

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 02 September 2013

**Public Authority:** The Foreign and Commonwealth Office

**Address:** King Charles Street  
London  
SW1A 2AH

### Decision (including any steps ordered)

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1. The complainant requested information from the Foreign and Commonwealth Office (FCO) regarding Douglas Hogg's visit to the Baltic States in 1991. The FCO provided some information within the scope of the request but withheld the remainder citing the section 27 exemption (international relations).
2. The Commissioner's decision is that the withheld information was exempt under section 27(1)(a) of FOIA and that the public interest in maintaining the exemption outweighed the public interest in disclosure. The Commissioner requires no steps to be taken.

### Request and response

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3. On 18 October 2012 the complainant requested information of the following description:

*"1) The Background note for use in each Baltic State and Points to Make for Mr Douglas Hogg's visit to the Baltic States in 3-6 September 1991.*

*2) Mr Douglas Hogg's report about his visit to the Baltic States in 3-6 September 1991".*

4. The FCO responded on 14 November 2012: it denied holding any information within the scope of the request.

5. The complainant requested an internal review on 19 November 2012. In disputing the FCO's response, he said:

*"1) Mr Douglas Hogg had most likely at least one Background note for use in each Baltic State and Points to Make during his visit to the Baltic States in 3-6 September 1991.*

*2) Mr Douglas Hogg or somebody of his colleagues wrote a report about his/their visit to the Baltic States in 3-6 September 1991".*

6. The FCO noted the amendment to the information requested at part (2) of the request. It sent him the outcome of its internal review on 21 January 2013 in which it revised its position. The FCO confirmed that it does not hold information within the scope of part (1) of the request. However, with respect to part (2) of the request, it advised that while it does not hold a report by Mr Hogg about his visit to the Baltic States in 1991 it does hold reports of the visit - written by one of Mr Hogg's officials.
7. The FCO provided the complainant with some information within the scope of part (2) of the request but refused to disclose the remainder, citing section 27(2) (international relations) as its basis for doing so.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 25 January 2013 to complain about the way his request for information had been handled.

9. He confirmed that the FCO had disclosed one of the original reports. With respect to the withheld information he said:

*"I believe that the FCO has still failed to take proper account of the age of the material in relation to these documents.*

*This factor is particularly important given the UK government has accepted in principle that the standard 30 year rule for the release of most government documents should come down to 20 years, and this can be done without damage of the kind which the FCO claims would happen in this case".*

10. During the course of the Commissioner's investigation, the FCO confirmed that it also considered that section 27(1) applied to the withheld information.

11. The Commissioner accepts that a public authority may make a late claim of an exemption. He therefore considers the scope of his investigation to

be the FCO's application of section 27(1) and 27(2) to the withheld information.

## Reasons for decision

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### *Section 27 international relations*

12. The Commissioner has first considered the FCO's application of section 27(1).

13. Section 27(1) provides that:

*"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice –*

*a) Relations between the United Kingdom and any other State".*

14. In order for a prejudice based exemption, such as section 27(1)(a), to be engaged the Commissioner considers that three criteria must be met:

- firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance;
- thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority to discharge.

15. In this case, having viewed the withheld information, the Commissioner accepts that the alleged prejudicial effect of disclosing the withheld information - causing damage to the relationship between the UK and any other state – relates to the applicable interest in section 27(1)(a).

16. The Commissioner also accepts that there is a causal link between disclosure of the withheld information and the anticipated prejudice to

relations with the relevant foreign states. He is satisfied that the nature of the prejudice that could occur is real and of substance.

17. With respect to the likelihood of prejudice, the Commissioner notes that the FCO told the complainant:

*"We work closely with the Baltic States within NATO, especially in Afghanistan, and also in the European Union, and we would not wish to prejudice these partnerships. If the United Kingdom does not maintain the trust and confidence of these countries, they may be less willing to share their view with us in future".*

18. Similarly, the FCO told the Commissioner:

*"We still consider that releasing this information would be detrimental to our relationships .... and could harm UK interests going forward".*

19. In the absence of clarification from the FCO as to whether it considers 'would' or 'would be likely to' is relevant in this case, the Commissioner, following the approach of the Information Tribunal in *Ian Edward McIntyre v the Information Commissioner and the Ministry of Defence* (EA/2007/0068, 4 February 2008), considers the lower level of likelihood applies.

20. Having considered the arguments and viewed the withheld information, he finds the exemption engaged.

#### *The public interest test*

21. Although the Commissioner is satisfied that the exemption is engaged, section 27 is a qualified exemption and therefore he must consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

#### *Public interest arguments in favour of disclosing the requested information*

22. In bringing his complaint to the Commissioner's attention, the complainant said:

*"Mr Hogg visited Baltic States in 3-6 September 1991. After that Baltic States had first free elections, joined United Nations and launched their own currency.*

*In 2004 Estonia, Latvia and Lithuania joined European Union and NATO. In consequence, Baltic States in 1991 and in 2013 are very different countries.*

*It's hard to believe that the disclosure of the documents about this visit in 1991 could now, more than 20 years later, still harm the excellent and strong relationship between the United Kingdom and Estonia, Latvia and Lithuania.*

*On the contrary, the document could show how the United Kingdom tried to help the newly independent Baltic States in 1991 politically and economically”.*

23. The FCO acknowledged that disclosure in this case:

*“would be consistent with the need for transparency in international affairs”*

and that:

*“it would improve the public understanding of the relationship between the UK and the Baltic States at that time”.*

#### *Public interest arguments in favour of maintaining the exemption*

24. In favour of maintaining the exemption, the FCO told the complainant that the information at issue:

*“relates to issues that remain sensitive today”.*

25. With respect to the complainant’s concern that the FCO has failed to take proper account of the age of the withheld information, the Commissioner asked the FCO for its submissions.

26. Although unable to rehearse its arguments here without disclosing the nature of the withheld information, the Commissioner would like to reassure the complainant that the FCO’s submissions clearly explained how it took various factors into account – including the age of the information - in reaching its decision that the public interest favours maintaining the exemption.

#### *Balance of public interest arguments*

27. The Commissioner considers that there is clearly a public interest in transparency and accountability of public authorities. In that respect, the Commissioner notes that the FCO has been able to disclose some of the information within the scope of the request to the complainant. He considers that the public interest in disclosure has been met to some extent by that disclosure.

28. He also recognises that there is a general principle that the public interest in maintaining an exemption will diminish over time because in

many cases the sensitivity decreases over time. He considers this argument to be of relevance when considering the balance of the PIT.

29. The Commissioner gives weight to the complainant's argument about the age of the disputed information and the changes that the Baltic States have undergone since 1991. He acknowledges the potential for changing events to affect international relations overtime.
30. However, although he cannot provide an expert opinion on such matters, the Commissioner is satisfied that the arguments put forward by the FCO in relation to the continuing sensitivity of the information carry greater weight.
31. In the Commissioner's view it is strongly in the public interest that the UK maintains good international relations. He considers that it would not be in the public interest if there were a negative impact on the effective conduct of international relations as a result of the release of the remaining reports. The Commissioner is clear that such a prejudicial outcome is firmly against the public interest and he has therefore concluded that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
32. In the light of his conclusion in respect of the engagement of section 27(1)(a) of FOIA and the associated public interest balancing test, the Commissioner has not gone on to consider the FCO's application of section 27(2) to the same information.

## Right of appeal

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33. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

34. 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.
35. 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**