

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 January 2014

Public Authority: The Foreign and Commonwealth Office

Address: King Charles St
City of Westminster
London SW1A 2AH

Decision (including any steps ordered)

1. The complainant requested information from the Foreign and Commonwealth Office (FCO) about the Metropolitan Police review in relation to the Madeleine McCann case. The requested information related to correspondence between the Foreign Secretary and the Home Secretary and between the Foreign Secretary and the British Ambassador to Portugal – or officials acting on their behalf.
2. The FCO confirmed it holds relevant information but refused to provide it citing a number of exemptions including section 27 (international relations), section 31 (law enforcement), section 35 (formulation of government policy) and section 36 (prejudice to effective conduct of public affairs).
3. The Commissioner's decision is that the FCO has withheld the information correctly. He did, however, find procedural errors. The Commissioner requires no steps to be taken.

Request and response

4. On 6 December 2011 the complainant made the following request for information under the FOIA:

"My questions relate to the Metropolitan Police review of the Madeleine McCann case and are as follows:

** Please supply all correspondence, including letters, emails or notes of phone calls, between the Foreign Secretary (or officials acting on his*

behalf) and the Home Secretary - or officials at the Home Office acting on her behalf - in relation to the Met Police review of the Madeleine McCann case.

** Please supply all correspondence, including letters, emails or notes of phone calls, between the Foreign Secretary (or officials acting on his behalf) and the British Ambassador to Portugal - or officials acting on her behalf - in relation to the Madeleine McCann case and the Met Police review.*

In doing so please provide dates of correspondence and the name of the individuals involved."

5. The Commissioner understands that the FCO originally informed the complainant that it was considering section 31(1)(a) of FOIA. When the FCO provided its substantive response on 29 May 2012 it told the complainant:

"As you know, the Foreign and Commonwealth Office holds information relevant to your request. We have completed or assessed the information held for your request, including that considered under Section 31 of the FOIA - prevention and detection of crime".

6. The FCO cited the following exemptions in relation to the requested information:
 - section 23(5) information supplied by, or relating to bodies dealing with security matters;
 - section 27(1)(a) international relations;
 - section 31(1)(a) and (b) law enforcement;
 - section 35(1)(b) ministerial communications;
 - section 36(2)(b)(i) and (ii) prejudice to effective conduct of public affairs; and
 - section 40(2) and (3) personal information.
7. The FCO provided an internal review on 7 November 2012 in which it maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 22 January 2013 to complain about the way his request for information had been handled.
9. During the course of the Commissioner's investigation, the FCO confirmed that no information within the scope of the request had been disclosed. The FCO also told the Commissioner that it considered that other exemptions also applied, namely section 27(2) (information received in confidence from another state) and section 35(1)(a) (formulation of government policy).
10. In line with a judgement of the Upper Tribunal, the Commissioner accepts that a public authority can, as of right, make a late claim of an exemption or exception and that both he and the First-tier Tribunal must consider any such late claim. The Commissioner has referenced those additional exemptions, where applicable, in the section of the decision notice below.
11. With respect to the subject matter of the request in this case, the Commissioner acknowledges that matters relating to Madeleine McCann remain in the public domain. However, his remit is to consider the FCO's handling of the request for information at the time of the request.
12. The Commissioner has considered a similar request for information on another occasion - case reference FS50430043. The request in that case was for correspondence exchanged between the Home Office and the Metropolitan Police Service (MPS) regarding the MPS' review of the Madeleine McCann case. The decision notice in that case can be found on the Commissioner's website¹.
13. While acknowledging the existence of other similar cases having been, or being, investigated, the Commissioner's duty is to decide, on a case-by-case basis, whether a request for information has been dealt with in accordance with the FOIA. However, he considers that aspects of the analysis in that previous case are relevant here.
14. Having considered the arguments put forward by the complainant, the Commissioner considers the scope of his investigation in this case to be:

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http://www.ico.org.uk/~media/documents/decisionnotices/2012/fs_50430043.ashx

- to determine whether the FCO is entitled to rely on sections 27(1)(a), 27(2), 31(1)(a) and (b), 35(1)(a) and (b), and 36(2)(b)(i) and (ii), as a basis for refusing to provide the information requested; and
- the timeliness with which the FCO handled the request for information and the request for internal review.

