

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 17 October 2011**

**Public Authority:** The Department for Business Innovation and Skills  
**Address:** 1 Victoria Street  
London  
SW1H 0ET

### Summary

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The Complainant made a request to the Department for Business Innovation and Skills (BIS) for information relating to details of meetings between UKTI DSO staff (including those overseas) and defence ministry officials and members of the armed forces of Algeria. BIS provided the complainant with some of the requested information but refused to provide some of the information under sections 24, section 26, section 27 and section 43 of the Act. The Commissioner's decision is that the withheld information was properly exempted on the grounds of prejudice to international relations, but that the statutory time limits for a response were not met.

### The Commissioner's Role

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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

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2. The complainant made a request to UK Trade & Investment Defence and Security Organisation (UKTI DSO) on 23 October 2009. The request was as follows:

*"I would like to request details of meetings between UKTI DSO staff (including those overseas) and defence ministry officials and/or members of the armed forces of Algeria. Please could you provide the dates, locations and purposes of the meetings and the posts of those present (both UKTI DSO and from Algeria). I would like the request to cover meetings back to 1 April 2008."*

3. On 21 January 2010 UKTI DSO responded to the request. It refused to provide the complainant with the requested information as it stated it was exempt from disclosure under section 24 (national security), section 26 (defence), section 27 (international relations) and section 43 (commercial interests). It provided the complainant with an explanation as to why it believed these exemptions were applicable.

4. On 19 March 2010 the complainant asked UKTI DSO to carry out an internal review. In particular he stated:

*"If the review determines that the overall decisions stand, I would still ask that you provide as many of the individual elements of the information as possible. The request covered dates, locations and purposes of meetings, and the posts of those present. Even if it is the case that some of the information merits exemption, I cannot envisage a situation where each aspect of each meeting could have grounds for being exempted. In the circumstance that the review decides against revealing the information, I would request that you provide a table relating to the meetings, with information provided where it is not considered exempt and a reference to the specific relevant exemption if it is."*

5. On 25 June 2010 UKTI DSO wrote to the complainant with the result of the internal review it had carried out. It upheld its application of all of the exemptions to the request, but provided the complainant with a table containing some of the information requested on 19 March 2010.
6. On 4 August 2010 the complainant wrote to UKTI DSO to ask it to provide further information in relation to the table it had provided on 25 June 2010.
7. On 16 September 2010 UKTI DSO provided further detail in relation to the table it had given the complainant on 25 June 2010.

## The Investigation

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### Scope of the case

8. On 12 November 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 whether the exemptions had been correctly applied to withhold some of the information requested.

### Chronology

9. On 26 January 2011 the Commissioner wrote to BIS to ask for it to provide him with a copy of the withheld information. The Commissioner also asked for further submissions in support of the application of the exemptions.
10. On 14 March 2011 BIS responded to the Commissioner. It provided further submissions in support of the exemptions it had applied.
11. Due to the nature of the withheld information in this case, the Commissioner inspected the information at BIS offices on 25 May 2011.

## Analysis

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### Exemptions

#### Section 27

12. BIS has applied sections 27(1)(a), 27(1)(c), 27(1)(d) and 27(2) to the withheld information.
13. Under section 27(1) information is exempt if its disclosure under the Act would, or would be likely to, prejudice:
  - (a) relations between the United Kingdom and any other State,
  - (b) [...]
  - (c) the interests of the United Kingdom abroad, or

- (d) the promotion or protection by the United Kingdom of its interests abroad.

14. Under section 27(2) information is exempt if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.
15. This is a qualified exemption and is therefore subject to a public interest test.
16. The full text of section 27 can be found in the Legal Annex at the end of this notice.
17. The Commissioner has first considered the application of section 27(1)(a).

### **Section 27(1)(a)**

18. BIS has argued that:

*"The effective conduct of international relations depends upon maintaining a high level of trust and confidence between Governments. Disclosure of information beyond that which has already been released is likely to prejudice the relationship between the UK Government and the Government of Algeria and lead to a breakdown of cooperation between the UK and Algeria. The British Ambassador to Algeria has consulted the Algerian Government about this request. The Algerian Government confirmed that they would consider any release of information on the detail of meetings which have taken place between UK Government representatives and officials of the Algerian Government as a gross breach of trust."*

19. BIS has also suggested that disclosure may also have a wider effect, as it may cause other countries to reconsider future cooperation with the United Kingdom in light of such disclosure.
20. The Commissioner will first consider whether the prejudicial effects of disclosure relate to the UK's international relations with other States. Upon viewing the withheld information and taking into account BIS's submissions set out at paragraph 18 and 19 above, the Commissioner considers that the prejudice claimed does relate to the UK's international relations with other States. When considering the application of this exemption however due to the nature of the information he is unable to refer to it in detail in this notice.

