

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 2 February 2015

Public Authority: Foreign and Commonwealth Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant submitted a request to the Foreign and Commonwealth Office (FCO) for information about discussions between the UK government and Ugandan government about Tullow Oil. The FCO provided the complainant with a digest of information contained within three documents. Further information was withheld on the basis that it was exempt from disclosure on the basis of one of the following exceptions within the EIR: regulation 12(5)(a) (international relations); 12(5)(e) (commercial confidentiality); or 12(3) (personal data).
2. The complainant argued that the public interest favoured disclosing the withheld information and also argued that as the information related to emissions, regulation 12(5)(a) could not apply by virtue of regulation 12(9).
3. The Commissioner's decision is that:
 - The withheld information does not constitute information on emissions. Therefore regulation 12(9) is not applicable.
 - Regulation 12(5)(a) is engaged for the information identified in the annex attached to this notice and the public interest favours maintaining the exception.
 - Regulation 12(3) is engaged for the information identified in the attached annex.

- Regulation 12(5)(e) is engaged for the information identified in the annex attached to this notice and the public interest favours maintaining the exception. The exceptions to this finding are in relation to the following information which the Commissioner does not accept is exempt from disclosure on the basis of regulation 12(5)(e):
 - Document 2 – paragraph 5;
 - Document 3 – paragraphs 3 and 10.
- 4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with the information identified below:
 - Document 2 – paragraph 5;
 - Document 3 – paragraphs 3 and 10.
- 5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

6. The complainant submitted the following request to the FCO on 2 December 2012:

'Please provide information relating to meetings and correspondence between the Foreign and Commonwealth Office, including the:

- *Secretary of state*
- *Minister for Africa and overseas territories Henry Bellingham*
- *UK High Commission to Uganda*
- *Ugandan High Commission to the UK*

and the government of Uganda, including but not limited to:

- *President Yoweri Museveni*
- *Ministry for Foreign Affairs*
- *Ministry for Energy and Minerals*

relating to subjects, including but not limited to:

- a. *Tullow Oil*
- b. *Production sharing agreements and associated memoranda of understanding*
- c. *Oil exploration and production licenses*
- d. *Ugandan oil legislation such as the Petroleum laws*

I would be grateful if you could use keywords in the terms listed above to search your records systems as part of your efforts to locate information.

My request is for information in the time period starting on 01/09/2011 and continuing up to 28/02/2012.

Please provide information relating to meetings that includes, but is not limited to:

- *Time*
- *Date*
- *Place*
- *Names, job titles and organisation names of those in attendance*
- *Minutes*
- *Agendas*
- *Documents created before, during or following a meeting*

Please provide information relating to correspondence that includes, but is not limited, to:

- *Emails and attachments*
- *Letters*
- *Briefing documents or equivalents (sent and received)*
- *Transcripts or notes taken in relation to phone calls'*

7. The FCO responded on 29 January 2013 and provided the complainant with a digest of the information contained in three documents. The FCO explained that it had also withheld information from the three documents on the basis that some information was not of 'direct relevance' to the request or that it was exempt from disclosure by virtue of either regulation 12(5)(a) (international relations) or regulation 12(5)(e) (confidentiality of commercial information) of the EIR.
8. The complainant contacted the FCO on 21 March 2013 in order to request an internal review of this decision. He asked the FCO to provide him with original copies of the documents, with redactions in place, and an indication as to which exception applied to each redaction. (Albeit he

noted that he understood that this might not be possible.) He argued that the withheld information related to information 'on emissions' and thus the exception contained at regulation 12(5)(e) could not be relied on by virtue of regulation 12(9). He also argued that the public interest favoured disclosure of the information he had requested.

9. The FCO informed the complainant of the outcome of the internal review on 13 November 2013. The review explained that when the disclosing the documents in question a note had been provided detailing the exception applied to each redaction. The FCO argued that this sufficiently explained the redactions and moreover it was not under any obligation to provide the information in the format requested.¹ The review also rejected the complainant's argument that regulation 12(9) was applicable and concluded that the exceptions contained at regulations 12(5)(a) and 12(5)(e) had been applied correctly.

