

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 November 2011

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

Decision (including any steps ordered)

1. The complainant requested copies of the Fiduciary Risk Assessments (FRAs) which the Department for International Development (DFID) prepares on all countries in which it provides or is considering providing aid to.
2. The Commissioner's decision is that DFID was correct to argue that all of the FRAs were exempt from disclosure on the basis of the international relations exemption and that it in all the circumstances of the case public interest favoured maintaining the exemption.

Request and response

3. On 12 April 2011 the complainant wrote to DFID and requested information in the following terms:

'Can you provide me with a table showing the amount of money the UK has paid in international aid to each country that it has paid money to, over each of the last five years. For example...

	Country 1	Country 2
2010		
2009		

Can you provide me with statistics showing how much of the aid in each of those countries in each of those years, was lost as a result of corruption in the receiving county?

Can you provide me with the most recent reports produced by DFID analysing how big a problem corruption is for making UK aid an effective tool – as well as any documents that accompany these reports.'

4. DFID responded to this request on 17 May 2011. In relation to the first part of the request, it directed the complainant to its website where it already published data about how much money the UK had paid in international aid over the last five years. In relation to the second part of the request, DFID explained that it did not hold statistics showing how much aid was lost in each country as a result of corruption. In relation to the third part of the request, DFID explained that for each country in which it is providing, or considering providing aid, FRAs are prepared. These include an explicit assessment of the risk of corruption, the strength of government financial management systems and the potential effect of all of these on government expenditure including UK aid. DFID explained that it considered the various FRAs to be exempt from disclosure on the basis of sections 27(1)(a), (c) and (d) of FOIA.
5. The complainant contacted DFID on the same date and asked for an internal review of this decision to be undertaken arguing that the public interest favoured disclosing the FRAs.
6. DFID responded on 17 June 2011 and upheld the application of the exemptions cited in the refusal notice. It also explained that it considered the information to be exempt from disclosure on the basis of further exemptions contained with FOIA, namely sections 27(1)(b), 27(2) and 27(3).

Scope of the case

7. On 30 June 2011 the complainant contacted the Commissioner to complain about DFID's decision to withhold the FRAs.

Reasons for decision

8. 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.'

9. 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.
10. 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

11. 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.
12. With regards to how prejudice to these various interests would actually occur, DFID explained that the FRAs are based on information derived from a variety of sources – governments, donors, international

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

organisations. In some cases, there will have been explicit agreements on the confidentiality of the information. However, in all cases there was an implicit understanding that all information would be treated in confidence, shared only on an agreed basis with partners to help promote a harmonised approach and improve the fiduciary control environment in partner countries. Thus it is clear that the requested information was never intended to be placed into the public domain.

13. Furthermore, DFID explained that the FRAs themselves are very sensitive because they contain a high level of candid and often critical remarks about corruption levels and risks, governance, actions and policies of overseas governments. There is also a wide range of personal comments made about political figures and offices, many of whom remain active in overseas governments and states.
14. Therefore, in relation to sections 27(1)(a) and (b) DFID explained that given the sensitive nature of the comments contained in the FRAs, and the fact that the FRAs are based upon information provided in confidence, it was clear that disclosure of the FRAs would be likely to endanger the UK government's relations with both individual governments who are the subject of the FRAs, and indeed other governments and international organisations who provided information. Disclosure would also reduce the likelihood of open and effective dialogue in the future, particularly with those government figures that have been criticised in the FRAs.
15. With regard to sections 27(1)(c) and (d), DFID explained that if the UK's relations with other countries were damaged this would be likely to prejudice the UK government's ability to pursue its interests with that government or its partners or allies. Disclosure could limit the UK's ability to work with and influence these partners not just in relation to the sphere of international development issues but also more broadly.
16. In respect of all four exemptions, 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

17. The complainant suggested that disclosure of the FRAs would not have the negative impact on the UK's relations with partner governments to the extent envisaged by DFID. In particular, the complainant argued that the idea that other countries would refuse development aid because of the release of the FRAs was highly questionable.

The Commissioner's position

18. The Commissioner accepts DFID's suggestion that the four different exemptions contained within section 27(1) are sufficiently interrelated, such that, particularly in the circumstances of this case, 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
19. The Commissioner also accepts that the types of harm that DFID believes would be likely to occur if the FRAs were disclosed are ones that are clearly applicable to the four exemptions contained within section 27(1) of FOIA.
20. 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 affect negatively relations with the other governments and international organisations who provided the information. Firstly, because such parties would be likely to be unhappy that their confidence had been broken. Secondly, because it would be logical to assume that such parties would be unwilling to be as frank with contributions to the UK government in the future. Furthermore, the Commissioner also accepts that it is logical to argue that the UK's relations with the governments that were negatively criticised in the FRAs will be harmed. 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.
21. 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 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.
22. 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

² [FS50298517](#), paragraph 45.

number of Information Tribunal decisions. He believes that for the threshold of 'would be likely' to be met the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk. With regard to the alternative limb of 'would prejudice' the Commissioner believes that this places a stronger evidential burden on public authority to discharge.

