudi Arabian royal family.

19. The reasoning used in those decisions of the Tribunal, which concerned Saudi Arabian matters was, the FCO believed and the Commissioner accepted, very relevant to consideration of the application of the section 27(1)(a) exemption and the balance of the public interest as regards enquiries regarding Prince Jefri. The Commissioner accepted FCO evidence that the Bruneians are very discreet about details of the royal wealth and the country's economy. He has seen that the release of information about Bruneian finances by the UK government would therefore be particularly unwelcome and would, or would be likely to, cause serious offence. This could make the Bruneian authorities reluctant to share sensitive information with the UK government in the future, and also inhibit frankness and openness in diplomatic reporting.
20. In the CAAT and Gilby cases, the Information Tribunal acknowledged the validity of very similar concerns raised by FCO in the context of the Saudi Arabian royal family. In the CAAT case, the Tribunal interpreted 'prejudice to international relations' broadly, as already noted within the FCO evidence set out above.
21. Similarly in relation to the application of section 27(1) in the Gilby cases, the Tribunal acknowledged the general importance of transparency and accountability, the sensitive nature of the Saudi regime, and the importance of transparency in the fight against corruption. However, the Tribunal also said that these considerations did not:

"negate the public interest in maintaining our good relations with Saudi Arabia and avoiding prejudice to the UK interests in that country or the promotion of protection of those interests" (paragraph 51).

The Tribunal considered that disclosure of the disputed information:

"would be highly likely to result in real and substantial prejudice of that kind, which would be contrary to the public interest" (paragraph 52).

22. The Commissioner decided that those considerations also applied in the matter of Brunei. Having considered carefully the complainant's arguments and those of the FCO, as well as the decisions by the Tribunal in the CAAT and Gilby cases, the Commissioner decided that the public interest in maintaining the exemption outweighed the public interest in disclosing the information requested and therefore that the information had been withheld correctly.

The Decision

23. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

24. The Commissioner requires no steps to be taken.

Right of Appeal

25. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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

Dated the 12th day of February 2009

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF**