

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 December 2011

Public Authority: Foreign and Commonwealth Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant has requested information concerning allegations of corruption in the Cayman Islands. The Foreign and Commonwealth Office (FCO) refused the request under the exemption provided by section 27(1)(a) (prejudice to international relations) of the FOIA.
2. The Commissioner's decision is that the FCO applied the exemption provided by section 27(1)(a) correctly and so it is not required to disclose this information.

Request and response

3. On 25 March 2011, the complainant wrote to the FCO and requested information about Operation Tempura, which concerned alleged corruption in the Royal Cayman Islands Police Service, in the following terms:

"a copy of the original complaint(s) [concerning Operation Tempura] filed with the FCO by [named individuals]".

4. The FCO responded on 15 April 2011. It stated that the request was refused, with the exemptions provided by the following sections of the Act cited:

27(1)(a) (relations between the UK and any other State)

27(1)(c) (prejudice to the interests of the UK abroad)

27(1)(d) (prejudice to the promotion or protection by the UK of its interests abroad)

27(2) (confidential information obtained from a State other than the UK, or from any international organisation or international court)

5. Following an internal review the FCO wrote to the complainant on 18 June 2011. It stated that the refusal of the request under the exemptions cited previously was upheld.

Scope of the case

6. The complainant contacted the Commissioner on 18 June 2011 to complain about the way his request for information had been handled. The complainant believed that the exemptions cited had been applied incorrectly and that the information requested should have been disclosed.
7. The Commissioner issued a decision notice in relation to an information request closely related to the request in this case on 31 October 2011 (FS50399152). Following the issuing of that notice, the complainant contacted the Commissioner's office and clarified that he also wished the response to the above request to be considered.

Reasons for decision

8. As covered above, the FCO cited several subsections from section 27 of the FOIA when refusing this request. The Commissioner will focus here on section 27(1)(a). This states that information is exempt if disclosure of it would be likely to prejudice relations between the UK and any other State.
9. Consideration of this exemption is a two-stage process. First, the exemption must be engaged due to prejudice to international relations being likely to result through disclosure. Secondly, this exemption is qualified by the public interest, meaning that the information must be disclosed unless the public interest in the maintenance of the exemption outweighs the public interest in disclosure.
10. The Commissioner would note first that section 27(1)(a) can be cited in the context of relations between the UK and the Cayman Islands. Whilst the Cayman Islands is a British Overseas Territory, section 27(5) is specific that "State" in section 27(1)(a) includes any territory outside the UK.

11. Turning to whether the exemption is engaged, the argument of the FCO is that disclosure would be likely to prejudice relations between the UK and the Cayman Islands. The basis of this argument is that the document records sensitive information concerning allegations about senior figures within the Cayman Islands. The concern of the FCO is that the Cayman Islands authorities would prefer this information to remain confidential and that a failure on the part of the UK to abide by this preference would be likely to cause sufficient consternation in the Cayman Islands that this would be likely to result in prejudice to relations between the Cayman Islands and the UK.
12. In previous cases where section 27(1)(a) has been considered, the Commissioner has taken a lead from an Information Tribunal case in which it was stated that this exemption can be engaged where disclosure would require a *“particular diplomatic response to contain or limit damage which would not otherwise have been necessary”*. The Commissioner has also followed this approach here.
13. Taking this approach, the Commissioner accepts that there is a likelihood of prejudice. Having reviewed the content of the information in question, it is clear that this would be regarded as sensitive by the individuals named within it and it is likely that those individuals would prefer this information to remain confidential. It is also sufficiently sensitive that the Cayman Islands authorities more widely would also be likely to hold a strong preference for this information not to be disclosed.
14. Given this, the Commissioner accepts that a decision on the part of the FCO to disclose this information would be likely to at least necessitate a diplomatic damage limitation exercise in respect to the relationship between the Cayman Islands and the UK. The Commissioner finds, therefore, that the exemption provided by section 27(1)(a) is engaged.
15. The complainant advanced a number of arguments as to why he did not believe that this exemption applied, to which the Commissioner will respond here. First, the complainant referred to a newspaper article which he argued indicated that the information in question had been disclosed to this newspaper, and then through the newspaper coverage into the public domain. However, it is not clear from this article alone what information the newspaper was privy to. In any event, the Commissioner does not believe that the possible disclosure of relevant material to a newspaper would mean that the prejudice described above would not be likely to result and so would not mean that this exemption could not be engaged.
16. The complainant has argued that any damage to relations between the UK and the Cayman Islands that would be likely to result through