23. Having considered the circumstances of this case, the Commissioner is satisfied that the lower threshold of prejudice of all four exemptions contained within section 27(1) is clearly met. The Commissioner has reached this conclusion for the following reasons: firstly, as DFID has argued, the content of the FRAs is extremely candid and includes particularly frank assessments and comments about both individuals and institutions in the country in question. Given the at times critical tone of the FRAs the Commissioner is satisfied that it is clearly more than a remote possibility that disclosure would be likely to negatively impact the UK's relations with the governments in question. Secondly, the information falling within the scope of the complainant's request is broad, that is to say, it encompasses FRAs not just on one or two countries but all countries which the DFID has, or is considering, providing aid to. In the Commissioner's opinion this clearly increases the likelihood of prejudice occurring. Thirdly, the fact that disclosure would not simply be likely to prejudice relations with the government of the country which is the subject of a particular FRA, but also with the various different sources that have provided information in confidence for the purposes of the FRA. Fourthly, the Commissioner accepts that given the often critical and broad reaching nature of the comments about the countries which are the subject of the FRA, disclosure would be likely to harm the UK's relations with the countries not simply in the context of international development but also on other issues.
24. In reaching this conclusion it follows that the Commissioner does not accept the complainant's line of argument that overseas countries have an inherent interest in maintaining positive relations with the UK government in order to receive aid. Although on a superficial level, the Commissioner can understand why such an argument may appear to be a reasonable one, he is persuaded by DFID's explanation that international development is a far more complex issue than this assumption suggests. That is to say, central to the success of international aid is a collaborative relationship between both rich and poor countries. The UK needs to respect the role of overseas governments as key partners in the challenge of eliminating poverty. Therefore, the Commissioner accepts that the disclosure by the UK of sensitive and / or critical information about overseas governments risks alienating these partners, and thus the UK's ability to promote international development, regardless of any inherent interests the

governments in question may have in maintaining positive relations with the UK.

Public interest test

25. Section 27(1) is a qualified exemption and therefore the Commissioner must consider the public interest test at section 2(2)(b) of FOIA 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.
26. 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), especially in the context of this case; 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

27. DFID acknowledged that there was a clear public interest in releasing information in order to provide transparency and accountability for the way in which DFID engages with international organisations and foreign governments in seeking to reduce poverty and fight corruption. DFID explained that it was also committed to providing greater transparency about its activities and spending to help the public hold DFID to account for using aid money wisely. It referred the Commissioner to its activities in relation to the cross-government transparency agenda, UK Aid Transparency Guarantee and the International Transparency Initiative.
28. The complainant argued that, given the current economic climate, the public interest favoured disclosure of this information so that the public could fully understand the decisions taken by DFID to invest in these countries, despite the levels of corruption that may exist.

Public interest arguments in favour of maintaining the exemption

29. DFID explained that it depended very heavily on maintaining good relationships with overseas governments and international partners in order to deliver its poverty focussed objectives and to reduce corruption. The free and frank discussion with these third parties is

essential to ensuring that lessons learned are passed on to enable DFID ultimately to achieve results and value for money in the use of public funds. It would not therefore be in the public interest if the FRAs were disclosed as this would undermine DFID's ability to work with and influence other donors in eradicating poverty and undermine the ability of the UK to respond to international development needs.

30. More broadly DFID argued that it was clearly in the public interest that the UK enjoys effective relations with foreign states and international institutions. Disclosure of the information would not simply impact on the international development issues; disclosing sensitive information relating to an overseas government could damage the UK government's ability to work with them and influence them, not just in relation to international development issues. It would not be in the public interest if the UK's ability to deliver aspects of its foreign policy was undermined.

Balance of the public interest arguments

31. 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 FOIA, 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).
32. The Commissioner agrees with the thrust of the complainant's argument that, given the significant level of funding the UK government devotes to international development issues, it is reasonable that the public has the opportunity to understand why DFID has chosen to invest in the countries that it does. Such a point arguably attracts more weight given that the current Coalition Government ring-fenced the international development budget whereas other Whitehall departments faced significant reductions in funding. The Commissioner believes that, given the volume and detail of the FRAs themselves, disclosure of the requested information could clearly meet the public interest factors identified above in favour of disclosure.
33. With regard to the public interest factors in favour of maintaining the exemption, the Commissioner accepts that it is very strongly in the public interest that the UK enjoys effective relations with foreign governments and international organisations. The Commissioner also agrees that it would be directly contrary to the public interest if the

UK's ability, along with work it does with international partners, to reduce the inequalities of opportunity across the world was impaired. More broadly, the public interest arguments in favour of maintaining the exemptions attract significant weight because the disclosure also threatens to undermine the UK's relations with countries and international organisations on a range of issues, not simply international development. Furthermore the Commissioner believes that these arguments attract additional weight simply because of the range and number of foreign States with the UK's relations could be harmed. In light of these wide ranging consequences the Commissioner has concluded that the public interest in maintaining each of the exemptions outweighs the public interest in disclosing the requested information.

34. Given his conclusion in respect of section 27(1) the Commissioner has not considered DFID's reliance on the other exemptions cited in the internal review.

Right of appeal

35. 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

36. 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.
37. 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

Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF