

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 24 March 2011

Public Authority: Department for International Development
Address: 1 Palace Street
London
SW1E 5HE

Summary

The complainant submitted a request to the Department for International Development (DFID) which asked for 50 specific documents which he identified by both their title and reference number on DFID's electronic document records management system. DFID withheld 40 documents in their entirety; disclosed 8 documents in a redacted format and explained that the remaining 2 documents were in fact duplicates of other documents. DFID relied on the exemptions contained at sections 27(1)(a) to (d); 35(1)(a); 38(1)(a) and (b); 40(2) and 43(2) of the Act to withhold the information not provided to the complainant. The Commissioner has reviewed the information that has been withheld and is satisfied that sections 27(1)(a) to (d) and section 40(2) provide a basis to withhold this information.

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. The complainant submitted four requests to the Department for International Development (DFID) on the following dates: 28 August 2009, 29 September 2009, 10 November 2009 and 18 December 2009 (requests '1 to 4' respectively). Each request asked for 50 specific

documents which the complainant identified by both their title and their reference number on DFID's electronic document records management system. The documents that were requested all focused on the oil industry in Iraq.

3. On 25 September 2009 DFID contacted the complainant in relation to request 1 and explained that it considered the exemptions contained at sections 27 and 35 to apply to the requested information but it needed further time to consider the balance of the public interest test. DFID explained that it aimed to have completed its assessment within a further 20 working days.
4. DFID contacted the complainant again on 23 October 2009 and on 20 November 2009 and explained that it still needed further time to consider the balance of the public interest test.
5. On 21 January 2010 DFID contacted the complainant again and explained that it was continuing to process the four requests, including assessing the balance of the public interest for the qualified exemptions it considered to apply. With regards to requests 1 and 2 DFID explained that it hoped to have this process complete within one month and that it would inform him of the outcome of its considerations in respect of requests 3 and 4 as soon as they were complete.
6. On 19 February 2010 DFID provided the complainant with a substantive response to his first request, i.e. the one dated 28 August 2009. As part of this response DFID disclosed 8 documents, albeit with certain redactions, and withheld the remaining documents on the basis of the exemptions contained at sections 27(1)(a) to (d); 35(1)(a); 38(1)(a) and (b); 40(2) and 43(2) of the Act. (The response noted that two of these documents were duplicates of other documents.)
7. The complainant contacted DFID on 23 March 2010 and asked for an internal review of the decision to withhold the 40 documents in their entirety and the decision to redact one of the documents that had been disclosed. (The complainant did not dispute the redactions made to the seven other documents which had been disclosed.) The complainant included detailed submissions to support his position that the exemptions to withhold this information had been misapplied.
8. On the same day, but in a separate piece of correspondence, the complainant submitted an 'internal review request' in relation to DFID's extension of the public interest test in relation to the remaining three requests.
9. DFID contacted the complainant again on 30 April 2010 and explained that it had conducted an 'internal review' into its handling of all four

requests and concluded that all of them were vexatious and thus were being refused on the basis of section 14(1) of the Act.

10. Following the intervention of the Commissioner, details of which are set out below, DFID withdraw its reliance on section 14(1) for all four requests and in respect of request 1 returned to its position as set out in its refusal notice dated 19 February 2010.

The Investigation

Scope of the case

11. The complainant contacted the Commissioner on 12 May 2010 in order to complain about DFID's handling of his requests. The complainant argued that DFID was incorrect to refuse his four requests on the basis that they were vexatious.
12. As already noted by the time this Notice is being issued DFID has withdrawn its reliance on section 14(1) of the Act as a basis to refuse all four of the complainant's requests. The scope of the complaint has therefore shifted at the point this Notice is being issued. There are now two outstanding points of complaint: firstly, the application of the Part II exemptions to refuse request 1 (as detailed in the refusal notice dated 19 February 2009). Secondly, DFID's need to fulfil requests 2 to 4 now that it is now longer relying on section 14(1) to refuse them. This Notice is limited to considering the first aspect of this complaint. (The Commissioner has already issued a separate notice under reference number FS50373136 which deals with the second aspect of this complaint.) With regard to details of the first aspect of his complaint, as noted above, the complainant disputed DFID's decision to withhold all 40 documents in their entirety and also the decision to redact information from one (not all) of the released documents. (This document bears the DFID reference number 421571.)

