

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 November 2011

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

Decision (including any steps)

1. The complainant requested correspondence between the Department for International Development (DFID) and the Cabinet Office relating to aid policy and national security. DFID refused to disclose this information and cited the exemption provided by section 35(1)(a) of the FOIA.
2. The Commissioner's decision is that DFID withheld the information correctly under the exemption provided by section 35(1)(a) and so it is not required to disclose this information.
3. DFID did, however, breach the FOIA by responding to the request late. There was also a delay to the completion of the internal review.

Request and response

4. On 28 September 2010 the complainant wrote to DFID and requested information in the following terms:

"Correspondence (excluding administrative e-mails concerning arrangements for meetings) between DFID and the National Security Council Secretariat and the Strategic Defence and Security Review Team within the National Security Secretariat of the Cabinet Office related to National Security and Aid Policy.

Moreover, unless this is already included under the above heading, I should also request a copy of the document cited in the Guardian article which I referenced in my original request."

5. DFID responded on 10 February 2011, well outside 20 working days from receipt of the request. It stated that it would not disclose the information requested and cited the exemptions provided by the following sections of the Act:
 - 27(1)(a) (prejudice to relations between the UK and any other state)
 - 27(1)(c) (prejudice to the interests of the UK abroad)
 - 35(1)(a) (information relating to the formulation or development of government policy)
 - 35(1)(d) (information relating to the operation of any Ministerial private office)
 - 40(2) (personal information)
6. Following an internal review DFID wrote to the complainant, after a lengthy delay, on 5 May 2011. It stated that the refusal to disclose the information was upheld and now also cited the exemptions provided by the following sections of the Act:
 - 27(1)(d) (prejudice to the promotion or protection by the UK of its interests abroad)
 - 35(1)(b) (information relating to Ministerial communications)

Scope of the case

7. On 5 May 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant indicated at this stage that he was dissatisfied with the citing of exemptions in response to his request.

Reasons for decision

8. The Commissioner has focussed on section 35(1)(a). This states that any information that relates to the formulation or development of government policy is exempt. Determining whether this exemption is engaged means concluding whether it is accurate to describe the information in question as relating to the formulation or development of government policy.
9. This exemption is also qualified by the public interest. This means that, if the exemption is engaged, the information should nevertheless be

disclosed unless the public interest in the maintenance of the exemption outweighs the public interest in disclosure.

10. Turning first to whether the exemption is engaged, the approach that the Commissioner takes to section 35(1)(a) is that the wording "relates to" as it is used in this section of the Act can be interpreted widely. In line with this approach, the decision here is based upon the overall purpose of the information in question, rather than on a minute examination of the content of this information.
11. The information in question consists of documents recording policy options for the Government on various aspects of international aid policy that relates to national security, and emails between officials within the public authority and others discussing the content of these documents. Many of these documents relate to the Strategic Defence and Security Review and the National Security Strategy, both of which were in the formulation stages at the time that this information was recorded.
12. The Commissioner considers it clear that this information does relate to the formulation and development of government policy. These documents record the policy making process in the area of international aid and the Commissioner is aware that papers setting out policy options and emails between officials discussing these options are likely to play a central role in any policy making process. The Commissioner is also of the view that this type of information is squarely within the class envisaged by Parliament when including this provision in the Act and his conclusion is, therefore, that the exemption provided by section 35(1)(a) is engaged.
13. The next step is to consider the balance of the public interests. In reaching a conclusion here, the Commissioner has taken into account factors that apply in relation to the specific information in question, including any arguments advanced by DFID and by the complainant.
14. Covering first those arguments in favour of disclosure of the information, the information relates to aid policy, the Strategic Defence and Security Review (SDSR) and the National Security Strategy (NSS) and the Commissioner finds that there is significant public interest in favour of disclosure, considering the general subject matter and specific content of the information.
15. First, the issue of public spending was the subject of significant public debate at the time of the request. There is significant public interest in disclosing the information in this context.
16. The Commissioner also recognises the significant public interest in the relationship between aid policy and national security policy. In this

case the information records the formulation of key policy decisions by the Government as to how it intends to approach these challenges in future. The Commissioner considers the subject matter of this information to be a factor in favour of disclosure of significant weight.

17. He also finds that disclosure of this information would provide a genuine insight into the policy making process to which it relates and underlines the public interest in the disclosure of this information that is described above.
18. Turning to those factors that favour maintenance of the exemption, DFID has argued that withholding this information is necessary in order to preserve space away from the possibility of disclosure in which policy options can be debated and all participants in this process can contribute freely without being concerned that a record of their contribution may be disclosed later. DFID has argued that maintenance of the confidentiality of the policy making processes recorded within this information was particularly important given that these processes were ongoing at the time of the request.
19. The Commissioner recognises that the argument concerning the preservation of a space within which to carry out the policy making process is valid on the grounds that this will assist in the open discussion of all policy options, including those that may be considered politically unpalatable. The weight that this argument carries in each case will vary, depending on the circumstances that apply in each case.
20. In this case the view of the Commissioner is that the stage reached in the policy making process at the time of the request, the level of detail of the information in question and the subject matter of this information are relevant when considering what weight should be given to the public interest in preserving the space within which to carry out the policy making process.
21. Reference is made above to the level of detail within this information. Whilst this is included above as an argument in favour of disclosure of this information, this is also relevant when considering whether the information should be withheld owing to the harm that may result through disclosure. Disclosure would reveal detailed discussions and exchanges about the policy. Given this, the Commissioner accepts that the argument that disclosure could result in inhibition to officials when participating in future policy making processes is relevant to the content of this information. However, the Commissioner also notes that officials are under a duty to participate in the policy making process fully, reducing any weight that this argument may carry in favour of maintenance of the exemption. The amount of weight that should be

given to this argument also depends on the circumstances of the case; the timing of the request and links to other policies are key factors.

22. A particularly important point here is that the Commissioner accepts that the policy making process recorded within the information in question was ongoing at the time of the request. The SDSR was launched on 19 October 2010 and the NSS was published on 18 October 2010. This means that the argument concerning harm to policy making refers directly to the process recorded within this information, rather than, for example, this argument concerning harm to the policy making process in general.
23. The subject matter of the information is referred to as an argument in favour of disclosure, but the Commissioner recognises that this can also be cited as an argument in favour of maintenance of the exemption. The policy making process recorded in this information is clearly of a high level of significance, meaning that any harm to the policy making process that may result through the disclosure of this information would also be of particular significance.
24. The Commissioner accepts that there is a relevant public interest argument in favour of protecting the safe space for the policy process in question. The view of the Commissioner is that this is a factor in favour of maintenance of the exemption of very significant weight.
25. The Commissioner has also considered whether disclosure of some of the information could impact upon the convention of collective Cabinet responsibility, whereby all members of the government share responsibility for all government policies, regardless of any views they may have voiced privately. This argument concerns whether disclosure showing the individual views of a minister could erode this convention, with a resultant negative impact upon the operation of Cabinet government.
26. The Commissioner recognises the possibility that disclosure could lead to an erosion of the convention of collective Cabinet responsibility, and regards this as a valid factor of some weight in favour of maintaining the exemption in relation to this information.
27. The Commissioner has recognised valid factors in favour of disclosure of this information, the most weighty of which relates to the subject matter of the policy formulation recorded in this information. Added to these arguments that relate specifically to this information is the more general public interest in improving the transparency of the public authority in general and of the policy making process in particular.
28. However, that the policy making process to which this information relates was ongoing at the time of the request means that the

Commissioner must give very significant weight to the arguments relating to harm to the policy making process through disclosure of this information and to the public interest in avoiding such harm. Given the key importance of the area of policy recorded within this information, the view of the Commissioner is that the public interest in avoiding harm to the policy making process in this area tips the balance in favour of maintenance of the exemption.

29. The conclusion of the Commissioner is, therefore, that the balance of the public interest supports the upholding of the exemption and the non-disclosure of the information. As a result, DFID is not required to disclose this information.
30. Separately to the above, the Commissioner also finds that DFID breached the requirement of the Act that an information request should be responded to within twenty working days of receipt.

Right of appeal

31. 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
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Signed

Steve Wood
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