

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 April 2013

Public Authority: UK Trade & Investment
Address: 1 Victoria Street
London
SW1H 0ET

Decision (including any steps ordered)

1. The complainant has requested information about a proposed coalmine in Bangladesh known as the Phulbari Coal Project, and the London-based, AIM-listed company backing the project, GCM Resources. UK Trade & Investment (UKTI) withheld one document in full under section 27(1)(a) and (d), section 43(2) and section 40(2) of the Freedom of Information Act (FOIA). It made another redaction under section 27(1)(a) and (d) FOIA to another document. Further information was provided in part however this does not fall within the scope of the complaint.
2. The Commissioner's decision is that UKTI has correctly applied section 27(1)(a) FOIA to withhold the document in full and to make the redaction referred to above. The Commissioner did not therefore consider the application of section 27(1)(d), section 43(2) or section 40(2) FOIA any further.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 18 May 2012, the complainant wrote to UKTI and requested information in the following terms:

"This Freedom of Information Act request pertains to a proposed coalmine in Bangladesh known as the Phulbari Coal Project in Bangladesh, and the London-based, AIM-listed company backing the project, GCM Resources.

Under the Freedom of Information Act, please provide me with:

- Copies of any notes or minutes pertaining to meetings involving GCM executives [named individuals] and officials from UK Trade & Investment, both in the UK and the British high commission in Dhaka [named individuals], from 2006 until the present time;
 - Copies of any correspondence involving any GCM executives [named individuals] and any officials from UK Trade & Investment, both in the UK and the British high commission in Dhaka [named individuals], from 2006 until the present time."
5. UKTI responded on 19 June 2012. It stated that the exemptions under section 27(1) and 43(2) FOIA were likely to apply but it required further time to consider the public interest in this case. On 17 July 2012 it provided a further response. It provided the complainant with some of the information he requested but withheld some information either in full or in part under sections 27(1), 38, 40(2) and 43(2) FOIA. UKTI provided a number key for the documents which it held which fell within the scope of the request.
 6. The complainant requested an internal review on 11 September 2012. He specifically asked UKTI to review the withholding of document 1 in full under section 27(1) and section 43(2) FOIA, the redaction made to document 7 under section 27(1) and the fact that document 2 referred to another email but this had not been provided. UKTI sent the outcome of its internal review on 9 October 2012. It confirmed that document 1 should be withheld under section 27(1) and section 43(2) FOIA. It provided the complainant with the missing email which was referred to in document 2. Finally it upheld the redaction made under section 27(1) FOIA to document 7.

Scope of the case

7. The complainant contacted the Commissioner on 4 December 2012 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether UKTI was correct to withhold document 1 in full under section 27(1), section 43(2) and section 40(2) FOIA. He has also considered whether it was correct to make the redaction under section 27(1) FOIA to document 7.

Background Information

9. The information request relates to a proposed coalmine in Bangladesh known as the Phulbari Coal Project. GCM Resources (formerly known as Asia Energy) had secured rights to coalmine in the Phulbari area. In August 2006 local residents protested against the project and 3 protestors were killed. Shortly after this incident the Government of Bangladesh withdrew Asia Energy's rights to mine in Bangladesh. GCM Resources continues to engage with the Government of Bangladesh in an attempt to reinstate its rights to mine there. There are still significant sensitivities surrounding this project and protestors marched again on 26 August 2012, Phulbari Day, in remembrance of the three protestors who were killed in 2006.

Reasons for decision

10. In this case UKTI explained that section 27(1)(a) and (d) were applicable. Under section 27(1) information is exempt if its disclosure under the Act would, or would be likely to, prejudice:
- a. relations between the United Kingdom and any other State,
 - d. the promotion or protection by the United Kingdom of its interests abroad.
11. This is a qualified exemption and is therefore subject to a public interest test.
12. UKTI has explained that 'document 1', which was withheld in full, dates back to 2006 and contains information about the Government of Bangladesh relating to the Phulbari coalmine project at that time. UKTI has explained that this document was provided to the British High Commission in Dhaka and if it were disclosed this would be likely to prejudice the UK's relationship with the Bangladeshi Government. Furthermore it said that maintaining an effective relationship based on mutual trust with the Government of Bangladesh is the purpose behind the High Commission's work. The High Commission represents UK companies when interacting with the Bangladeshi Government. If the requested information were disclosed, the relationship with the Bangladeshi Government would be prejudiced and this would be detrimental to the High Commission's ability to represent effectively the interests of UK companies in the future.
13. UKTI went on to explain that the redaction made to 'document 7' also relates to information about the Bangladeshi Government and the Phulbari coalmine project. However this information is more recent, it is

dated September 2012. For the reasons set out above, UKTI said that disclosure of the redacted information would be likely to prejudice the UK's relationship with the Bangladeshi Government and would also be likely to prejudice the UK's ability to protect its interests abroad.

14. Upon viewing the withheld information and taking into account UKTI's submissions, the Commissioner considers that the prejudice claimed does relate to the UK's international relations. The Commissioner also considers that it relates to the promotion or protection by the United Kingdom of its interests abroad.
15. The Commissioner has therefore gone on to consider the nature of the prejudice claimed. The Commissioner must be satisfied that there is a causal relationship between disclosure of the actual withheld information and the prejudice claimed. Furthermore he must be satisfied that the prejudice claimed is not insignificant or trivial. UKTI considers that the information relates to an extremely sensitive matter which is still very much at the forefront of issues being dealt with and considered by the Government of Bangladesh. The Commissioner considers that the fact that 'document 7' is dated September 2012 demonstrates that the issues surrounding this mining project are still very much live. Given the subject matter to which the information relates, whilst the UK has a good relationship with the Bangladeshi Government, UKTI said that disclosure would be likely to have an adverse effect on this relationship UKTI expanded its submission on this point. The confidential annex to this Notice refers to this. The Commissioner considers that due to the sensitive subject matter of the withheld information and the fact that the issues concerned are still very much live, UKTI's assertion is a realistic representation of the likely consequence of disclosure. The effects of further disclosure are not insignificant or trivial.
16. Furthermore UKTI has contacted the British High Commission in Dhaka to ascertain its views on disclosure of document 1 and the redaction made to document 7. It explained that the High Commission has said that its dealings with the Government of Bangladesh would be likely to be adversely affected by disclosure and this would be detrimental to its ability to represent UK companies, and therefore UK interests in Bangladesh in the future. The Commissioner therefore accepts UKTI's assertion that the UK's ability to protect its interests abroad would be likely to be prejudiced by disclosure.
17. In this case, having viewed the withheld information, taking into account the submissions presented by UKTI including the further point noted in the Confidential Annex to this Notice, the Commissioner accepts that disclosure would be likely to prejudice relations between the United Kingdom and the Government of Bangladesh. He is therefore satisfied that section 27(1)(a) FOIA is engaged in this case. Having reached that conclusion he has not gone on to consider UKTI's application of section

27(1)(d) to the withheld information in any detail. However, he recognises that there is a degree of overlap between these two provisions and, on the evidence and the arguments put to him, he considers it likely that the exemption at section 27(1)(d) would also be engaged in this case.

18. As section 27(1)(a) FOIA is a qualified exemption, the Commissioner has gone on to consider the public interest test in this case.

Public interest arguments in favour of disclosing the requested information

19. UKTI has explained that there is a clear public interest in transparency in the workings of the UK Government and its relations with other countries.

Public interest arguments in favour of maintaining the exemption

20. UKTI has explained that disclosure of the withheld information would be likely to have a detrimental effect on the UK's relations with the Government of Bangladesh which is not in the public interest.

Balance of the public interest arguments

21. The Commissioner considers that there is a strong public interest in transparency in the workings of government and in particular with regard to its relations with other countries to further public understanding of decisions taken which stem from the international relationships.
22. However the Commissioner considers that there is a significant public interest in avoiding causing damage to relations between the United Kingdom and the Government of Bangladesh. He considers that due to the sensitive issues to which the requested information relates and the fact that these are still very much live, the weight to be attributed to this public interest argument is substantial.
23. The Commissioner considers, having regard to the content of the withheld information and the competing public interest arguments in this case, that the public interest in favour of maintaining the exemption clearly outweighs the public interest in disclosure.
24. As the Commissioner has found that section 27(1) applies to all of the withheld information and the public interest favours maintaining the exemption, he has not gone on to consider the application of any of the other exemptions applied.

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

Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF