

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 June 2013

Public Authority: Attorney General's Office (AGO)

Address: 20 Victoria Street
London
SW1H 0NF

Decision (including any steps ordered)

1. The complainant has requested any advice requested by or given to any governmental or quasi-governmental body regarding whether it is legitimate or not to recognise any purported authority of the Turkish Republic of Northern Cyprus (TRNC).
2. The Commissioner's decision is that the Attorney General's Office (AGO) has correctly relied on the section 35(3) FOIA exemption by virtue of section 35(1)(c) FOIA (Law Officers' advice) in refusing to confirm or deny whether it held the information requested. The Commissioner found that the balance of the public interest under section 35(3) favoured maintaining the exemption.
3. The Commissioner does not require AGO to take any action.

Request and response

4. On 15 November 2012, the complainant wrote to AGO and requested information in the following terms:

All documentation on any advice requested and/ or given to any governmental or quasi-governmental body including and in particular to the Bank of England, the FSA, the Foreign Office and the Treasury, regarding the legitimacy or otherwise of recognising any purported authority of the 'TRNC' having regard, inter alia, to UN Security Council resolutions and the Cyprus Treaty of Guarantee.

5. AGO responded on 11 December 2012 saying that the section 35(1)(c) FOIA exemption applied to the entirety of the request and that the section 35(3) FOIA exemption meant that, in the circumstances of the

case, AGO was not obliged to confirm or deny whether the requested information was held. AGO added that the balance of the public interest favoured maintaining the exemption.

6. Following an internal review the AGO wrote to the complainant on 15 January 2013 upholding its position.

Scope of the case

7. On 16 January 2013 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The Commissioner considered whether AGO was correct to rely on the section 35(3) FOIA exemption by virtue of section 35(1)(c) FOIA; he also considered the balance of the public interest.

Reasons for decision

9. Section 35(1) FOIA states that:

"Information held by a government department or by the Welsh Assembly Government is exempt information if it relates to-

(a) the formulation or development of government policy,

(b) Ministerial communications,

(c) the provision of advice by any of the Law Officers or any request for the provision of such advice, or

(d) the operation of any Ministerial private office".

Section 35(3) FOIA provides that:

"The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1)".

10. In this case, AGO relied on section 35(3) FOIA by virtue of section 35(1)(c) FOIA. In so doing AGO neither confirmed nor denied holding information relating to the provision of advice by any of the Law Officers or any request for the provision of such advice.
11. The 'Law Officers' are defined in section 35(5) FOIA as: the Attorney General, the Solicitor General, the Advocate General for Scotland, the

Lord Advocate, the Solicitor General for Scotland, the Counsel General of the Welsh Assembly Government and the Attorney General for Northern Ireland. The Law Officers are thus the government's most senior legal advisers.

12. AGO is a government department and the Commissioner is satisfied that the requested information, if any were held, would relate to advice requested from or provided by, the Law Officers. He therefore found that the section 35(3) FOIA exemption is engaged.

The public interest test

13. As the section 35 FOIA exemption is qualified, a public interest test must be applied.
14. There is a general public interest in accountability and transparency on the part of public authorities. It follows that confirmation or denial would contribute to greater public understanding of the work of the Law Officers and their role in government. Confirmation or denial by the AGO would also inform the public debate about the recognition of the TRNC. The Commissioner finds that there is public interest in this issue, but of limited weight.
15. The Commissioner has not been made aware of any public indication as to whether or not the Law Officers have been consulted about the TRNC matters contained in the information request.
16. There is a clear public interest in government departments being able to have a safe space in which to seek and receive frank and candid advice from their legal advisers in confidence and to be free from external pressure in deciding what sort of legal advice to obtain, when, and from whom. This strong public interest is reflected in the long-standing convention that neither the advice of Law Officers, nor the fact that their advice has or has not been sought, is disclosed outside government.
17. The Commissioner's approach to the public interest test under section 35(3) FOIA and 35(1)(c) FOIA is similar to the public interest test under the section 42(1) FOIA (Legal professional privilege) exemption. That is to say, there will always be a strong public interest in maintaining the Law Officers' advice exemption in the same way that there is a strong inherent weight in maintaining the legal professional privilege exemption.
18. It would be impossible for the Law Officers to advise on every aspect of government policy that has legal implications, given the range of legal advice that government requires. If the government routinely disclosed the occasions on which the Law Officers had given advice, that could give rise to questions as to why they had not advised in other cases,

thus creating pressure for them to advise in cases where their involvement would not be justified.

19. The Commissioner recognises the weight the section 35(1)(c) FOIA exemption attracts from the way in which it has been drafted by Parliament – providing a specific exemption for a particular type of legal advice. That weight is reinforced by the convention of non-disclosure adopted by successive governments.
20. However, section 35(1)(c) FOIA is not absolute and there will be occasions where the public interest favours confirming or denying whether or not information is held and even in disclosing the requested information in some cases. For this to happen, there must be compelling public interest arguments in favour of confirming or denying if information is held in order to shift the balance of the public interest. Having considered the circumstances of the case the Commissioner finds that there is not a compelling public interest in favour of confirming or denying.
21. The Commissioner therefore finds that AGO correctly maintained the section 35(3) FOIA exemption in refusing to confirm or deny whether Law Officers' advice had been requested or given.

Right of appeal

22. 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

23. 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.
24. 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

Steve Wood
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