

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 29 June 2011

Public Authority: Foreign and Commonwealth Office
Address: Old Admiralty Building
Whitehall
London SW1A 2PA

Summary

The complainant requested a breakdown of information about refused student visa applications under the Academic Technology Approval Scheme (ATAS) which was set up as part of the Government's non-proliferation strategy. This was a narrowed version of an earlier request which had been complied with in part. It was refused under section 24 (Safeguarding National Security) of the Act. No internal review was offered. The Commissioner has concluded that the public authority was entitled to rely on section 24 as its basis for refusing to provide this information. No steps are required.

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.

Background

2. The Academic Technology Approval Scheme is described as follows on the public authority's website¹:

¹ <http://www.fco.gov.uk/en/about-us/what-we-do/services-we-deliver/atas/atas-what/>

"[It] was introduced on 1 November 2007. It is used to help stop the spread of knowledge and skills that could be used in the proliferation of weapons of mass destruction (WMD) and their means of delivery. This is common with other governments around the world.

The ATAS is designed to ensure that people who are applying to study certain sensitive subjects in the UK do not have links to WMD programmes."

3. Post-graduate students who require a visa to study certain sensitive subjects in the UK (or who wish to extend their stay) are required to obtain an ATAS certificate.
4. There was an exchange of correspondence leading up to the request which is the subject of this notice. Initially (on 10 February 2010), the complainant requested the following information relating to the ATAS scheme
 - *how many applications were received and how many were granted, refused or withdrawn since its introduction*
 - *provide a breakdown of the above information by each year since the introduction of the scheme*
 - *provide a specific breakdown of granted applications, refusals and withdrawals, by nationality of the applicants and subjects they wanted to study for every year since its inception."*
5. Following a delay to consider the balance of public interest in relation to section 24, the public authority supplied some of the requested information in relation to the first part of his request (applications approved and refused). As regards the number of applications received in total, it explained that it had received several thousand applications since the requirement was introduced but that some of them had not been completed, or had been withdrawn or had otherwise not proceeded. It said that it would exceed the appropriate limit set by statute to provide a response to his request for the number of applications that had been withdrawn and therefore relied on section 12 (Appropriate limit) as a basis for not responding to this part of the request.
6. In response to the second part of the request, it provided detail by calendar year (including part year figures for 2007 and 2010) for the number of applications approved and refused. It then commented that it had concluded that section 12 took precedence over section 24.

7. In response to the third part of the request it argued that it was again relying on section 12 and explained why it would exceed the appropriate limit to respond to this part of the request. It described the request as "*widely-framed*".

The Request

8. The complainant requested an internal review of the FCO's decision on 10 May 2010 asking for detail about the extent to which the appropriate limit would be exceeded. He also asked "*in the alternative*" for "*a breakdown of partial information on the refused applications only (193 to March 2010, by nationality and the subjects they wanted to study by each year since [ATAS'] inception)*". The Commissioner describes this as the "refined request".
9. On 8 June 2010, the public authority wrote to him with the details of the result of the internal review it had carried out. It provided more detail about its section 12 calculations. It confirmed its view that section 12 "*took precedence due to clear cost and resource implications.*"
10. Regarding the refined request, the public authority commented that section 24 "*also applies to the information*" and set out its explanation as to why, in its view, this was the case. It explained that the balance of public interest favoured maintaining the exemptions. It commented that:

"The release of detailed information concerning ATAS would undermine the effective operation of the scheme in its role in maintaining the UK's security."
11. The public authority directed the complainant to apply to the Commissioner under section 50 of the Act if he disagreed with its decision.

The Investigation

Scope of the case

12. On 25 June 2010, the complainant contacted the Commissioner to complain about the way his request for information had been

handled. The complainant specifically asked the Commissioner to consider the following points:

- The public authority had incorrectly withheld information under section 24 of the Act.
- As set out below it was agreed on 23 February 2011 that his complaint was about the public authority's response to his refined request of 10 May 2010.

Chronology

13. The Commissioner wrote to the complainant on 30 June 2010 to acknowledge receipt of his correspondence and again on 7 August 2010 to explain that his complaint had been passed to a complaints handling team.
14. The Commissioner also wrote to the public authority on 30 June 2010 to advise receipt of the complaint.
15. In November 2010, there was an exchange of telephone calls between the Commissioner and the complainant and the Commissioner and the public authority to establish the chronology of pre-request correspondence.
16. The Commissioner then wrote to the complainant on 7 February 2011 to clarify the scope of the case. In particular, he sought to establish if the complainant's priority was to obtain a decision regarding the public authority's use of section 24 in relation to the refined request.
17. On 23 February 2011, the complainant confirmed this by telephone.
18. On 1 March 2011, the Commissioner sent his first substantive letter to the public authority by email and hard copy on the matter. He set out a series of questions as to the application of section 24. He also asked for a copy of the withheld information.
19. When the Commissioner called the public authority on 15 March 2011 to check as to progress, he learned that this letter had apparently gone astray. He resent it on 16 March 2011 and revised his 20 working day deadline for response accordingly.
20. This revised deadline was missed and there was a further exchange of telephone calls in early April 2011 between the

Commissioner and the public authority about this. At short notice and while making arrangements for a meeting with the public authority at their offices on an unrelated case, it was agreed that the Commissioner would meet with the public authority on 20 April 2011.

21. At the meeting the public authority explained how the ATAS programme worked and set out why the exemption from disclosure was required for the purpose of safeguarding national security. It also agreed to forward written arguments as to the balance of public interest to the Commissioner. These were emailed to the Commissioner on 13 May 2011. In this email the public authority also confirmed that it was not seeking to rely on section 12 as a basis for refusing the refined request.