Chronology

13. The Commissioner contacted DFID on 5 July 2010 in order to inform it that he had received a complaint regarding all four of these requests.
14. In response to this letter on 2 August 2010 DFID provided the Commissioner with copies of the information falling within the scope of all four of the complainant's requests.
15. The Commissioner contacted DFID on 16 December 2010. He explained that his preliminary view was that section 14(1) did not provide a basis to refuse the four requests and provided detailed reasoning to support

- his view. The Commissioner explained to DFID that if it agreed with this view then he would issue a decision notice which solely addressed the Part II exemptions cited by DFID as a basis to refuse the request 1. The Commissioner would then expect DFID to process requests 2 to 4, i.e. disclose the requested information or issue a refusal notice compliant with section 17 of the Act. The Commissioner explained that if DFID wished to maintain its reliance on section 14(1) as a basis to refuse requests 1 to 4 then he would simply issue a decision notice which addressed the application of this section to all four requests.
16. The Commissioner received a response from DFID on 18 January 2011. In this response DFID confirmed that having considered the Commissioner's comments on its application of section 14(1) it had decided to withdraw its reliance on this section. DFID also confirmed that it was content with the way in which the Commissioner suggested this complaint could be progressed.
 17. On 3 February 2011 the Commissioner contacted DFID and asked it to clarify the basis upon which it had relied upon the exemptions cited in the refusal notice of 19 February 2010.
 18. DFID provided the Commissioner with this clarification on 9 March 2011.

Analysis

Exemptions

Section 27 – international relations

19. DFID is relying on all four of the sub-sections of section 27(1) to withhold the 40 documents withheld in their entirety and to some parts of the redacted document which has been disclosed to the complainant and falls within the scope of this complaint (i.e. the document bearing the DFID reference number 421571).
20. Section 27(1) states 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,
 - (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.'

21. In order for a prejudice based exemption, such as section 27(1), to be engaged the Commissioner believes that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would or would be likely to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure would be likely to result in prejudice or disclosure would result in prejudice. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.

22. Furthermore, the Commissioner has been guided by the comments of the Information Tribunal which suggested that in the context of section 27(1), prejudice can be real and of substance 'if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary'.¹

DFID's position

23. In relying on all four sub-sections of section 27(1), as opposed to simply one of these exemptions, DFID noted that it considered all four to be very closely aligned and interrelated. It confirmed that the UK's relations with the government of Iraq were at the centre of its considerations in relying on these exemptions. However, it explained that a significant proportion of the requested information also related to other partner governments and institutions, including the US, World Bank, UN and countries bordering Iraq. DFID noted that Iraq is a uniquely difficult operating environment and the vast majority of the requested documents are highly sensitive.

¹ *Campaign Against the Arms Trade v The Information Commissioner and Ministry of Defence* (EA/2006/0040), paragraph 81.

24. With regards to exactly how prejudice would be likely to occur, DFID explained that the majority of the information consisted of emails between DFID officials and other UK government departments, partner organisations or overseas governments. It also includes notes and minutes relating to meetings between UK officials and government ministers and senior Iraqi government ministers. In respect of sections 27(1)(a) and (b) DFID argued that the vast majority of the information contained within this request was very sensitive, containing candid remarks about the actions, plans and governance of Iraq as well as about senior politicians and members of government. Such comments were made in what was intended to be a confidential space. Disclosure of such information by DFID in the knowledge that they contain sensitive comments and information which was provided by a partner in an environment where trust and confidence are absolutely paramount, would be likely to endanger the UK government's relations with these governments and partner institutions. It would also reduce the likelihood of open and effective dialogue in future, especially because at the time of the request many key figures were still active in the Iraqi government and the issues covered in the information continued to be ones which were ongoing.
25. In respect of sections 27(1)(c) and (d), DFID highlighted fact that it depended very heavily on maintaining good relations with overseas governments and international partners in order to deliver its objectives focussed on poverty reduction. (This is particularly true in Iraq where there is a considerable reconstruction effort still in progress.) Without the UK government being able to maintain effective working relationships with other governments and institutions it would not be able to positively influence international events and decisions. DFID argued that disclosure of information in this case, where the focus was on Iraq, could also limit the UK's ability to work with and influence such organisations more broadly, not just in relation to Iraq or international development issues.
26. In its submissions to the Commissioner, DFID confirmed that it did not believe that the passage of time between the date of the documents' creation and the date of the request had effected the likelihood of prejudice occurring. This was because although there had been considerable political change in Iraq over the last few years, tensions remained and many of the key players were still in government which meant that many of the sensitivities were still current.
27. Finally, DFID confirmed that it was relying on the lower threshold of likelihood that prejudice would be likely to occur, rather than would occur.

