

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 October 2014

Public Authority: Foreign and Commonwealth Office

Address: King Charles Street
London SW1A 2AH

Decision (including any steps ordered)

1. The complainant has requested correspondence between Tony Blair and the Foreign and Commonwealth Office ("FCO") relating to the Arabian Peninsula and Iraq. The FCO refused to provide this citing section 27 (International Relations); section 38 (Health and Safety); and section 40 (Personal Information). It upheld this at internal review.
2. The Commissioner's decision is that the FCO is entitled to rely on section 27, section 38 and section 40 as its basis for withholding the requested information.
3. No steps are required.

Request and response

4. On 25 April 2013 (and following on from correspondence he had had with the FCO in 2012), the complainant requested information of the following description:

"Would you please provide me with copies of all correspondence, or records of oral conversations, between Tony Blair and the Foreign Office (i.e. the central department) between June 2009 and July 2012.

Please include in this request correspondence originating from, or sent to, representatives of Tony Blair's organisations:

Office of Tony Blair
Tony Blair Africa Governance Initiative
Tony Blair Faith Foundation
Government Advisory Practice/Policy Advisory Group

Please restrict this request to the following subject areas:

Middle East and North Africa".

5. On 13 December 2013, the Arabian Peninsula and Iraq desk at the FCO responded. It acknowledged that his request had covered other parts of the world but explained that it was responding to the part of the request that covered the Arabian Peninsula and Iraq.
6. It refused to provide the information it held within the scope of the request that covered the Arabian Peninsula and Iraq. It cited the following exemptions as its basis for doing so:
 - section 27 (International Relations);
 - section 38 (Health and Safety); and
 - section 40 (Personal Information).
7. The complainant requested an internal review on 17 December 2013. The FCO sent him the outcome of its internal review on 17 February 2014. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 1 April 2014 to complain about the way his request for information had been handled.
9. The Commissioner has considered whether the FCO is entitled to rely on any of the exemptions it has cited as a basis for refusing to provide that information within the scope of the request which remains withheld.
10. For ease of future reference, this notice will refer to the information that the complainant is seeking as the "Tony Blair correspondence".
11. In correspondence with the Commissioner, the complainant confirmed that he was content for the scope of this case to be restricted to Tony Blair correspondence on the subject areas of the Arabian Peninsula and Iraq. It was agreed that the following states fall within the Arabian

Peninsula: Kuwait, Bahrain, Qatar, United Arab Emirates, Oman, Yemen and Saudi Arabia.

12. The complainant also confirmed that he was content to exclude from further consideration Tony Blair correspondence on the subject areas of North Africa or any other countries of the Middle East that are not listed above as being on the Arabian Peninsula. For the avoidance of doubt, this notice will not look at whether the FCO holds such information.

Reasons for decision

Section 27 (International relations exemption)

13. Section 27(1) focuses on the effects of the disclosure of information. It provides for information to be exempt under section 27(1) 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; and
 - (d) the promotion or protection by the United Kingdom of its interests abroad.
14. In the Commissioner's view, the exemption does not necessarily focus on the scale or importance of the issue or on the subject or type of the information, but on whether UK interests abroad, or the international relations of the UK, would be prejudiced through the disclosure of the information relating to the issue.
15. The request in this case relates to Tony Blair correspondence (as defined above) with the FCO over a three year period.
16. In correspondence with the Commissioner, the FCO confirmed it was relying on section 27(1)(a) and (c).

Is the exemption engaged?

17. In order for a prejudice based exemption, such as those set out in 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;
 - 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.
18. The Commissioner has considered the complainant's submissions, the withheld information and the FCO's submissions in support of its reliance on section 27(1)(a) and (c). In doing so, he considers that the arguments cited by the FCO for each of the subsections are sufficiently interrelated for it to be reasonable for him to consider them together rather than separately.
 19. In correspondence with the Commissioner the FCO further explained its application of section 27. It set out, with specific reference to the withheld information, how disclosure would make engagement with the countries in the region more difficult. It stressed that productive international relations depended on maintaining trust and confidence. The Commissioner is unable to set out the detail of the FCO's arguments in this notice without disclosing something of the nature and content of the information which has been withheld.
 20. The Commissioner accepts that the alleged prejudicial effects of disclosing the withheld information – for example causing damage to the promotion or protection by the United Kingdom of its relations with other countries – relate to the applicable interests in section 27(1).
 21. He is also satisfied that the disclosure of the information at issue in this case is at least capable of harming the interests in some way, for example by damaging relations with allies and important diplomatic contacts, and that there is a causal link between the disclosure and the prejudice claimed.

22. With respect to the likelihood of the prejudice occurring, the FCO asserted that prejudice would arise. It explained this with specific reference to the withheld information and, regrettably, the Commissioner is unable to set that detail out on the face of this Notice.
23. Having duly considered the arguments put forward by the FCO, the Commissioner's view is that the higher level of 'would prejudice' is satisfied. He therefore finds the exemption engaged and has carried this higher level of likelihood through to his consideration of the public interest test.

