

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 December 2012

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

Decision (including any steps ordered)

1. The complainant requested information about UK military aid to Nigeria. The Foreign and Commonwealth Office (FCO) provided him with some information but withheld the remainder, citing the exemption relating to international relations (section 27).
2. The Commissioner's decision is that the FCO has correctly withheld the information.
3. The Commissioner requires no steps to be taken to ensure compliance with the legislation.

Request and response

4. On 17 May 2012 the complainant wrote to the FCO and requested information in the following terms:

"I am seeking greater disclosure of the FCO's activities in relation to the UK's policy of military assistance to Nigeria, specifically in the Niger Delta.

I would like to request any information, not already disclosed, that the FCO holds on:

- *The visit to Nigeria conducted by the MoD between October 2009 and December 2009, including information in preparation for this visit, records of it and any form of evaluation afterwards".*

5. The FCO responded on 22 June 2012. It confirmed it holds information within the scope of the request and provided the complainant with a digest of the information found in two documents. However, it refused to disclose the remainder of the information it holds, citing the section 27 exemption (international relations) as its basis for doing so.
6. The complainant requested an internal review on 9 July 2012. The Commissioner notes that the complainant raised wider issues - such as whether the request was interpreted correctly and the entitlement to original documents as opposed to extracts of information - with the FCO. He also asked the FCO to confirm the extent of the withheld information as he considered it *"unclear whether or not the FCO holds other documents related to this request"*.
7. The FCO sent him the outcome of its internal review on 4 September 2012. It upheld its original position, but did provide information about the context of the previously disclosed information. The FCO redacted some of the contextual information it provided, citing section 27.

Scope of the case

8. The complainant contacted the Commissioner on 6 September 2012 to complain about the way his request for information had been handled. Explaining the nature of his complaint, he told the Commissioner:

"The scope of my complaint is wider than s27. Below are some of the wider issues - a fuller discussion is found in my IR [internal review] submission".

9. Summarising his complaint, he told the Commissioner:

"Overall ... I believe that the FCO has been unwilling to engage with the arguments I have put forward. Instead, they rely on stock responses which are generally vague and unconvincing".

10. The Commissioner understands that the information in scope of the request in this case is contained within two documents. The withheld information is contained in the second document, an egram issued from the FCO High Commission in Abuja as a scene setter for a ministerial visit. Regarding the egram, the FCO told the complainant:

"One paragraph concerning UK military assistance to the Niger Delta, has been disclosed, with one redaction under S27".

11. During the course of the his investigation, the FCO told the Commissioner:

"We expressly stated in our response to [the complainant] that only a single phrase had been redacted and by including associated punctuation we were as clear as we could be that it was not an extensive redaction".

12. The FCO also provided the Commissioner with a copy of the withheld information.
13. Having been advised by the Commissioner regarding this case, the complainant confirmed that he wished the Commissioner to proceed to issuing a decision notice in relation to the withheld information. The complaint said:

"I would draw your attention to the arguments I made at internal review, and in particular those regarding the redaction of a sentence which explains the core objective of the UK's controversial policy of military assistance in the Delta. There are compelling public interest considerations to be weighed carefully on this (and on similar withheld information). I would expect the IC to give detailed consideration to this and to any representations from the FCO on this issue".

14. The Commissioner considers the scope of his investigation to be the FCO's citing of section 27 in relation to that redaction.

Reasons for decision

Section 27 International relations

15. Section 27(1) (international relations) focuses on the effect of disclosure and provides that information is exempt if its disclosure 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 other international organisation or international court;

(c) the interests of the United Kingdom abroad; and

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

16. In other words, section 27(1) focuses on the effects of the disclosure.
17. In this case, the FCO told the complainant that it is relying on section 27(1)(a).

18. In order for section 27(1) to be engaged, the FCO must show that the disclosure would, or would be likely to, prejudice the stated interest(s). In this case, as the FCO told the complainant it is relying on section 27(1)(a), it must show that disclosure would or would be likely to prejudice relations between the UK and any other state. The Commissioner notes that, in the context of section 27, the definition of 'state' includes the Government of any State and any organ of such government.

19. In assessing the likelihood of the prejudice that a disclosure of information might cause it is necessary to identify the particular harm that may arise. The FCO told the complainant:

"In this case, the information relating to military assistance could harm our relations with Nigeria".

