

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 September 2013

Public Authority: Department for International Development
Address: 1 Palace Street
London
SW1E 5HF

Decision (including any steps ordered)

1. The complainant has requested information about a decision to provide, and then subsequently to suspend, UK aid to Rwanda. The Department for International Development ("DfID") refused the request citing a number of exemptions, most significantly section 27 (International relations). The Commissioner's decision is that DfID was entitled to rely upon section 27 to withhold the information.

Request and response

2. On 30 November 2013 the complainant made the following request for information under the FOIA:
 1. *Please provide a copy of all briefing material submitted to the former Secretary of State for International Development Andrew Mitchell regarding the decision to give £16m of aid to Rwanda in September.*
 2. *Please provide a copy of all briefing material submitted to the current Secretary of State for International Development Justine Greening regarding the decision announced today (Friday 30 November 2012) to suspend aid to Rwanda."*
3. DfID responded on 3 January 2013 and refused to provide the requested information, citing the following FOIA exemptions:
 - Section 21(1) (Information accessible to the applicant by other means). However, DfID included in its response on this point a web

link to a Memorandum of Understanding between the United Kingdom Government and the Government of Rwanda, available on its website.

- Section 27(1)(a), (b), (c), (d); and (2) (International relations).
 - Section 35(1)(a), (b) and (d) (Formulation of government policy).
 - Section 40(2) (Personal information).
4. Following an internal review DfID wrote to the complainant on 4 February 2013. It maintained its position that the information was exempt.

Scope of the case

5. The complainant contacted the Commissioner on 5 February 2013 to complain about the way her request for information had been handled. The complainant specifically challenged DfID's conclusion that disclosure would not be in the public interest.
6. The Commissioner first considered whether the exemption at section 27 had been correctly applied by DfID to the information in its entirety.
7. He is satisfied that DfID made the Memorandum of Understanding available to the complainant in its refusal notice by providing a link to the document on its website, and, with the complainant's agreement this was excluded from the scope of the investigation. He concluded that DfID was entitled to rely upon section 27 to withhold the remaining information. The Commissioner has therefore not gone on to consider whether the other exemptions cited by DfID are also applicable.

Reasons for decision

International relations

Section 27(1)(a), (b), (c) and (d)

8. The Commissioner firstly considered whether DfID was entitled to withhold the information that fell within the scope of the request on the basis of the exemptions at section 27(1)(a) - (d).
9. DfID submitted that the arguments for each of the above exemptions were sufficiently interrelated that it was reasonable to consider the exemptions together rather than separately. The Commissioner agrees with DfID's approach in the circumstances of this case.
10. Section 27(1) 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; or
 - (d) the promotion or protection by the United Kingdom of its interests abroad.
11. In order for a prejudice-based exemption such as section 27(1) to be engaged, the Commissioner considers that three criteria must be met. First, the actual harm which the public authority alleges would or would be likely to occur if the withheld information were disclosed has to relate to the applicable interests within the relevant exemption.
12. 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 nature of the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance and arise from a clear causal link to the proposed disclosure.
13. Thirdly, it is necessary to establish whether the likelihood of the prejudice being relied upon by the public authority is met – that is, disclosure would be likely to result in prejudice or disclosure would result in prejudice. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.

14. Furthermore, the Commissioner has been guided by the comments of the Information Tribunal which suggested that in the context of section 27(1), prejudice can be real and of substance: "*if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary*" (*Campaign Against the Arms Trade v The Information Commissioner and Ministry of Defence* (EA/2006/0040), paragraph 81)¹.

Engaging the exemptions

15. With the above in mind, the Commissioner has considered both the withheld information and DfID's detailed submissions in support of its reliance on section 27(1)(a) - (d). He has also considered the complainant's submissions.

Does the alleged harm relate to the exemptions cited?

