

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 March 2012

Public Authority: Export Credits Guarantee Department
Address: PO Box 2000
2 Exchange Tower
Harbour Exchange Square
London
E14 9GS

Decision (including any steps ordered)

1. The complainant requested information about projects supported by the Export Credits Guarantee Department (ECGD) but not disclosed in its Annual Review and Resource Accounts for the financial years 2007/08, 2008/09 and 2009/10. The ECGD disclosed some information but withheld the remainder citing international relations (section 27) and commercial interests (section 43) of the FOIA. The Information Commissioner's decision is that the ECGD correctly applied section 27 to all of the withheld information. He requires no steps to be taken.

Request and response

2. The complainant wrote to Alistair Darling MP on 21 February 2011 and requested information in the following terms:

"Please would you supply me with the names of the market/exporter/investor, the buyer/operating lessor, the project/goods and services, case impacts and amounts guaranteed for all the 'Other Business not listed' amounting to £29,866,049/- (2007-08), £18,525,192/- (2008-09) and £21,044,714/- (2009-10).

As you know, the ECGD is able to guarantee its client's businesses only because it used public money. It is therefore obliged to be transparent in all (not just some) of its transactions. Unfortunately,

the nature of business guarantees amounting to nearly £70 million remains undisclosed for these 3 years which is unacceptable."

3. The request was forwarded by the recipient to the Export Credits Guarantee Department (ECGD), with the ECGD receiving it on 9 March 2011.
4. The ECGD responded on 19 April 2011. It provided some of the requested information for the financial year 2007/08. However, it withheld further information for 2007/08 and all the information for the financial years 2008/09 and 2009/10, citing commercial interests (section 43 of FOIA). It also stated that some of the information relating to the financial year 2009/10 was withheld on the basis that disclosure would, or would be likely to, prejudice relations between the UK and another state (section 27 of FOIA).
5. Following an internal review the ECGD wrote to the complainant on 21 September 2011. It stated that, due to a change in circumstances, it was now able to disclose some further information. However it upheld the decision to withhold the remaining information citing sections 27 and 43 of FOIA.

Scope of the case

6. The complainant contacted the Information Commissioner to complain about the way her request for information had been handled. She acknowledged that the ECGD had provided some of the information she had requested. However, she told the Information Commissioner:

"I am still seeking the disclosure of a remaining amount of £4,514,655 from the 2009-10 Annual Review and Resource Accounts 'Other Business Not Listed'."

7. The Information Commissioner has seen the correspondence between the complainant and the ECGD in which the ECGD disclosed information within the scope of the request. While he would query the exact amount which the complainant has brought to his attention, he accepts that the withheld information involves a sum in excess of £4 million.
8. The request in this case relates to information, about business activities which the ECGD has supported, that was not published in the ECGD's Annual Review and Resource Accounts.

9. According to its website:

"UK Export Finance is the operating name of the Export Credits Guarantee Department (ECGD), the United Kingdom's export credit agency. It was created in 1919 and was the world's first export credit agency. We work closely with exporters, banks, buyers and project sponsors and have 90 years' experience of supporting exports to, and investments in, markets across the world. We do this by providing guarantees, insurance and reinsurance against loss, taking into account the government's international policies".

10. The ECGD's Annual Review and Resource Accounts is laid before Parliament and is publicly available. It includes a table of guarantees and insurance policies issued or renewed in respect of export contracts and overseas investments during the financial year in question. There is an entry in that table called "*Other Business not listed*".
11. The Information Commissioner considers the scope of his investigation to be with respect to the ECGD's application of sections 27(1)(a) (international relations) and 43(2) (commercial interests) to the withheld information relating to the 2009/10 accounts.

Reasons for decision

12. The ECGD is relying on section 27(1)(a) of FOIA to withhold all the remaining information in this case. That section focuses on the effect of disclosure and provides that information is exempt if its disclosure would, or would be likely to, prejudice relations between the United Kingdom and any other State.

The nature of the prejudice

13. In order for section 27(1)(a) to be engaged, the ECGD must show that the disclosure would, or would be likely to, prejudice relations between the United Kingdom and any other State.
14. When making his assessment regarding the prejudice test, the Information Commissioner must consider not only whether the prejudice identified can be said to have a real, detrimental or prejudicial effect but also whether or not the nature of the prejudice can be adequately linked back to the disclosure of the information in question.
15. In this case the ECGD has argued that releasing the remaining withheld information:

"...would, or would be likely to, prejudice relations between the United Kingdom and another state. Disclosure of the information would inhibit the willingness of that state to deal with the UK in the future".

16. During the course of the Information Commissioner's investigation the ECGD provided him with its reasoning in support of that claim. Although unable to explain the basis of the causal link without disclosing the nature of the information, the Information Commissioner accepts that a causal relationship exists between the potential disclosure and the prejudice claimed.