21. The Commissioner has therefore gone on to consider the nature of the prejudice claimed. The Commissioner must be satisfied that there is a causal relationship between disclosure of the actual withheld information and the prejudice claimed. Furthermore he must be satisfied that the prejudice claimed is not insignificant or trivial. The Commissioner has noted that in this case the British Ambassador to Algeria has been consulted and has confirmed that disclosure of the requested information in this case would be considered by the Algerian Government as a gross breach of Trust. In light of this, and having himself reviewed the nature of the information, the Commissioner considers that disclosure would not be insignificant or trivial. He considers that due to the strong views of the Algerian Government, it is highly likely that other countries may share these concerns and therefore disclosure could have a wider impact upon the United Kingdom's relations with other States.
22. In this case BIS has argued that the prejudicial effects would be likely to occur. The threshold to prove "would be likely to prejudice is lower than if BIS had claimed that the prejudice would occur. In dealing with the issue of the likelihood of prejudice, the Commissioner notes that in the case of *John Connor Press Associates Limited v The Information Commissioner (EA/2005/0005)*, the Information Tribunal confirmed that "the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk" (paragraph 15). He has viewed this as meaning that the risk of prejudice need not be more likely than not, but must be substantially more than remote.
23. BIS has explained that:

*"The information requested in this case covers the period from 1 April 2008 to 23 October 2009, when the request was received. It is therefore relatively recent, and meetings which have taken place relate to business which has either not been concluded, or has not been delivered."*

The Commissioner considers that as the information requested was recent in that the meetings relate to ongoing business this increases the likelihood of the prejudice occurring.

24. Furthermore, given the reported views of the Algerian Government, the Commissioner considers that it is reasonable to

conclude that disclosure would have a serious negative impact on future relations with the UK.

25. BIS has also explained that some of the information which has been withheld contains notes taken by UK officials detailing the purpose behind the meetings but which have not been agreed or confirmed as an accurate account by the Algerian representatives. The Commissioner considers that as the withheld notes are not an agreed account of the meetings this would again increase the likelihood of the prejudice occurring.
26. The Commissioner therefore considers that section 27(1)(a) was correctly applied in this case and that this exemption is applicable to all of the withheld information.
27. As the Commissioner has decided that the exemption is engaged, he has gone on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Public interest arguments in favour of disclosing the requested information**

28. BIS has explained that there is a clear public interest in transparency in the workings of government and its relations with other countries.

### **Public interest arguments in favour of maintaining the exemption**

29. BIS has explained that disclosure of the withheld information would be likely to have a detrimental effect on its relations with Algeria and with other nations. This would not be in the public interest.

### **Balance of the public interest arguments**

30. The Commissioner considers that there is a strong public interest in transparency in the workings of government and in particular with regard to its relations with other countries to further public understanding of decisions taken which stem from these relationships.

31. However the Commissioner considers that there is a significant public interest in avoiding causing damage to international relations between the United Kingdom and Algeria and other States generally. He considers that the age of the requested information and the strong views held by the Algerian Government in relation to the damaging effect of disclosure are factors which increase the weight attributed to this public interest argument in this case.
32. The Commissioner recognises that there are compelling public interest arguments both for and against disclosure. However, he has noted in particular the strength of the public interest in avoiding causing damage to international relations between the UK and Algeria and other States. In view of this the Commissioner considers that the public interest in favour of maintaining the exemption outweighs the public interest in disclosure.
33. As the Commissioner has found that section 27(1)(a) applies to all of the withheld information and the public interest favours maintaining the exemption, he has not gone on to consider any of the other exemptions applied.

## **Procedural Requirements**

### **Section 1(1)**

34. Section 1(1) of the Act 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.”
35. As BIS did not provide a response under section 1(1)(a) within the statutory time for compliance it breached section 1(1)(a) in its handling of this request.

## Section 10(1)

36. Section 10(1) of the Act 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."
37. The Commissioner has considered whether or not BIS complied with section 10(1) of the Act.
38. BIS failed to comply with section 1(1)(a) within the statutory time for compliance, therefore it breached section 10(1) of the Act in its handling of the request.

## The Decision

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39. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
  - BIS correctly applied section 27(1)(a) to exempt the information from disclosure.
40. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
  - BIS breached section 1(1)(a) and section 10(1) in its handling of this request by not responding within the statutory time limit.

## Steps Required

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41. The Commissioner requires no steps to be taken.

## Other matters

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



Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 40 working days for an internal review to be completed, despite the publication of his guidance on the matter.

## Right of Appeal

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43. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

44. 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.
45. 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 17<sup>th</sup> day of October 2011**

**Signed .....**

**Graham Smith  
Deputy Commissioner  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### 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”

## **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.”

### **Section 10(2) provides that –**

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

### **Section 10(3) provides that –**

“If, and to the extent that –

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

### **Section 10(4) provides that –**

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

**Section 10(5) provides that –**

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

**Section 10(6) provides that –**

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

**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.”

**Section 27(2) provides that –**

“Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.”

**Section 27(3) provides that –**

“For the purposes of this section, any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.”

**Section 27(4) provides that –**

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a)-

(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1), or

(b) would involve the disclosure of any information (whether or not already recorded) which is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.”

**Section 27(5) provides that –**

“In this section-

“international court” means any international court which is not an international organisation and which is established-

(a) by a resolution of an international organisation of which the United Kingdom is a member, or

(b) by an international agreement to which the United Kingdom is a party;

“international organisation” means any international organisation whose members include any two or more States, or any organ of such an organisation;

“State” includes the government of any State and any organ of its government, and references to a State other than the United Kingdom include references to any territory outside the United Kingdom.”