16. The alleged harm claimed by DfID clearly relates to the exemptions within section 27(1)(a) - (d). That is, DfID has asserted that there will be a likely detrimental impact upon bilateral relations between the UK and Rwanda as well as any other States and international organisations mentioned in the information. It has asserted that this would also impact negatively both on the UK's interests abroad and on the UK's efforts to promote its interests abroad. The first criterion for engaging these exemptions is therefore met. The harm envisaged relates to the prejudicial outcomes described in the exemptions cited.

Is there a causal relationship between disclosure and the harm described in the exemption?

17. DfID provided relevant background detail and identified how disclosure would, in its view, be likely to give rise to harm. The withheld information consists of policy options and supporting information presented to the Secretary of State, as well as the views on policy towards Rwanda held by the Prime Minister and the Foreign Secretary and internal analysis of the actions of Rwanda and other parties.
18. Placing in the public domain information about the UK's policy options and strategy for working with Rwanda would be likely to adversely affect the UK's ability to conduct international relations with Rwanda because

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<http://www.informationtribunal.gov.uk/DBFiles/Decision/i205/Campaign%20Against%20the%20Arms%20Trade;%20EA.2007.0040%20.pdf>

this information would become available to any third party to use how they wished. This disclosure of the UK's strategic position would be likely to prejudice the UK's ability to conduct and develop international relations in a directed, managed and appropriate way. It would reveal to the world at large information which would normally be discussed in confidence with stakeholders, in a manner and time of the UK's choosing, and this would be likely to adversely affect its negotiating position and ability to manage high-level relations with Rwanda.

19. As a result, the UK would be, at least to some extent, diverted from pursuing its key strategic objectives, and would have to focus attention and resources on managing the "fall out" from the disclosure. For this reason, disclosure could have a negative effect on international relations as well as damage the UK's interests abroad.
20. More generally, DfID argued that disclosing the requested information within the framework of the UK FOIA would be likely to prejudice the UK's relations with Rwanda and other countries and international organisations because disclosure would be seen by them as breaching the accepted protocols of international diplomacy. Disclosure would be likely to be interpreted as a lack of discretion and a compromise of the principles of diplomacy and would be likely to lead to distrust of the UK or, at the very least, a lack of confidence in its ability to conduct international relations in an appropriate manner.
21. Against that background, DfID was keen to stress that Rwanda is regarded as an important area of foreign policy for the UK government with relations on broad-ranging areas including development, regional stability and trade and investment. Any adverse effect on relations between UK and Rwandan officials would therefore reduce the UK's ability to carry out foreign policy objectives, including international development obligations and policies in Rwanda.
22. DfID also provided further detailed arguments which make specific reference to the withheld information. Unfortunately, the Commissioner is unable to set them out on the face of this notice without disclosing the withheld information itself. In the Commissioner's view, DfID has satisfactorily established a causal link between disclosure of the withheld information and the prejudicial outcome described in the exemptions in section 27(1). He also agrees that the alleged likely prejudice is real and of substance. The Commissioner, therefore, agrees that the second criterion for engaging sections 27(1)(a) - (d) is met.

Likelihood of prejudice

23. Considering the third criterion, the Commissioner notes that DfID has specified that it is relying on the lower threshold, namely that prejudice would be likely to arise following disclosure rather than asserting that prejudice would arise.
24. The Commissioner has considered the detail of the withheld information, which includes subject matter which is current and remains sensitive. The UK's relationship with Rwanda remains the subject of ongoing diplomatic initiatives. He agrees that disclosure would be likely to have a negative impact on the UK's relations with Rwanda and other states and international organisations. Disclosure would also be likely to damage the UK's interests abroad.
25. With the above in mind, the Commissioner agrees that the prejudicial outcomes described in section 27(1)(a) - (d) would be likely to arise if DfID were to disclose the withheld information to which those exemptions have been applied.

Public interest test

26. Section 27 is a qualified exemption and is subject to a public interest test. This means that, even where its provisions are engaged, it is necessary to decide 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.