The complainant's position

28. The complainant argued that the degree to which any prejudice would occur to the UK's international relations following disclosure of this information was slight, at best, for the following reasons:
29. He noted that the Commissioner's guidance on section 27 stated that international relationships will change over time; changing events will affect whether disclosure of information will be prejudicial. In the circumstances of this case, the complainant explained that some of the documents relate to the period before Iraq even had a permanent government, others relate to the period in which Iraq was nominally sovereign, but when the UK managed sizeable military forces in the country. None of them related to the period since UK troops had been withdrawn. The complainant also noted that since the time period covered by the documents, the UK government had changed, as had its policy towards Iraq. Furthermore, it was not the case that there is a positive relationship of trust between the UK and Iraq that would be damaged by disclosure of the information. The complainant explained that British-Iraqi relations were described as having suffered a 'catastrophic failure' when the Iraqi government turned to the US rather than British forces for assistance in its military operations in Basra. Therefore in relation to such large issues affecting UK-Iraqi relations, damage to the relationship of trust, as a result of releasing the requested information, would be slight at most.
30. Furthermore, the complainant argued that it would be very difficult to conclude that every single part of every document was sensitive. For example, parts of documents which restated public positions or referred to information in the public domain would not be exempt. In making this point, the complainant emphasised the fact that the Act provides a right of access to information, not simply documents, and thus even if large parts of a document were exempt from disclosure this does not mean that the remainder of the document should also be withheld.

The Commissioner's position

31. The Commissioner accepts DFID's suggestion that the four different exemptions contained within section 27(1) are sufficiently interrelated, especially in the circumstances of this case, that it is logical to consider all four exemptions together. (In the majority of cases the Commissioner would not conflate the consideration of exemptions but in a previous decision notice, FS50298517, he accepted the fact that as

- a general principle section 27(1)(a) cannot be seen in isolation to the other sub-sections within 27(1)).²
32. The Commissioner also accepts that the types of the harm that DFID envisages occurring if the information was disclosed are ones that are clearly applicable to the four exemptions contained with section 27(1) of the Act.
 33. With regard to the second criterion and sections 27(1)(a) and (b) the Commissioner accepts that disclosure of information provided to DFID in confidence clearly has the potential to negatively affect relations between the UK government and the other governments and international organisations who provided the information: not only would such parties be unhappy that their confidence had been broken but it would be logical to assume that they would be unwilling to be as open and candid with representatives of the UK in the future. With regard to sections 27(1)(c) and (d) the Commissioner also accepts the logic of DFID's argument that if its relations with these partner governments and organisations were harmed then it could make it more difficult for the UK government to protect and/or promote its interests abroad.
 34. The Commissioner is therefore satisfied that there is a causal relationship between the potential disclosure of the withheld information and the interests which the exemptions contained within section 27(1) are designed to protect. Moreover, the Commissioner is satisfied that the resultant prejudice which DFID believes would be likely to occur is one that can be correctly categorised, in light of the Tribunal's comments above, as real and of substance. In other words, subject to meeting the likelihood test at the third criterion, disclosure could result in making relations more difficult and/or demand a particular diplomatic response.
 35. In relation to the third criterion, the Commissioner has been guided on the interpretation of the phrase 'would, or would be likely to' by a number of Information Tribunal decisions. With regard to likely to prejudice, the Tribunal in *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005) confirmed that 'the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk' (Tribunal at paragraph 15). With regard to the alternative limb of 'would prejudice', the Tribunal in *Hogan v Oxford City Council & The Information Commissioner* (EA/2005/0026 & 0030) commented that

² [FS50298517](#), paragraph 45.