disclosure of the information in question has already taken place through the disclosure to the media and that withholding the documents in response to FOI requests will actually have the effect of worsening this prejudice. In response to these arguments, the Commissioner would note again that he does not believe that, even if it is the case that a newspaper has previously been privy to some, or all, of the information in question, this necessarily means that prejudice would not be likely to occur. In response to the argument that continuing to withhold is in fact worsening the prejudice, the question for the Commissioner here is simply whether disclosure in response to the complainant's request would be likely to result in prejudice. His conclusion, above, is that prejudice would be likely to result.

17. The complainant also made reference to the governance of overseas territories and to having been named within the information himself. Whilst the FCO has referred to the governance of the Cayman Islands and other overseas territories when arguing that this information should not be disclosed, this argument is not relevant to section 27(1)(a) and so has not been taken into account when finding that this exemption is engaged. In response to the complainant's point that he is named within this information, to the extent that any of the information in question may be the personal data of the complainant, the appropriate means for the complainant to gain access to this would be via section 7 of the Data Protection Act 1998, rather than through the FOIA.
18. Having found that the exemption is engaged, the next step is to consider the balance of the public interest. In forming a conclusion on the public interest here, the Commissioner has taken into account, on the one hand, the general public interest in avoiding the prejudice that would be likely to occur through disclosure; and on the other, in favour of disclosure, that this would improve the openness and transparency of the FCO, as well as those factors that apply in relation to this specific information. This includes arguments advanced by the complainant and by the FCO.
19. Covering first those arguments that favour disclosure of the information, the view of the Commissioner is that there is a valid public interest in understanding how well, or otherwise, the Cayman Islands are administered. Given its status as a British Overseas Territory, the governance of the Cayman Islands reflects upon and therefore influences international perceptions of the UK. The information in question here is relevant to the issue of how well the Cayman Islands are administered. The Commissioner regards this as a valid public interest factor in favour of disclosure of some weight.
20. The Commissioner believes there to be a further public interest in favour of disclosure on the basis of what this would reveal about the

involvement of other UK public authorities in the events recorded within the withheld information. Disclosure would reveal information about how these public authorities had contributed to the effective governance of the Cayman Islands, which as covered above reflects upon how the UK is regarded internationally. This is a valid public interest factor in favour of disclosure of some weight.

21. Turning to those arguments in favour of maintenance of the exemption, the FCO has argued that there is a public interest in favour of maintenance of the exemption on the grounds of ensuring that the Governors of the Cayman Islands and other British Overseas Territories can share information with the UK authorities in the knowledge that this would remain confidential. The FCO believed that disclosure in this case would undermine that confidence.
22. As noted above the Commissioner recognises that the governance of British Overseas Territories impacts upon how the UK is perceived internationally. He also recognises that it is important that the Governors of those territories can be confident that sensitive information shared with the UK will remain confidential and that this confidence could be undermined through disclosure in this case. The view of the Commissioner is that this is a public interest factor in favour of the maintenance of the exemption of some weight.
23. The Commissioner has recognised valid public interest in favour of disclosure as covered above. His view is, however, that neither of these factors is of particularly significant weight. As also noted above, the public interest in avoiding prejudice to international relations is a valid public interest factor in favour of maintenance of the exemption. The Commissioner believes that this is the single factor of most weight here. When the weight of the other factor covered above in favour of maintenance of the exemption is added to this, the Commissioner finds that this tips the balance in favour of maintenance of the exemption. The conclusion of the Commissioner is, therefore, that the public interest in the maintenance of the exemption outweighs the public interest in disclosure and so the FCO is not required to disclose this information.
24. As this conclusion covers the entirety of the information falling within the scope of the complainant's request, it has not been necessary to go on to also consider the other subsections from section 27 that were cited by the FCO.

Right of appeal

25. 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

26. 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.
27. 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

Jon Manners
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