The public interest test

24. 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.
25. The Commissioner notes that the public interest arguments put forward by the FCO in relation to each of the subsections of section 27 relied on in this case are broadly similar.

Public interest arguments in favour of disclosing the requested information

26. The FCO recognised that disclosure might slightly increase public knowledge about UK relations with the region during that period.
27. The Commissioner also recognises that the activities in the region of former Prime Minister, Tony Blair, remain of widespread interest. Among his other activities, Mr Blair is a representative of the Quartet. This is described on his website as follows:

"The Quartet, set up in 2002, consists of the [United Nations](#), the [European Union](#), the [United States](#) and [Russia](#). Its mandate is to help mediate Middle East peace negotiations and to support Palestinian economic development and institution-building in preparation for eventual statehood. It meets regularly at the level of the Quartet Principals (United Nations Secretary General, United States Secretary of State, Foreign Minister of Russia, and High Representative of the

European Union for Foreign Affairs and Security Policy) and the Quartet Special Envoys".¹

28. The ongoing conflicts in the region remains the subject of international concern and the Commissioner recognises that there is a public interest in knowing more about the work of Tony Blair as a Quartet representative, where this information is held by the FCO.

Public interest arguments in favour of maintaining the exemption

29. In favour of maintaining the exemption, the FCO stressed the importance of maintaining effective relationships in the region. It elaborated on this point with specific reference to elements of the withheld information. It also referred to the prejudicial outcome which, in its view, would arise following disclosure.
30. It also argued that its officials may be more reluctant to report openly in the future if the information were to be released. The Commissioner is sceptical as to the merits of this argument and would, in any event, consider it pertains more closely to the exemption in section 36 (prejudice to the effective conduct of public affairs).

Balance of the public interest arguments

31. When balancing the opposing public interests in a case, the Commissioner is deciding 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.
32. He accepts that, in the circumstances of this case, disclosure of the withheld information may well be of interest to the public. However, notwithstanding that, his decision must be with regard to whether or not disclosure is in the public interest, which requires more objective consideration.
33. In balancing the public interest arguments in this case, the Commissioner is mindful that the weight given to arguments in favour of disclosure will depend largely on the extent to which there is a need for greater transparency which the information in question will meet.

¹ <http://www.quartetrep.org/quartet/pages/the-quartet/>

34. The Commissioner cannot give an expert opinion on matters relating to diplomacy in the region. However, it is very clear that relations between powers in the region are highly problematic and the issues of great sensitivity. Following the approach taken by the Information Tribunal in other cases, the Commissioner respects the FCO's opinion on the potential impact on international relations of disclosure of the withheld information.
35. In conclusion, the Commissioner's decision is that the FCO was entitled to apply section 27(1). While there is a public interest in knowing more about the work of Tony Blair as Quartet representative, he does not consider that this carries sufficient weight in the circumstances of this case. The public interest in maintaining the exemption at section 27(1) outweighs the public interest in disclosing the information.

Section 38 – Health and Safety exemption

36. Section 38(1) of FOIA states that information is exempt information if its disclosure would, or would be likely to –
 - (a) endanger the physical or mental health of any individual, or
 - (b) endanger the safety of any individual
37. The FCO's arguments indicated that it was seeking to rely on both limbs of section 38(1) of FOIA.
38. The Commissioner considers that the term 'endanger' in section 38(1) should be interpreted in the same way as the term 'prejudice' in other FOIA exemptions. The likelihood of it arising should be considered as set out in three points above.
39. The information in question relates to the travel and security arrangements for Tony Blair where these are referred to in the withheld information. The Commissioner accepts that the harm envisaged by the FCO relates to the health and safety exemption. There is also a causal link between the disclosure of such information and the harm envisaged. Information about the travel plans and security arrangements for a high-profile individual such as Tony Blair reveals detail that would be useful to those seeking to do him harm.
40. The FCO asserted the lower threshold of likelihood "would be likely" was applicable in this case. The Commissioner has therefore considered whether the chance of prejudice occurring was more than a hypothetical possibility; whether there is a real and significant risk.
41. The FCO referred to threats of assassination that had been made against Mr Blair. Although not specifically prosecuted for these threats, a man

prosecuted for other terrorism offences was alleged to have made such threats in a 2010 case.² Mr Blair's premiership remains controversial with particular reference to decisions made regarding the invasion of Iraq in 2003.

42. The Commissioner accepts that although the travel and security information relates to previous visits by Mr Blair to the region it may still provide detail as to likely plans in the future which may very well be useful to those who seek to harm Mr Blair.
43. In light of the above, the Commissioner has concluded that section 38(1)(a) and (b) are engaged. He is satisfied that the likelihood of prejudice is not hypothetical and relates to the risk of significant harm to Mr Blair. Were this harm to be realised, it would also be likely to extend to those travelling with him.