Reasons for decision

15. The Commissioner notes that, throughout its handling of the request for information in this case, the FCO has said that:

"the overriding consideration is Madeleine McCann's welfare and a duty of care to ensure that nothing said or done by the authorities should place her in any greater jeopardy and, accordingly, that the aims of the MPS review are not compromised".

16. The Commissioner has first considered the FCO's application of section 27. In doing so, he notes that the FCO considers that section 27 applies – either singly or in conjunction with another exemption - to most of the information within the scope of the request.

Section 27 international relations

17. In the Commissioner's view, section 27 contains two closely related provisions: an exemption for information whose disclosure would or would be likely to harm UK interests, dealt with in section 27(1), and an exemption for information obtained in confidence from another state or international organisation or court, dealt with in section 27(2) and (3).

18. In correspondence with the complainant, the FCO told him:

"Some of the information we considered for your request is exempt from release under section 27(1)(a) of the FOIA – information which would, or would be likely to prejudice relations with Portugal".

19. During the Commissioner's investigation, the FCO acknowledged that it did not explicitly rely on 27(2) in its correspondence with the complainant:

"as the issue of any breach of confidentiality was clearly related to damage to the relationship with the Portuguese".

20. However, it told the Commissioner during his investigation:

"We would like to take the opportunity now to advance Section 27(2) as an exemption. The expectation of confidentiality by the Portuguese authorities is key to our assessment that the public interest favoured withholding the information".

21. The Commissioner has first considered the FCO's application of section 27(1)(a). That sub-section provides that information is exempt if its disclosure would, or would be likely to, prejudice:

"relations between the United Kingdom and any other State".

22. In order for a prejudice based exemption, such as section 27(1), 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; and
- thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, 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.

23. Explaining how the harm it alleges relates to the applicable interests – in this case relations between the UK and Portugal - the FCO told the complainant:

"Our relationship with the Portuguese government, including the local authorities in Praia da Luz allows us to freely discuss our foreign policy and to carry out our consular obligations. If we do not honour our part in this relationship, the Portuguese government, and other international partners, may be more reluctant to share sensitive information with the UK government in the future, and may be less likely to respect the confidentiality of information supplied by the UK Government to them".

24. The FCO also told him that it considered that release of the information at issue in this case:

".. could damage our relations with key officials on whose co-operation we rely on [in] cases such as Madeleine's".

25. In requesting an internal review, the complainant told the FCO:

"The FCO has failed to demonstrate how disclosure WOULD damage relations or compromise their ability to work with the Portuguese authorities".

26. In response the FCO accepted that its reply "should have used the words 'would' or 'would be likely to'".

27. It told him:

"The information considered related to contact between the FCO, British Embassy in Lisbon and members of the Portuguese authorities. The views of both our Embassy in Lisbon, primarily, and other stakeholders were taken into account. They assessed that information released at this time would damage relations with key contacts, whose cooperation was relied upon both for the ongoing MPS review and future mutual assistance".

28. In subsequent correspondence with the Commissioner the FCO provided further arguments identifying the particular harm it considers may arise from disclosure of the withheld information in this case. Although the Commissioner is unable to rehearse those arguments here without disclosing the nature of the withheld information, he is satisfied that the information at issue comprises sensitive information regarding engagement between the UK and Portugal about the Madeleine McCann case.

29. He is also satisfied that there is a causal relationship between the potential disclosure of the withheld information and the interests which section 27(1)(a) is designed to protect.

30. Regarding the level of likelihood of prejudice, the FCO confirmed its reliance on the higher threshold - that disclosure 'would' have a prejudicial effect.

31. With respect to the complainant's concern that the FCO failed to demonstrate why disclosure would result in prejudice, the Commissioner is satisfied that, in its submissions to him, the FCO clearly explained how prejudice would occur.

32. Having viewed the digest of information which the FCO considers falls within the scope of the request, and considered the arguments put forward by the FCO, the Commissioner is satisfied that disclosure of the information withheld by virtue of section 27(1)(a) would be detrimental to the UK's relationship with Portugal, including in relation to the Madeleine McCann case.