20. The complainant questioned why disclosure would cause prejudice to relations with Nigeria. For example, he argued that while some aspects of Nigerian politics remain the same as in 2009, the information is over 31 months old and was created under a different Nigerian administration. In his view:

"The sensitivity of this information is mitigated by time and context. The security situation has changed dramatically... Information related to the UK's relationship with Nigeria and the Delta conflict is unlikely to be a cause for concern for Nigeria at this time. The impact of disclosure and the likely response is therefore insignificant".

21. With respect to the likelihood of prejudice, he argued:

"Should the information contain sensitive or critical information about Nigeria, there is plenty of information on this issue in the public realm".

22. He provided the FCO with evidence in support of those arguments.

23. Notwithstanding those arguments, having viewed the withheld information and considered the submissions provided by the FCO during his investigation, the Commissioner is satisfied that disclosure would, or would be likely to, harm relations between the UK and any other State. It follows that he finds the exemption engaged.

The public interest test

24. 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.

Public interest arguments in favour of disclosing the requested information

25. In the complainant's view, there are substantial public interest grounds for disclosure. For example, the complainant told the FCO:

"The public should be able to monitor the overall coherence of government decision-making, especially in areas prone to conflict, to ensure that public resources are maximised and foreseeable risks avoided".

26. He also argued that:

"UK's interests have not been protected by the government's lack of transparency. They are not protected now by a lack of transparency about the issue during a time of relative stability in the Delta. Should there be a resurgence of conflict in the Delta, UK interests abroad need to know and be assured that UK external policy will not lead to any unintended threat to their interests."

27. The FCO accepted that disclosure would increase public knowledge and inform debate, notably about relations between the UK and Nigeria.
28. The complainant provided both the FCO and the Commissioner with extensive arguments – which the Commissioner has not reiterated here – as to why he considered the information should be disclosed. The Commissioner notes that the FCO sought to address those views, including those about the UK's interests overseas also encompassing human rights. The FCO told the complainant:

"I have considered these arguments but do not believe they are relevant to the use of the exception under section 27".

Public interest arguments in favour of maintaining the exemption

29. The FCO argued that the effective conduct of international relations depends on maintaining trust and confidence between governments.
30. Explaining the redaction in this case, the FCO stated that it concerns the British Government's assessment of the security situation in the Niger Delta, an assessment *"which would not have been shared with the Nigerian government"*. Describing these as sensitive matters, the FCO argued that, despite the time elapsed, disclosure:

"could potentially damage the bilateral relationship between the UK and Nigeria",

and

"could impact on the British Government's defence and wider relationship with the Nigerian government".

31. Arguing strongly in favour of maintaining the exemption, the FCO told the complainant:

"More widely, it is important for the British Government to retain its ability to make candid and private assessments of the security situation in other countries, without fear of having to disclose this publicly."

32. In correspondence with the Commissioner, the FCO also explained that it considered the redaction was not only *"proportionate to the dangers posed to our international interests"* but that it did not significantly affect the quality of the information disclosed to the complainant.

Balance of the public interest arguments

33. The 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 of 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.
34. The Commissioner acknowledges the argument that releasing the information would inform public debate and promote understanding of international affairs.
35. However, the Commissioner also considers that it is strongly in the public interest that the UK enjoys effective relations with foreign States. The public interest would obviously be harmed if these international relationships were negatively impacted. He considers this to be especially true given the nature of the issues involved in this case and the likely harm if disclosure makes international relations more difficult.
36. He therefore finds the public interest in maintaining the exemption outweighs the public interest in disclosure.

Other matters

37. The Code of Practice issued under section 46 of FOIA (the "Code") provides guidance to public authorities as to desirable practice in connection with the keeping, management and destruction of records. In relation to decisions about what records should be kept in order to meet corporate requirements, paragraph 8.1(d) recommends that authorities should take the following into account:

"The need to explain, and if necessary justify, past actions in the event of an audit, public inquiry or other investigation. For example, the Audit Commission will expect to find accurate records of expenditure of public funds. Or, if an applicant complains to the Information Commissioner's Office (ICO) about the handling or outcome of an FOI request, the ICO will expect the authority to provide details of how the request was handled and, if applicable, why it refused to provide the information."

38. The Commissioner notes that, in this instance, there was an error in the initial submission that the FCO provided to the Commissioner during the course of the section 50 investigation which led him to seek clarification of the FCO's response. Whilst accepting the volume of requests the FCO is expected to handle, the Commissioner wishes to refer the FCO to the Code and expects that it will have due regard to its recommendations in its future handling of requests.

Right of appeal

39. 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

40. 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.
41. 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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