Scope of the case

10. The complainant contacted the Commissioner on 12 May 2014 in order to complain about the FCO's handling of his request.² The complainant did not set out any specific grounds of complaint but simply referred the Commissioner to his correspondence with the FCO. The complainant noted that he was currently seeking legal advice and intended to make further submissions to support his complaint in due course.
11. The Commissioner contacted the complainant on 26 June 2014 and explained that he understood his grounds of complaint mirrored those set out in his request for an internal review: firstly, that the withheld information related to information 'on emissions' and thus the exception contained at regulation 12(5)(e) could not be relied on by virtue of regulation 12(9); and secondly that the public interest favoured disclosure of the information he had requested.
12. The complainant contacted the Commissioner on 7 July 2014 and explained that he expected his lawyers to make further submissions on

¹ The information contained in this note is produced in the annex at the end of this decision notice. This note also details the Commissioner's findings in relation to the application of the various exceptions.

² The complainant also complained to the Commissioner about the handling of a related request that he submitted to the FCO. The Commissioner's decision in relation to that complaint is set out in the decision notice FER0541832.

his behalf but this would take up to six weeks. The Commissioner agreed to this.

13. The complainant then contacted the Commissioner on 1 September 2014 and explained that he now needed until the end of that month before any further submissions could be made.
14. The Commissioner contacted the complainant on 3 September 2014 and explained that as he had now received a substantive response from the FCO he was intending to draft the decision notice. Therefore he asked the complainant to ensure that any further submissions were made by 15 September. Having received no response the Commissioner contacted the complainant on 26 September 2014 and explained that he was proceeding to draft this decision notice.
15. The complainant's lawyers provided the Commissioner with submissions in relation to this complaint on 15 October 2014. These submissions asked the Commissioner to consider two additional points of complaint, firstly whether the FCO was correct to refuse to disclose information that was not relevant to the request and secondly whether it actually held any further information falling within the scope of the request other than the three documents originally located.
16. Therefore this decision considers:
 - (a) Whether the FCO holds further information other than the three documents that have been located;
 - (b) Whether the FCO was correct in refusing to disclose information in the three documents on the grounds that it considered it to be irrelevant to the request;
 - (c) The FCO's reliance on the exceptions contained at regulations 12(5)(a) and 12(5)(e) to withhold certain information from the three documents in question. The FCO explained that it also considered regulation 12(3) to apply to a small amount of information.
17. Although the Commissioner has considered points (a) and (b) he would note that they were only formally raised with him in October 2014, some five months after the complainant first contacted the Commissioner about this matter. The Commissioner wishes to emphasise that he believes that complainants have a responsibility to be clear, upfront and timely with him with regard to the scope of their complaint and in responding to his enquiries.

Reasons for decision

Does the FCO hold any further information beyond the three documents located?

18. The complainant noted that when responding to his requests the FCO explained that 'colleagues were asked to check their personal and MS Outlook folders'. Nevertheless he argued that it was strange that no email correspondence was found for the period covering the request, ie 1 September 2011 to 28 February 2012. The complainant suggested that this is particularly so in respect of the former High Commissioner, Martin Shearman whom the complainant alleged had very clear personal connections to Tullow Oil. The complainant regarded it as strange that Mr Shearman was signing off eGrams and Telegrams concerning Tullow Oil during the period covered by the request but there were no emails in relation to this request. Furthermore, the complainant referred to a previous information request submitted by the Daily Telegraph newspaper concerning a similar topic and a period in 2010. The complainant noted that a large number of emails were located and disclosed by the FCO in relation to that request.
19. In circumstances such as this where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of 'on the balance of probabilities'.
20. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.
21. In applying this test the Commissioner will consider:
 - The scope, quality, thoroughness and results of the searches; and/or
 - Other explanations offered as to why the information is not held.
22. In response to his enquiries regarding this ground of complaint, the FCO referred the Commissioner to its comments in the internal review response:

'In handling your original request, we requested that our High Commission in Kampala search their records for any relevant material. This was coordinated by the Open Government Liaison Officer (OGLO) in the High Commission, who asked colleagues to check their personal and MS Outlook folders. In parallel the OGLO carried out an extensive search of the High Commission's registry and database. A similar

search was carried out in London, including shared registry areas and storage sites. There were no relevant paper files to check. The officer also made enquiries with their predecessor.'