33. Taking into account the sensitivities surrounding the Madeleine McCann case, the Commissioner finds that the FCO's submissions are sufficient to meet the higher threshold of 'would prejudice'.
34. It follows that he finds the exemption engaged by virtue of section 27(1)(a) and has carried the higher level of likelihood through to the public interest test.

The public interest test

35. Although the Commissioner is satisfied that the exemption is engaged, the public interest test must be applied to determine whether or not the withheld information should be disclosed.
36. The FCO submitted a single set of public interest arguments in respect of section 27.

Public interest arguments in favour of disclosing the requested information

37. The complainant told the FCO:

"The information requested relates to the Madeleine McCann case and the Met Police Review. The review was ordered in May 2011 following requests by the McCann family, and lobbying of politicians by journalists and executives from News International. Up to this date the public had been informed that the Portuguese authorities considered the case closed and had resisted previous attempts to re-open the case.

To help the public better understand how the review - which will cost taxpayers approximately £2 million in its first year - came about it is paramount that the decisions, discussions and co-operation between the UK and Portugal is released. This can only help to increase transparency - something the current Government has stated as one of its main aims during its tenure".

38. The FCO recognises the public interest in transparent and open government. It acknowledged that releasing the information at issue in this case:

"would inform public debate about our efforts to co-operate with international partners on consular cases involving British nationals".

39. It also accepted the strong public interest in Madeleine McCann's case in particular and in information relating to efforts to locate her, including the role of the Metropolitan Police Service.

Public interest arguments in favour of maintaining the exemption

40. In correspondence with the Commissioner, the FCO said that it continues to judge that there are arguments that weigh strongly in favour of withholding the information at issue.
41. For example, in favour of maintaining the exemption, the FCO told the Commissioner that it was not in the public interest for its ability to work with Portuguese officials to be compromised. Similarly, it argued that it would not be in the public interest if disclosure harmed wider bilateral cooperation between the UK and Portugal in respect of matters affecting the UK and Portugal, for example cases involving British nationals.

Balance of the public interest arguments

42. When balancing the opposing public interests in a case, the Commissioner is weighing the harm that is identified in a particular exemption against the wider public interest that may be served by disclosure. 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 test must be applied on a case-by-case basis.
43. Although the FOIA does not list the factors that would favour disclosure, the Commissioner has suggested that among the factors that would weigh in favour of disclosure are:
 - furthering the understanding and participation in the public debate of issues of the day;
 - promoting accountability and transparency of public authorities for decisions taken by them; and
 - promoting accountability and transparency in the spending of public money.
44. He has also taken into account the presumption running through the FOIA that openness is, in itself, to be regarded as something which is in the public interest.
45. In his view, there are a number of powerful public interest arguments in favour of disclosure in this case. In that respect he notes the high profile of the international campaign about Madeleine McCann and the fact that her disappearance has attracted, and continues to attract, significant public and media interest since she went missing in 2007.
46. The Commissioner also accepts that there is a public interest in the transparency of the FCO with respect to the way in which it works with

its international partners, including in consular matters involving British nationals.

47. With respect to the complainant's arguments about the public interest in light of the cost to the taxpayer of the review, the Commissioner recognises the strength of the public interest in matters concerning public spending including the funding of an investigation such as this.
48. However, 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 to be a negative impact on the effective conduct of international relations as a result of the release of the information at issue in this case. In his view, it is clear that disclosure in this case would not only harm the UK's relationship with Portugal specifically in relation to the case of Madeleine McCann but also on other bilateral issues. He also considers that disclosure could prejudice the UK's relations with other countries. The Commissioner is clear that such a broad 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.
49. In light of that conclusion, the Commissioner has not gone on to consider the FCO's application of section 27(2) to the same information. He accepts, however, that the issue of any breach of confidentiality in this case is very closely related to the damage which would be caused to relations between the UK and Portugal.

Section 31 law enforcement

50. The Commissioner notes that the FCO considers that section 31 applies to the same information to which it has applied section 27. In light of his findings in relation to the exemption at section 27 he has not gone on to consider whether that information is also exempt from disclosure on the basis of section 31.

Section 35 formulation of government policy

51. The FCO considers that section 35 applies to a small amount of information.
52. Section 35 sets out four exemptions designed to protect good government and provide a safe space for policymaking. The exemptions are class-based, meaning that the Commissioner does not need to consider the sensitivity of the information in order to engage the exemption. It must simply fall within the class of information described.

The classes are interpreted broadly and will catch a wide range of information.

53. The relevant parts of section 35(1) of FOIA which the FCO considers apply in this case state that information held by a government department:

"is exempt information if it relates to-

(a) the formulation or development of government policy,

(b) Ministerial communications".

54. In this case, the FCO cited section 35(1)(b) in its correspondence with the complainant. However, during the Commissioner's investigation, it said that it also considers section 35(1)(a) applies to the same information.

55. Section 35(1)(a) covers any information relating to the formulation and development of government policy while section 35(1)(b) covers communications between ministers and any information relating to those communications.

56. The Commissioner accepts that there is likely to be some overlap with section 35(1)(a). Many (although not all) ministerial communications will concern the formulation or development of government policy, and so will engage both section 35(1)(a) and 35(1)(b). In this case, he accepts that the FCO told the complainant:

"In order to discuss and make effective collective decisions on key issues, such as our policy on consular matters involving British nationals, Ministers should be able to express their views frankly in the expectation that they can agree freely in private while maintaining a united front when decisions have been made".

57. The approach of the Commissioner is that the term 'relates to' as it is used in this exemption can safely be interpreted broadly. Having viewed the withheld information and considered the FCO's submissions, he is satisfied that the information relates to the formulation and development of government policy on consular matters and that section 35(1)(a) is therefore engaged.

58. With respect to the FCO's citing of section 35(1)(b), given the specific wording of the request, the Commissioner finds it unsurprising that the FCO told the complainant that the information considered under section 35(1)(b) relates to:

"a senior level communication on the case".

59. It also told him that the information considered under this exemption:

"includes records of interdepartmental communications related to an ongoing and high profile issue".

60. In correspondence with the Commissioner, the FCO described the information as *"reflecting the views of Ministers"*.

61. Having considered the FCO's submissions the Commissioner is satisfied that the small amount of information withheld by virtue of section 35 also relates to ministerial communications. It follows that he finds section 35(1)(b) is engaged.

The public interest

62. The Commissioner considers that, generally speaking, there is no inherent or automatic public interest in withholding information just because it falls within a class-based exemption. He considers it necessary to consider the content and sensitivity of the particular information and the effect its release would have in all the circumstances of the case in order to determine the balance of the public interest.

63. For example, public interest arguments under section 35(1)(a) should focus on protecting the policymaking process while public interest arguments under section 35(1)(b) should focus on protecting ministerial unity and effectiveness and protecting ministerial discussions and collective decision making processes. This reflects the underlying purposes of the exemption.

64. In this case the FCO submitted a single set of public interest arguments in respect of section 35(1)(a) and (b).

Public interest arguments in favour of disclosing the requested information

65. In the complainant's view:

"By keeping the ministerial discussions secret the FCO can only strengthen distrust...In light of the lobbying revealed and the public resources used it is only right that the public be informed that ministers are acting in a correct way. Surely only information which would embarrass ministers or the Government would be withheld?"

66. The FCO acknowledged the public interest in disclosure, telling the complainant:

"The FCO considers that there is a general public interest in greater transparency in the decision-making process in order to ensure government is accountable to the public".

Public interest arguments in favour of maintaining the exemption

67. Arguing in favour of maintaining the exemption, the FCO said:

"However, with regards to section 35, for the effective formulation of government policy, the Government requires a clear space, immune from public view, in which it can debate matters internally free from the pressures of public political debate. This information is withheld due to the need for officials to be able to conduct rigorous and candid risk assessment of their policies and programmes, including their pros and cons, without there being premature disclosure which could close off alternative options and inhibit the free and frank discussion of all policy options".

68. These are sometimes referred to as 'safe space' arguments: in other words, arguments which concern the need for Ministers and officials to have a safe space to formulate policy, debate live issues and reach decisions without being hindered by external, including media, comment.