'clearly this second limb of the test places a stronger evidential burden on the public authority to discharge' (Tribunal at paragraph 36).

36. Having considered the circumstances of this case carefully, the Commissioner is satisfied that the lower threshold of prejudice is met for all four of the exemptions contained within section 27(1). The Commissioner has reached this conclusion for the following reasons: Firstly, the content of the information itself, that is to say the candid and sensitive nature of the comments and analysis, mean that the likelihood of prejudice occurring is increased. Secondly, the fact that prejudice would not simply be likely to occur to the UK's relations with Iraq, but also with a number of other governments, including the US and those in the Middle East, and furthermore international organisations such as the UN and World Bank. Thirdly, in concluding that disclosure of the withheld information provides a real and significant risk of prejudice occurring the Commissioner's accepts DFID's argument that is not simply the UK's relations (via DFID) with these bodies in the context of international development in Iraq that will be affected, but the UK's relations with these bodies on a wide variety of issues in the future.
37. By reaching this conclusion it follows that the Commissioner does not accept the counter arguments advanced by the complainant. In relation to the timing of the request the Commissioner obviously accepts the factual differences identified by the complainant, e.g. the change from a transitional to permanent government in Iraq and a change in British Prime Minister (in 2007). However, the Commissioner believes that because of the sensitive content of the withheld information, the fact that a number of key figures are in still in post in the Iraqi government and the general tensions in the country, disclosure of the withheld information would still be likely to prejudice the UK's relations with Iraq and its ability to protect UK interests in the country. Furthermore, the Commissioner does not accept the complainant's alternative argument that because relations between the UK and Iraq were so poor, disclosure would be unlikely to have any significant effect. Rather, in the Commissioner's opinion, the fragility of the relationship at the time of the request means that the likelihood of prejudice occurring is increased; disclosure would exasperate the difficulties with the relationship.
38. Moreover, for the reasons explained above the Commissioner has not simply concluded that the exemptions are engaged because the UK's relations with Iraq would be prejudiced by disclosure; rather disclosure would also be likely to effect the UK's relations with a range of other countries and organisations.

39. The Commissioner does not dispute the complainant's argument that the Act provides a right of access to information, not simply to documents, and he agrees that in considering requests public authorities should consider whether particular parts of a document could be disclosed. (Indeed this is illustrated in the way in which DFID disclosed 8 partially redacted documents in response to this request.) However, at the same time the Commissioner recognises that there has to be a practical and pragmatic way in which this approach is applied. Having considered the 40 documents withheld by DFID in their entirety, the Commissioner is satisfied that all parts of them are exempt from disclosure on the basis of section 27(1). For the parts of any documents which, as the complainant suggests could not be described as sensitive, in the Commissioner's opinion these are so small that the documents would have to be disclosed in such a heavily redacted manner to effectively render them unintelligible.

Public interest test

40. Section 27(1) is a qualified exemption and therefore the Commissioner must consider the public interest test at section 2(2)(b) of the Act and whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information.
41. The Commissioner has conflated his analysis of the public interest for all four exemptions contained within section 27(1) because, as noted above, in his opinion section 27(1)(a) cannot be seen in isolation to the other exemptions contained within section 27(1); the public interest in having good relations with other States is in reality a means to an end, the end being the ability of the UK to protect and promote its interests abroad. However, the Commissioner wishes to emphasise that his conclusion in relation to the public interest for each exemption has been reached on its merits; that is to say he has not aggregated the weight of his public interest test considerations.

Public interest arguments in favour of disclosing the requested information

42. The complainant emphasised the following public interest arguments in favour of disclosing the information he requested:
43. The public interest in understanding the government's activities in relation to Iraq was considerable given that the Iraq war has been described as the most controversial, and perhaps flawed, foreign policy since the Suez crisis of 1956. As evidence of its controversial nature the complainant highlighted the unpopularity of the war within the UK; the two Cabinet resignations as a direct result of it; the fact that to

date it had been subject to three separate public inquiries; and the level of press articles and books concerning the mishandling of the war and occupation which had led to a strengthening of public criticism.