The complainant's arguments

27. The complainant made no specific arguments as to any of the exemptions within section 27 other than to assert that DfID had considered the balance of public interest incorrectly. She cited the following reasons for appealing DfID's decision:

"...

- *Disclosure would promote accountability and transparency by public authorities for decisions taken by them.*
- *Disclosure would increase transparency and accountability of the way public money is spent and its effectiveness.*
- *The amount of taxpayers' money in question is significant – several hundred million pounds or more.*

- *Disclosure would facilitate engagement by the public in debate over aid spending and participation in decision making.*
- *Disclosure would enhance the quality of professional discussion and decision-making. It would assist in learning lessons. It would reveal how two very different decisions were made by the department in just a matter of months enabling a better understanding of the decision.*
- *The response fails to consider the importance in ensuring that decision making is being made appropriately at a time of Ministerial changes."*

DfID's arguments

28. As noted above, in making its arguments, DfID made considerable specific reference to the withheld information. This greatly assisted the Commissioner in understanding DfID's position. However, it means that the Commissioner is somewhat limited in the detail that he can reproduce in this notice without revealing the withheld information itself. However, the Commissioner considers that some of DfID's arguments can be summarised as follows:

- There is a strong public interest in avoiding disclosure of information on topics that remain live.
- There is a strong public interest in maintaining a safe space for discussions at the highest level between governments, particularly where the issues discussed remain sensitive.
- There is a strong public interest in the UK being able to manage its international relations with the various states and international organisations which have an ability to assist the UK in meeting its international development and wider foreign policy objectives (which include action on poverty, regional peace keeping and trade and investment).
- There is a strong public interest in the UK being in a position to promote UK interests overseas.

29. With regard to the public interest in informing the public about the UK government's policy on aid to Rwanda, DfID argued that this had been met by a series of Ministerial statements made in the House of Commons.²
30. It also referred the Commissioner to the International Development Committee's report on the UK's decision to reinstate aid to Rwanda following a period in which it had been suspended³. While this did not cover the subsequent decision to suspend budgetary support in November 2012, DfID argued that the public interest was served in so far as it provided an insight into the complexities of operating in the region, and stated that a further government response to the report would be issued in due course.

The Commissioner's position

31. 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.
32. DfID argued that the matters covered by the requested information are live and ongoing. The Commissioner agrees with this assessment. However, the Commissioner considers that there can be a public interest in disclosing information covering live issues even where that might give rise to prejudice to international relations. He must consider each case on its own merits.
33. The situation in Rwanda and the wider Great Lakes region is complex and subject to rapid and sometimes unpredictable change. It is fair to say that the region remains unstable and there continues to be considerable UK involvement in securing sustainable peace. The withheld information contains frank analyses of complex operating environments and the requested documents are highly sensitive.

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<http://www.theyworkforyou.com/search/?s=rwanda§ion%5B%5D=wms>

3

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmintdev/726/72602.htm>

34. The Commissioner acknowledges what appears to be the thrust of the complainant's argument, that releasing the information would inform public debate on overseas aid spending and promote understanding of international affairs. There is a clear public interest in raising awareness and understanding of how the UK government works at an international level and how it aims to engage with partner governments and international organisations in seeking to reduce poverty.
35. However, the Commissioner also considers that it is strongly in the public interest that the UK enjoys effective relations with foreign States and international organisations. 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. The Commissioner also considers that it would clearly not be in the public interest for the UK's policy objectives to be derailed to the extent that resources meant for pursuing its key strategic aims were diverted into managing its response to the adverse impacts of the disclosure.
37. DfID has made a strong case for showing how disclosure would give rise to prejudicial outcomes that are not in the public interest. The Commissioner has therefore concluded that the public interest in maintaining the exemptions at section 27(1) substantially outweighs the public interest in disclosure. In reaching this view he has given particular regard to DfID's argument that the information in question covers matters which remain sensitive in the region.

Section 27(2)

38. Section 27(2) provides that –

“Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.”