69. In correspondence with the Commissioner, the FCO said that its decision to withhold:

"took into account the level of communication involved, the expectation by the Ministers that the content would not be disclosed and the sensitivity of the information if disclosed".

70. The FCO also considered that release of the information at issue would damage the bilateral relationship between the UK and Portugal. The Commissioner finds that this argument is not inherent in the exemption at section 35(1)(b) - and has been addressed in any event under the exemption at section 27(1)(a) of the FOIA.

Balance of the public interest – section 35(1)(a)

71. In considering the balance of the opposing public interest factors in this case, the Commissioner acknowledges the public interest in allowing public scrutiny of the UK government's policy with regard to consular

matters involving British nationals. He notes that the FCO's website² counts "*supporting British nationals around the world through modern and efficient consular services*" as being one of its key responsibilities.

72. He acknowledges that disclosure of the information in question would promote transparency and enable public debate.
73. Focussing on the effect of disclosing the information in question at the time of the request, however, the fact that the issue relates to an ongoing and high profile issue does in the Commissioner's view add weight to the safe space argument. Accordingly he gives greater weight to the public interest in allowing Ministers and officials the space to further develop the policy in question and to be able to continue to effectively discuss issues in a frank and open manner.
74. In all the circumstances of this case, the Commissioner's decision is that the public interest in disclosure is outweighed by the public interest in favour of maintaining the exemption in this case.
75. Having reached that conclusion in respect of section 35(1)(a), the Commissioner has not gone on to consider the public interest with respect to the FCO's application of section 35(1)(b) to the same information.

Section 36 prejudice to effective conduct of public affairs

76. The FCO has cited the exemption provided by subsections 36(2)(b)(i) and (ii) with respect to a small amount of the withheld information in this case. These subsections apply where disclosure of the requested information would, or would be likely to, have the following results:
 - 36(2)(b)(i) – inhibition to the free and frank provision of advice
 - 36(2)(b)(ii) – inhibition to the free and frank exchange of views for the purposes of deliberation.
77. The Commissioner is concerned to note that the FCO's correspondence with the complainant variously states:

"disclosure of this information would likely inhibit..."

² <https://www.gov.uk/government/organisations/foreign-commonwealth-office/about>

"the candour of contributions to dialogue between colleagues would be likely to be affected"

"we consider that the knowledge that such information could be released into the public domain would affect the freedom of officials to engage in free and frank discussions..." .

78. It was not until the internal review that the FCO clearly stated its view that *"disclosure would prejudice"* free and frank exchange.
79. Consideration of the exemption is a two-stage process. First, the exemption must be engaged, and secondly, the exemption is qualified by the public interest. This means that the information must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.

Is the exemption engaged?

80. The exemption provided by section 36 can only be cited on the basis of the reasonable opinion of a specified qualified person (QP). Reaching a conclusion as to whether the exemption is engaged involves establishing whether an individual authorised to act as QP has given an opinion and, if such an opinion was given, whether that opinion was reasonable. If these conditions are met, the exemption is engaged.
81. Section 36(5)(a) provides that the QP for a government department is any Minister of the Crown. The FCO confirmed that in this case David Lidington MP, Minister of State for Europe, acted as QP and that the opinion on the use of this exemption was given on 8 May 2013.
82. The Commissioner accepts, therefore, that the exemption was cited on the basis of the opinion of an authorised QP. The next step is to consider whether the opinion of the QP was reasonable. In forming a conclusion on this point the Commissioner has considered the explanation provided to the QP in a submission prepared to assist him in the formation of his opinion, a copy of which was supplied to the ICO, as well as the content of the information in question.
83. In the Commissioner's view, the submission falls short of what he would expect to see demonstrated regarding the arguments as to why prejudice would or would be likely to occur. Furthermore, in his view, many of the arguments in the submission refer to the public interest test, an issue which properly falls to be considered when, or after, the decision has been taken that the exemption is engaged. Nor does he consider that the submission gives a clear indication of whether the risk of any prejudice or inhibition occurring was considered to be one that 'would be likely to' occur, or whether the risk met the higher test of 'would occur'.