44. Furthermore the complainant argued that there was a strong public interest in disclosure of information about oil in Iraq given that the oil industry accounts for 95% of Iraqi government revenue. Therefore decisions about Iraqi oil policy would be vital in determining the country's future.
45. DFID accepts that there is a very clear public interest in disclosure of the requested information as this would provide greater transparency and accountability for the way in which DFID and the UK government engages with foreign governments. Disclosure would enable increased public scrutiny of DFID's, and its partners, activities to reduce poverty and promote security, into which significant amounts of public funds are channelled. DFID also accepted that disclosure would contribute to a better informed public debate on the UK's involvement in Iraq which was an issue very high in the public consciousness.

Public interest arguments in favour of maintaining the exemption

46. DFID argued that it was very clearly in the public interest that the UK enjoys effective relations with foreign states and international institutions. The public interest would obviously be harmed by any negative impact on the exchange of information between the UK and its foreign partners, either through information ceasing to be provided in the future or by a failure by these foreign governments to respect the confidentiality of the information that they received from the UK government.
47. Equally, DFID argued that there was a significant public interest in the UK government preserving effective working relationships with other governments in order to positively influence international events and decisions.

Balance of the public interest arguments

48. With regard to attributing weight to the public interest arguments in favour of disclosing the information the Commissioner notes that they focus on issues often cited in any consideration of the public interest test, namely accountability and transparency, contributing to the public debate and the public's trust in government. However, as such concepts are inherent to the Act this should not diminish their relevance to this case. Nevertheless the weight that should be applied to them will depend upon the particular facts of the case and in particular the content of the information that the Commissioner has

decided is exempt on the basis of the exemptions contained within section 27(1).

49. The Commissioner is persuaded by the points made the complainant (and acknowledged by DFID) that given the background surrounding the UK's involvement with Iraq war, the centrality of the oil industry to Iraq's future and the amount of UK funds invested into Iraq's regeneration, the arguments in favour of disclosure need to be given significant and notable weight. Furthermore given both the volume and the detail of the withheld information, the Commissioner believes that its disclosure could clearly meet the public interest arguments identified above.
50. With regard to attributing weight to the public interest in favour of maintaining the exemptions, the Commissioner accepts that it is very strongly in the public interest that the UK enjoys effective relations with foreign States and international institutions. In the circumstances of this case the Commissioner accepts that this is particularly true of relationships with a key partner such as Iraq whose future stability is key to the UK's interests in the Middle East. Furthermore the Commissioner agrees with DFID that it is also very strongly against the public interest to undermine the UK's ability, via its diplomatic relationships, to protect and promote its interests abroad.
51. In conclusion the Commissioner recognises the strength of the arguments on both sides of the public interest test; however he has concluded that the public interest favours maintaining the exemption in respect of the 40 documents withheld in the their entirety and the sections of the redacted document which have been withheld on the basis of section 27. He has reached this conclusion because although disclosure of the withheld information would strongly serve the legitimate interests identified above and provide a particular insight into the UK's role in international development activities in Iraq, disclosure of the information would be likely to harm UK's diplomatic relations with other States and international organisations on topics and issues well beyond those discussed in the withheld information.
52. In light of this conclusion the Commissioner has not gone on to consider whether this information is also exempt from disclosure on the basis of the other exemptions (namely sections 35(1)(a), 38(1)(a), 38(1)(b) and 40(2)) cited by DFID.

Section 40 – personal data

53. The parts of the redacted document not withheld on the basis of section 27(1) have been withheld by DFID on the basis of sections

40(2), 38(1)(a) and 38(1)(b) of the Act. The Commissioner has initially considered the application of section 40(2) to this information.

54. This section provides an exemption for information which is the personal data of any third party where disclosure would breach any of the data protection principles contained in the Data Protection Act (DPA).

55. Section 1 DPA defines personal data as:

‘...data which relate to a living individual who can be identified

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.’

56. The information that DFID has redacted on the basis of section 40(2) consists of names of various individuals and their positions within the organisations that they work for. The Commissioner is satisfied that such information falls within the definition of personal data as defined by the DPA as the individuals are clearly identifiable from it.

57. DFID has argued that disclosure of the redacted information would breach the first data protection principle which states that:

‘Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.’