The likelihood of prejudice

17. Having considered the arguments put forward by the ECGD, the Information Commissioner's view is that at least the lower level of likelihood - 'would be likely to' - has been demonstrated. It follows that he finds the exemption engaged and he has carried this lower level of likelihood through to the public interest test.

Public interest test

18. When applying the public interest test, a public authority is simply deciding whether in any particular case it serves the interests of the public better to withhold or to disclose the information.

Public interest arguments in favour of disclosing the requested information

19. Arguing in favour of disclosure, the complainant told the ECGD:

"It is unacceptable that, via the ECGD, private organisations can use public money to conduct their business while the financial aspect and nature of the business remain invisible to, and cannot be scrutinised by, the people whose money is being used to guarantee the business!"

20. With respect to ECGD's "*insistence on the need to maintain secrecy*" based on the likelihood of prejudice to relations between the UK and another state, the complainant told both the ECGD and the Information Commissioner, that that stance:

"can only make me think that both the UK and the foreign state are engaging in trade which is profitable but harmful to people and/or the environment. I worry that many deaths in North Africa, the Middle East and South East Asia in recent times may have been caused by weaponry manufactured in the UK and traded with the support of public money via the ECGD".

21. The ECGD told the Information Commissioner that it had consulted with the Foreign and Commonwealth Office (FCO) about disclosure of the information in question, albeit in connection with a different request for the same information. It explained that it had consulted with the FCO on the basis that that department had "*the necessary expertise*" to judge the likely impact of disclosure on international relations.
22. The Information Commissioner recognises the logic behind this approach and endorses the practice, where appropriate, to consult both internally and externally. However, he would emphasise that the decision whether or not to disclose information is ultimately the responsibility of the public authority handling the request.
23. The Information Commissioner accepts that the FCO's advice was given in March 2011, shortly after the request in this case was received by the ECGD.
24. In favour of disclosing the information, ECGD recognised that disclosure would increase public knowledge about relations with the foreign state in question.

Public interest arguments in favour of maintaining the exemption

25. Arguing in favour of maintaining the exemption, the ECGD told the complainant that any public interest in the disclosure of information relating to support given by the ECGD is outweighed by the public interest in maintaining the exemption. It argued that this was both in order to avoid prejudice to the UK's relations with another state and to permit the effective conduct of the UK's international relations. It further argued that disclosure of the information would inhibit the willingness of that state to deal with the UK in the future.
26. The ECGD told the Information Commissioner that it considered that the effective conduct of international relations depends upon maintaining trust and confidence between governments and representatives of the Government:

"If the United Kingdom does not maintain this trust and confidence, its ability to promote and protect UK interests through international relations will be hampered which will not be in the public interest".
27. Accordingly, it argued that any public interest in the disclosure of the withheld information is outweighed by the public interest in maintaining the exemption in order to avoid prejudice to the UK's relations with the state in question. The ECGD provided the Information Commissioner with further information in support of this argument.

Balance of the public interest arguments

28. When balancing the opposing public interests in a case, the Information Commissioner is deciding whether it serves the public interest better to disclose the requested information or to withhold it because of the interests served by maintaining the relevant exemption. If the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, the information in question must be disclosed.
29. The Information Commissioner considers that, when applying the public interest test to information withheld under section 27(1), the content of the information is likely to have a significant bearing on the decision on whether to disclose. There must be some detriment to the public interest arising from disclosure for the balance of the test to justify maintaining the exemption.
30. In this case, the Information Commissioner acknowledges that there is clearly a public interest in financial transparency and accountability of public authorities. In this respect, he notes the following extract from the *Minister's Foreword* to the ECGD's annual report 2009/10:

"Taxpayers' money is put at risk when ECGD supports exports, and so ECGD must take on and manage its credit risks with due care."
31. The Information Commissioner also gives weight to the consideration that releasing the information would inform public debate and promote understanding of international affairs. However, he is also conscious that he has already accepted that the nature of the prejudice is not "trivial or insignificant".
32. With regard to the public interest factors in favour of maintaining the exemption, the Information Commissioner accepts that it is very strongly in the public interest that the UK enjoys effective relations with foreign governments and international organisations.
33. In this respect, he considers the public interest arguments in favour of maintaining the exemption attract significant weight because disclosure in this case threatens to undermine the trust and confidence between the UK and the state in question. More widely, he considers that the effective conduct of international relations depends on maintaining trust and confidence and that the UK's relations with other States, and its ability to conduct business with them, could also be harmed as a direct result of disclosure in this case.
34. Accordingly, the Information Commissioner has concluded that the public interest in maintaining the exemption outweighs the public interest in disclosing the requested information.

Other exemptions

35. As the Information Commissioner has concluded that the ECGD correctly applied section 27, he has not gone on to consider the other exemption cited by the ECGD in this case.

Right of appeal

36. 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

37. 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.
38. 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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