84. During the course of the Commissioner's investigation, the FCO confirmed that the qualified person's opinion was that the exemption was engaged on the basis that disclosure "*would be damaging*".
85. Notwithstanding his concerns about the quality of the submission to the qualified person, the Commissioner is satisfied that the overall conclusion of the process was correct and the QP's opinion was reasonable for the purposes of section 36(2). In his view it is not unreasonable to engage section 36(2)(b)(i) and (ii) given the nature and sensitivity of the withheld material – material relating to a high profile consular case.
86. He therefore finds the exemption engaged in relation to the information withheld by virtue of section 36(2) and he has carried the higher level of likelihood through to the public interest test.

The public interest test

87. Even where the qualified person has concluded that the exemption applies, the public interest test must be applied to the decision whether or not to disclose the withheld information.

Public interest arguments in favour of disclosing the requested information

88. In favour of disclosure, the complainant said:

"As the FCO rightly acknowledges the public will want to be reassured that the appropriate advice was sought by officials in relation to this case.....Transparency ensures that advice is fair and that deliberations are honest and without prejudice. Non-disclosure does not allow proper scrutiny of advice given in such important cases".

Public interest arguments in favour of maintaining the exemption

89. The FCO told the complainant that "*release of the information would not add substantively to public knowledge*". It also cited the safe space argument that the freedom of officials to engage in free and frank discussions on sensitive issues "*such as policy decisions taken regarding Madeleine's case*" would be affected.

Balance of the public interest arguments – 36(2)(b)(i)

90. The Commissioner has considered firstly the public interest arguments in respect of section 36(2)(b)(i). In doing so, he notes that, in this case, the public interest arguments put forward by the FCO in relation to section 36(2)(b)(ii) are broadly similar.

91. The Commissioner notes that, having accepted the reasonableness of the qualified person's opinion that disclosure of the information would have the stated detrimental effect, he must give weight to that opinion as a valid piece of evidence in his assessment of the balance of the public interest.
92. In forming his assessment of whether the public interest test dictates disclosure in this case, the Commissioner has considered the severity, extent and frequency of that prejudice - to the provision of advice - which disclosure of the withheld information would be likely to pose.
93. He accepts that the provision of advice from officials to Ministers, and between officials, plays an important role in the functioning of the FCO and that such advice is provided frequently. The Commissioner is mindful that civil servants and other public officials are expected to be impartial and robust when giving advice, and not easily deterred from expressing their views by the possibility of future disclosure. However, in the circumstances of this case, he considers that the safe space arguments should be given significant weight in light of the public interest in the Madeleine McCann case to date, particularly the widespread media coverage.
94. While recognising the general arguments for transparency and openness, mindful of the focus and nature of the disputed information, the Commissioner's conclusion is that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in favour of disclosing the requested information.
95. The Commissioner considers that section 36(2)(b)(i) can be applied to all the withheld information. He has therefore not gone on to consider the application of section and 36(2)(b)(ii)36(2)(c).

Section 10 time for compliance with request

96. Section 10(1) of the FOIA provides that:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt".

97. In this case the complainant's request for information was received by the FCO on 6 December 2011. Although the Commissioner understands that, after that date, the FCO wrote to the complainant on a number of occasions about his request for information, the FCO did not issue its substantive response until 29 May 2012.
98. The FCO apologised for the delay, telling the complainant:

"this was due to extensive consultation with stakeholders in considering the various public interest tests and referral to an FCO Minister".

99. Notwithstanding that explanation, the Commissioner finds the FCO in breach of section 17(1) of the FOIA by failing to provide the details required by that section within 20 working days.

Other matters

100. The Commissioner is concerned that the FCO took over five months to complete its internal review in this case. Although there is currently no statutory time frame for completing internal reviews, the Commissioner would like to highlight that the Code of Practice under section 45 of the FOIA states that internal reviews should be undertaken "promptly". The Commissioner considers that an internal review should generally not take longer than 20 working days. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
101. The Commissioner would expect that in the future the FCO would ensure that its internal reviews are completed in accordance with the Code of Practice.

Right of appeal

102. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

103. 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.

104. 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
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Water Lane
Wilmslow
Cheshire
SK9 5AF