23. Furthermore, the FCO also explained to the Commissioner that emails are not automatically saved and staff have limited inbox capacity. It would be standard practice for staff to delete old emails regularly, particularly once staff have left an embassy or high commission. The FCO explained that its guidance to staff explained that it is mandatory to register emails which contain policy decisions relevant to the FCO. It argued that given the length of time between the initial request and the period and nature of the request it would not have expected any emails to be returned.
24. With regard to the request submitted by the Daily Telegraph, the FCO explained that this was submitted on 10 November 2010 and sought emails and letters sent between May 2010 and November 2010. The request also had, the FCO suggested, a broader scope than the request which is the subject of this complaint.
25. The Commissioner is satisfied that on the balance of probabilities the FCO does not hold any emails falling within the scope of this request. He has reached this conclusion because in his opinion the searches undertaken by the FCO for such information were both thorough and logical. Furthermore, the Commissioner considers the FCO's further explanation as to why it would not expect such emails to be held to be reasonable and rational. Moreover the Commissioner considers the FCO's submissions regarding the different amount of information returned in relation to this request compared to the information returned in relation to the request submitted by the Daily Telegraph request to be plausible.

Withholding information on the grounds that it is not in the scope of the complaint

26. The complainant explained that he was dissatisfied with the FCO's decision to withhold information contained in the three documents located on the basis that such information was not of direct relevance to his request.
27. The Commissioner notes that this request specifically sought 'information relating to' Tullow Oil and the Ugandan Oil industry. (This is in contrast to the request which is the subject of the linked complaint FER0541832 in which the complainant specifically sought 'correspondence between the UK High Commission to Uganda' regarding a number of similar topics.)

28. Consequently given the way that this request is constructed, in the Commissioner's opinion any information contained in the three documents located by the FCO which does not relate to Tullow Oil or the Ugandan Oil industry falls outside the scope of the request. Having reviewed the information redacted by the FCO as being out of scope of the request the Commissioner is satisfied that it does not relate to the Tullow Oil or the Ugandan Oil industry.

Regulation 12(9) – information on emissions

29. The complainant argued that the withheld information constituted information on emissions, as defined by the EIR. Whether this is indeed the case has a direct bearing on the FCO's reliance on the exception contained at regulation 12(5)(e). This is because regulation 12(9) states that:

'To the extent that the environmental information to be disclosed relates to information on emissions, a public authority shall not be entitled to refuse to disclose that information under an exception referred to in paragraphs 5(d) to (g).'

30. The complainant's arguments to support his position on this point are as follows:
31. He argued that it was clear from the redacted version of the documents disclosed that all three of them concerned the development and commercialisation of Uganda's nascent oil industry. Generally speaking, the oil industry extracts, refines and distributes oil for sale. These activities directly produce carbon dioxide emissions and facilitate the production of further emissions (when oil or oil products are used by other industries and individual consumers). The oil industry, then, is intrinsically bound to the production of carbon dioxide emissions.
32. The complainant emphasized the construction of regulation 12(9), namely that it would apply *'to the extent that the environmental information to be disclosed **relates to information on emissions...**'* (his emphasis). The complainant referred to a previous decision of the Commissioner, (FER0085500, 29 July 2008) in which the requester sought a due diligence report written by an engineering consultancy for the Department of Business Enterprise and Regulatory Reform (DBERR). The report was written following an application by Peninsula Power for funding to build a biomass energy power plant. The complainant noted that in that case the Commissioner had concluded that *'because the framework that the report is used within is a measure likely to affect emissions, which in turn affect the elements of the environment, the Commissioner considers that regulation 12(9) is applicable. The report*

relates to information on emissions as it relates to a measure that will affect emissions.'