58. DFID argued that much of the information attributed to officials was supplied in the expectation that it would remain within DFID. DFID noted that much of the information attributed to individuals was of a free and frank nature and is often their personal opinions on particular matters. Disclosure of this information would not only be an intrusion of privacy, but could have adverse effects on, for example, individuals’ safety in a fragile state such as Iraq.

59. The complainant argued that it was incorrect to say that the individuals involved, particularly the more senior British and Iraqi officials, would

have had a reasonable expectation that their names would not be disclosed. In support of this point of view the complainant highlighted a number of Tribunal decisions in which it had been found that disclosure of personal data of public employees had been fair.³

60. In deciding whether disclosure of personal data would be unfair the Commissioner takes into account a range of factors including:

- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
 - what the public authority may have told them about what would happen to their personal data;
 - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights;
 - the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - particular circumstances of the case, e.g. established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
- The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
 - whether information of the nature requested is already in the public domain;
 - if so the source of such a disclosure; and
 - even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?

61. Having examined the information redacted from the document in question the Commissioner would dispute DFID's argument that this personal data actually attributes opinions to identifiable individuals. Rather the documents consist of briefing documents prepared prior to various meetings with simply the names of participants of each meeting withheld on the basis of section 40(2). Furthermore, the Commissioner accepts the complainant's argument that as a general

³ House of Commons v Information Commissioner & Baker (EA/2006/0015 & 0016) and BERR v Information Commissioner and & FoE (EA/2007/0072).

rule public employees, especially those holding senior or public facing positions, who have played a significant role in key policy decisions, such as debates on Iraqi oil policy, should not have an expectation that their names would be withheld.

62. However, the Commissioner believes that the expectations of all civil servants have to be seen in the context of the particular information which is being requested. Given that this information relates to work in Iraq, with its fragile security situation, then the individuals in question would have an expectation that their names (including their positions, from which their identities would be able to be ascertained), linked to particular meetings which they were attendees, would not be released. Given the nature of the security situation and the precautions taken by civil servants in Iraq, the Commissioner is prepared to accept that this is a reasonable expectation. In other words, the expectations of these individuals are legitimately different from civil servants whose names are linked to policy development in a less 'risky' sphere. In light of this finding, the Commissioner also accepts that the consequences of disclosing the names of the individuals could be to place the individuals at the risk of damage or distress to the extent that they could be placed at risk. The Commissioner is therefore satisfied that disclosure of the withheld information would be unfair and thus breach the first data protection principle. The redacted names and the individuals' positions have therefore been correctly withheld on the basis of section 40(2) of the Act.
63. In light of his findings in respect of section 40(2) the Commissioner has not gone on to consider whether this information is also exempt on the basis of sections 38(1)(a) and (b).

The Decision

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

Steps Required

65. The Commissioner requires no steps to be taken.

Other matters

66. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

67. The Act does not define what a 'reasonable' time period is for a public authority to complete its consideration of the public interest test. However in his guidance note, *'Good Practice Guidance No 4'*, which was published in February 2007, the Commissioner has made it clear that in his opinion all public authorities should aim to respond to requests within 20 working days. In cases where the public interest considerations are exceptionally complex it may be reasonable to take longer but in the Commissioner's opinion in no case should the total time taken exceed 40 working days. In this case DFID took over 100 working days to complete its consideration of the public interest test.
68. In the future when completing its consideration of the public interest test the Commissioner expects DFID to adhere to the timescales identified in the guidance document referenced above.

Right of Appeal

69. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

70. 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.

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

Dated the 24th day of March 2011

Signed

**Alexander Ganotis
Group Manager – Complaints Resolution
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Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

- (e) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (f) if that is the case, to have that information communicated to him."

Section 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), 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.”

Vexatious or Repeated Requests

Section 14(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”

Refusal of Request

Section 17(1) provides that -

“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.”

Section 17(3) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

International Relations

Section 27(1) 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,
- (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.”

Formulation of Government Policy

Section 35(1) provides that –

“Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

- (e) the formulation or development of government policy,
- (f) Ministerial communications,
- (g) the provision of advice by any of the Law Officers or any request or the provision of such advice, or
- (h) the operation of any Ministerial private office.”

Personal Information

Section 40(2) provides that –

“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.”

Section 40(3) provides that –

“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-

1. any of the data protection principles, or
2. 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.”

Commercial Interests

Section 43(2) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”