Engaging the exemption

39. This exemption applies to information which matches the description set out in the previous paragraph. It is therefore a class-based exemption with no test of prejudice or harm; the information in question either matches this description or it does not.
40. DfID stated that some of the withheld information had been obtained from senior representatives of overseas governments. It identified what that information was and who it had been obtained from.

41. DfID noted that communications between the UK and other governments are not generally governed by formal confidentiality agreements. Instead, communications and diplomatic exchanges between heads of state, government ministers and officials are generally regarded by long-standing international conventions as private and confidential and are not intended for disclosure into the public domain other than by mutual agreement. This provides a safe space for such exchanges on matters of international significance. In view of the subject matter under consideration here (a current and serious regional conflict) and the fact that the exchanges involve information provided by bearers of the highest office in two named countries, DfID considered that the information should be recognised as having been provided under terms of confidentiality.
42. The Commissioner has reviewed the information to which this exemption has been applied. He is satisfied that it is confidential information within the meaning of section 27(2). Unfortunately, he is unable to elaborate on this point without disclosing the detail of the withheld information, which would defeat the object of the exemption. However, he is satisfied that section 27(2) is clearly engaged in relation to this information.

Public interest test

43. As explained at paragraph 25, above, section 27 is a qualified exemption and is subject to a public interest test.

The complainant's arguments

44. The complainant made no specific arguments as to any of the exemptions within section 27(2) other than to assert that DfID had considered the balance of public interest incorrectly. Her reasons for challenging DfID's view are therefore the same as for section 27(1)(a) - (d), set out at paragraph 26, above.

DfID's arguments

45. DfID explained its reliance on section 27(2) and its view on the balance of public interest in its submissions to the Commissioner. For the reasons set out previously the Commissioner is unable to reproduce the detail of these arguments, but they can be summarised as being that disclosure would be contrary to the public interest because it would be likely to damage diplomatic relations in the manner set out at paragraph 19, above. The relevant public interest arguments in maintaining the exemption are therefore as follows.
- There is a strong public interest in maintaining a safe space for discussions at the highest level between governments, particularly where the issues discussed remain sensitive.

- There is a strong public interest in the UK being able to manage its international relations with the various states and international organisations which have an ability to assist the UK in meeting its international development and wider foreign policy objectives (which include action on poverty, regional peace keeping and trade and investment).

The Commissioner's position

46. Section 27(2) was considered in the aforementioned Tribunal case, *Campaign Against the Arms Trade (CAAT) v the Information Commissioner and Ministry of Defence* (EA/2007/0040). At paragraph 95, the Tribunal accepted that Parliament recognised that the FOIA, by virtue of the provisions in section 27, assumes an "*inherent disservice to the public interest in flouting international confidence*". It ascribed particular weight to the importance of maintaining confidences in the context of what it referred to as "*international comity*". The Shorter Oxford Dictionary definition of comity is: the mutual recognition by nations of the laws and customs of others.
47. The Commissioner considers that the public interest arguments favouring disclosure which have been set out above in relation to section 27(1)(a) - (d) are also relevant here. In addition, where confidential information has been imparted in the course of diplomatic exchanges, it is vitally important that confidences are properly respected. The Commissioner considers that the public interest in protecting international confidences is particularly weighty in the circumstances of this case. He considers that the detailed background set out above indicates the sensitivity that attaches to the withheld information. He has taken DfID's further detailed arguments with specific reference to the withheld information into consideration in reaching this view.
48. The Commissioner's decision is therefore that DfID is entitled to rely on the section 27(2) exemption where it has applied it. He has concluded that the public interest in maintaining this exemption clearly outweighs the public interest in disclosure. He has given particular weight to the very strong public interest in maintaining confidences in the context of international relations.
49. As the Commissioner has found that the requested information was correctly withheld under section 27(1) and (2) he is not required to make a decision in relation to the application of the remaining exemptions cited by DfID.

Right of appeal

50. 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

51. 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.
52. 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
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