33. In the same vein, the complainant argued that the actions described in the information that had been disclosed to him took place in the context of a measure likely to affect emissions, which in turn is likely to affect the environment. The measure in question being the development of Uganda's oil industry, which, the complainant argued, will lead to increased emissions of carbon dioxide; and that carbon dioxide emissions affect the elements of the environment, namely the air and atmosphere and water.
34. Since the Commissioner issued the decision notice referred to by the complainant his interpretation of regulation 12(9) has changed. In the past, as the decision notice FER0085500 suggests, he has taken the view that regulation 12(9) can apply where information is more indirectly linked to emissions. However, in light of his experience in dealing with complaints and relevant decisions from the Information Tribunal, the Commissioner now takes the view that regulation 12(9) will only be relevant where information falls within the definition of environmental information directly under regulation 2(1)(b). In other words it will only apply where information is directly linked to emissions.³
35. The Commissioner accepts that the requested information constitutes environmental information. The relevant provisions of the EIR which define environmental information and are relevant in this case are the following parts of regulation 2(1):

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on -

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

³ Further details of the Commissioner's position on this can be found in his guidance Information on emissions (regulation 12 (9)), in particular paragraphs 14 to 18: <https://ico.org.uk/media/for-organisations/documents/1616/information-on-emissions-eir-guidance.pdf>

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;'

36. More specifically, in the Commissioner's view the requested information falls within the definition of environmental information via regulation 2(1)(c) given that it is clearly information on a measure, ie the development of Uganda's oil industry, that is likely to affect both the elements and factors listed in regulation 2(1)(a) and (b). However, having reviewed the withheld information in the Commissioner's view it cannot be said to be information which falls within the definition of environmental information at regulation 2(1)(b) simply because it does not focus on any of the factors listed in that regulation. More specifically it does not make any reference to any emissions that may be produced by the proposed developments in Uganda's oil industry. Therefore the Commissioner has concluded that regulation 12(9) is not relevant because the withheld information cannot be said to be information that is directly linked to emissions.

Regulation 12(5)(a)

37. Regulation 12(5)(a) provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect international relations, defence, national security or public safety. In this case the FCO has applied the exception on the basis that disclosure would adversely affect the UK's relations with Uganda. The FCO emphasised that the effective conduct of international relations depends upon maintaining trust and confidence between governments. It argued that disclosure of the information redacted on the basis of regulation 12(5)(a) would undermine the trust and confidence between the UK and Uganda.
38. In the Commissioner's view the information that has been redacted on the basis of this exception falls within one of two descriptions: either it describes information provided to FCO officials by representatives of the Ugandan government, information which the Ugandan's appear to have assumed would be treated confidentially, or it consists of information exchanged only within the FCO or wider parts of the UK government which includes commentary and analysis on the Ugandan oil industry and associated issues.

39. With regard to whether disclosure of such information would adversely affect the UK's relations with Uganda, the Commissioner has taken into account the comments of the Tribunal when it considered the application of section 27 of FOIA, the equivalent exemption in that legislation. The Tribunal accepted that prejudice to international relations can be said to be real and of substance if such harm *'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'*.⁴
40. In relation to the first category of information the Commissioner accepts that if the FCO disclosed information that was provided to it in confidence then this is very clearly likely to negatively affect the UK's relations with Uganda. Such an outcome is based not only on the fact that disclosure of such information would betray an implied confidence, but also in light of the content of the particular information that has been withheld in this case.
41. Similarly, the Commissioner also accepts that if the second category of information was disclosed then this would adversely affect the UK's relations with Uganda. This is because the information in question was clearly not intended to be shared beyond UK diplomats and government departments. In the Commissioner's view disclosure of such information would make relations between the UK and Uganda more difficult and, or, require a damage limitation response that would otherwise have not been necessary.

Public interest test

42. Regulation 12(5)(a) is a qualified exception and therefore the Commissioner must consider whether the public interest in maintaining the exception outweighs the public interest in disclosing the requested information.

Public interest arguments in favour of maintaining the exception

43. The FCO argued that if the UK did not maintain the trust and confidence of other governments then its ability to protect and promote UK interests through international relations will be hampered, an outcome which would be firmly against the public interest. It emphasised that Uganda was an important partner for the UK and the strength of the

⁴ [Campaign Against the Arms Trade v The Information Commissioner and Ministry of Defence \(EA/2006/0040\)](#), paragraph 81.

relationship allowed the UK to keep working with Uganda on a range of bilateral issues.