Public interest arguments in favour of disclosure

44. The FCO acknowledged that disclosure would increase public knowledge about Tony Blair's security and his travel arrangements.

Public interest arguments in favour of maintaining the exemption

45. The FCO argued that disclosure of the information could put Mr Blair's life at risk. It explained this point with specific reference to the withheld information which the Commissioner does not propose to set out on the face of this notice.

Balance of the public interest

46. The Commissioner will invariably place significant weight on protecting individuals from the risk to their physical safety. The natural consequence of this is that disclosure will only be justified where a compelling reason can be provided to support the decision. In this case, the Commissioner considers the argument in favour of disclosure to be very slight. It is strongly outweighed by the public interest in avoided likely prejudice to the personal safety of individuals.
47. In conclusion, the Commissioner's decision is that the FCO was entitled to apply section 38(1). He considers that the genuine public interest, as opposed to public curiosity, in the disclosure of the specific information at issue in this case is relatively low and that, in all the circumstances of

² <http://www.bbc.co.uk/news/10403356>

the case, the public interest in maintaining the exemption at section 38(1) outweighs the public interest in disclosing the information.

Section 40(2) – Unfair disclosure of personal data

48. Section 40(2) of FOIA states that personal data (which is not the personal data of the requester) is exempt if its disclosure would breach any of the data protection principles contained within the Data Protection Act ("DPA"). The term "personal data" is defined specifically in the DPA.³

Does the requested information constitute third party personal data?

49. In determining whether information is the personal data of individuals other than the requester, that is, third party personal data, the Commissioner has referred to his own guidance and considered the information in question.⁴ He has looked at whether the information relates to living individuals who can be identified from the requested information and whether that information is biographically significant about them.

50. Having read the withheld information the Commissioner is satisfied that it includes Tony Blair's personal data and the personal data of other living individuals who can be identified from it. These are either members of Tony Blair's staff or officials at the FCO. In the main, it is contact information but it also includes expressions of opinion. The Commissioner is satisfied that the information relates to those individuals and that it is biographically significant about them. Information about where a person works (including how they can be contacted there) is biographically significant about that person.

Would disclosure contravene any of the DPA data protection principles?

51. The data protection principle that is normally considered in relation to section 40 is the first data protection principle which states that:

³ <http://www.legislation.gov.uk/ukpga/1998/29/contents>

⁴

http://www.ico.org.uk/for_organisations/data_protection/the_guide/~media/documents/library/Data_Protection/Detailed_specialist_guides/PERSONAL_DATA_FLOWCHART_V1_WITH_PREFACE001.ashx

'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

at least one of the conditions in Schedule 2 is met, and

in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'

52. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
 - what the public authority may have told them about what would happen to their personal data;
 - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights;
 - the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - particular circumstances of the case, e.g. established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
 - The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor, the Commissioner may take into account:
 - whether information of the nature requested is already in the public domain;
 - if so, the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?
53. Furthermore, notwithstanding the individual in question's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling legitimate interest in disclosure to the public.
54. In considering 'legitimate interests', in order to establish if there is such a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the individual in question, it is also important to take a

proportionate approach. It may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.

55. Dealing first with individuals who work in Tony Blair's office or public officials named in the withheld information, the Commissioner notes that they do not have public facing roles and would not expect their personal data to be disclosed. The Commissioner has further concluded that this expectation is wholly reasonable.
56. The disclosure of their names would not add anything to any legitimate interest the public might have in knowing more about how the FCO interacts with Tony Blair's office in relation to any visits he makes to the region in question.
57. As such, the Commissioner is satisfied that disclosure of the personal data of individuals other than Tony Blair would contravene the first data protection principle of the DPA, as it would be unfair and no Schedule 2 condition is met. That personal data is therefore exempt under section 40 of the FOIA.
58. Turning now to Tony Blair's personal data, the Commissioner notes that the information relates to Mr Blair's activities as a private individual. Mr Blair remains a high profile figure, given his activities as Quartet representative. However, he no longer holds elected public office and is not acting as an official of the UK government in the Middle East. Therefore an expectation of privacy with regard to his personal data is not unreasonable.
59. The public has a legitimate interest in understanding more about Mr Blair's role as Quartet representative. However the Commissioner does not think that the information which falls to be considered under section 40 in this case would shed any significant light on that role.
60. The Commissioner has therefore concluded that the disclosure of any of Mr Blair's personal data which falls to be considered here under section 40 would contravene the first data protection principle of the DPA, as it would be unfair and no schedule 2 condition is met. That personal data is therefore exempt from disclosure under section 40 of the FOIA

Right of appeal

61. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

62. 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.

63. 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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