Analysis

Exemptions

22. Section 24(1) provides that –

“Information which does not fall within section 23(1) (Listed Security Bodies) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.”

23. By virtue of section 2(2)(b), section 24 is qualified by the public interest test. This means that even if section 24 is engaged, a public authority is only entitled to withhold the requested information where the public interest in maintaining the exemption outweighs the public interest in disclosure.

Required to safeguard

24. Section 24 only applies where exemption is required for the purposes of safeguarding national security. National security is not defined in law but the Commissioner considers that it can be interpreted widely. The Commissioner understands that the word ‘required’ in this context means reasonably necessary and sets a fairly high threshold for the use of the exemption.
25. Having considered the close link between information rights and human rights, the Commissioner considers that it is appropriate to

consider the case law on Article 8(2) of the European Convention on Human Rights, which states:

"There shall be no interference by a public authority with the exercise of this right except such as...is necessary in a democratic society in the interests of national security..."

26. The European Court of Human Rights has interpreted 'necessary' as "not synonymous with 'indispensable', neither has it the flexibility of such expressions as 'admissible', 'ordinary', 'useful', 'reasonable' or 'desirable'". Accordingly, in the view of the Commissioner, necessity is less than absolutely essential but more than merely useful.
27. The Commissioner thinks that section 24 should not be applied in a blanket fashion. The information in question must not merely relate to national security matters. There must be evidence that disclosure of the information in question would pose a real and specific threat to national security.
28. In its letter to the complainant of 8 June 2010, the public authority explained:

"The release of details such as nationalities, courses and individuals that are being refused could identify countries, and possibly those institutions within, that we suspect of trying to obtain sensitive information. Such information could also identify certain institutions as having courses worth targeting by those seeking to circumvent our counter proliferation measures and deliver WMD and systems for their delivery. The identification of universities and courses might also bring unwelcome attention and impinge on their willingness to co-operate with the ATAS scheme. Such a loss of co-operation would undermine the ATAS scheme."

29. The Commissioner notes that the ATAS programme is part of the Government's initiative to counter the proliferation of weapons of mass destruction in order to safeguard national security. In his discussions with the public authority on 20 April 2011, the Commissioner asked the public authority to explain precisely how disclosure of the requested information would undermine that initiative. He asked the public authority to provide more detail in support of its assertions to the complainant as set out above. It did so. The Commissioner is unable to set out on the face of this

Notice what the explanation was because that would, in itself, involve the disclosure of the requested information.

30. Having considered the public authority's explanation and the threshold described above for engaging the exemption, the Commissioner is satisfied that the requested information is exempt under section 24(1). The public authority is entitled to rely on the exemption for the purpose of safeguarding national security.
31. Having concluded that the information is exempt under section 24(1), the Commissioner went on to consider whether the public interest in maintaining this exemption outweighed the public interest in disclosure.

Section 24 – Public interest test

Public interest arguments in favour of disclosing the requested information

32. The complainant submitted the following arguments in favour of disclosure:
 - Little harm would arise from disclosure because he was not seeking information about universities or colleges providing the courses in general
 - The public has a right to know whether the FCO is accountable for its decisions
 - Withholding the information fosters an atmosphere of secrecy over openness
33. The public authority submitted the following arguments in favour of disclosure:
 - Disclosure would inform debate on foreign policy
 - Disclosure would enhance transparency and accountability
34. It noted that the public interest was already being served by publishing general information about the scheme on its website.

Public interest arguments in favour of maintaining the exemption

35. For obvious reasons, the complainant did not advance any arguments in favour of maintaining the exemption and the Commissioner did not ask or require him to do so.
36. The public authority advanced arguments in support of maintaining the exemption which added some detail to the ones already set out in its letter to the complainant of 8 June 2010. Its comments to the complainant can be summarised as follows:
 - It is contrary to the public interest to undermine the ATAS scheme through disclosure
 - It is contrary to the public interest to affect adversely levels of co-operation from academic institutions
37. Its further more detailed arguments are set out in a Confidential Annex to this Notice.

Balance of the public interest arguments

38. The Commissioner accepts that there is a general public interest in disclosure and he therefore gives this argument some weight. Disclosure would provide new information to the public, of which very little is currently known, and could therefore further public debate.
39. However, the Commissioner is of the opinion that releasing the requested information would cause a specific and real threat to national security. He is satisfied that disclosure would allow individuals and groups to undermine the ATAS scheme and that this would give rise to a threat to national security. Further detail about the public authority's arguments is set out in the Confidential Annex of this Notice. The Commissioner accepts that these arguments carry significant weight when considering the balance of public interest.
40. The complainant has argued that he is not seeking information that would identify universities or colleges. The Commissioner has considered this point and has concluded that such detail could, nevertheless, be readily determined from an analysis of the withheld information. The Commissioner also agrees with the public authority's arguments as to why disclosure would

undermine national security taking into account the arguments put forward by the public authority.

41. The Commissioner accepts that non-disclosure on this matter adds to an atmosphere of secrecy, as the complainant asserts. The Commissioner thinks that such secrecy is necessary in this case in order to protect national security.
42. The Commissioner therefore believes that any advantages gained by further informing the public would be significantly outweighed by the factors for protecting the public from the adverse consequences that would arise by maintaining the exemption. The complaint is therefore not upheld.

The Decision

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

Steps Required

44. The Commissioner requires no steps to be taken.

Right of Appeal

45. 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

46. 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.
47. 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 29th day of June 2011

Signed

Graham Smith

Deputy Commissioner

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Legal Annex

General Right of Access

Section 1(1) provides that -

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

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) 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"

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Section 12(2) provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

...

National Security

Section 24(1) provides that –

“Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.”

Section 24(2) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.”

...