Public interest arguments in favour of disclosing the withheld information

44. The complainant made reference to detailed submissions to support his view that the public interest favoured disclosure of the withheld information. The Commissioner has summarised these arguments below. It should be noted that although not all of the points raised by the complainant are referred to below, the Commissioner has considered them carefully as part of his consideration of this case.
45. The complainant emphasised that it was vital to see Uganda's oil industry in context; according to the information that had been disclosed in response to the request successful exploitation of the country's oil reserves could potentially double the Ugandan government's revenues. However such benefits depended upon the government securing contracts with oil companies which fairly represented the country and managing the sector carefully. The complainant argued that there were good reasons to suspect that such an outcome may be in jeopardy. That is to say, corruption and poor management threatened to undermine the promise of oil exploitation.
46. The complainant suggested that corruption is endemic across Uganda. He pointed to both Transparency International's ranking in 2013 of Uganda being 140th out of 170 countries in the world in its corruption perceptions index⁵ and the fact that in late 2012 the UK froze direct aid and withheld £11.1m from the Ugandan government for the year 2012/13.
47. The complainant also argued that the Ugandan oil sector itself had been plagued by concerns about a lack of transparency, close executive control and potential mismanagement. More specifically the complainant explained that in October 2011 the Ugandan Parliament passed a resolution calling for greater transparency in the management of the oil sector, investigations into corruption allegations and a moratorium on any further deals until a legal framework was in place. However, the complainant explained that on 3 February 2012, days before the new draft oil laws were presented to Ugandan Parliament, the government pushed a head with a new agreement with UK-listed Tullow Oil that paved the way for a US\$2.9 billion deal between Tullow and Total and CNOOC. The complainant argued that the Ugandan public and

⁵ <http://www.transparency.org/cpi2013/results>

Parliament therefore had a right to know as much information as possible about why a deal, which is unlikely to fall within the jurisdiction of the new laws, was done prior to the legislation going to Ugandan Parliament.

48. The complainant argued that the need for such transparency was made more compelling given the reluctance of the Ugandan government to publish information about the management of both the sector itself and details of particular deals signed with energy companies. The complainant drew on the findings of a report called *'Contracts Curse: Uganda's oil agreements place profit before people'*⁶ to suggest that the government's lack of accountability was veiling its own poor governance of oil reserves.
49. The complainant argued that the public interest in understanding more about Tullow Oil's deal was extremely strong given that it will affect millions of Ugandans and influence the method and extent to which the environment in the region is protected. Furthermore despite the freeze on direct financial aid the Department for International Development (DFID) estimates it will spend at least £89m per year on aid in Uganda until at least 2015. The integrity of Ugandan public affairs is therefore a value for money question for the British taxpayer. Moreover, he argued that if Uganda can manage its oil efficiently and in the national interest then the country's revenues will be boosted to the extent that DFID may well be able to review and reduce its level of aid.
50. Consequently, in the complainant's opinion disclosure of the withheld information would serve interests of both the Ugandan and British public. He argued that if the information revealed any elements of misconduct then its disclosure would assist those who wished to challenge and change such practices. If nothing inappropriate has taken place, then disclosure will help restore confidence in the Ugandan oil industry, the Ugandan and British governments, the international community and investment community.
51. In contrast, the complainant argued that the prospect of continued secrecy is unlikely to have any positive consequences; rather civil society groups have warned that a lack of transparency is likely to impinge on good governance and lay foundations for potential future corruption. The complainant also noted that there was significant concern amongst commentators that poor management and continued

⁶ <http://platformlondon.org/wp-content/uploads/2012/01/Contracts-Curse-Uganda-Platform-CSCO.pdf>

secrecy in Uganda's oil sector may result in Uganda being pulled towards the 'resource curse' as it has done in other resource rich countries. This could lead to corruption, significant environmental degradation, increased social conflict and even instability.

Balance of the public interest

52. The Commissioner agrees that there is an inherent public interest in the UK maintaining effective relationships with other States. In the particular circumstances of this case, there is a clear public interest in not adversely affecting the UK's relationship with Uganda given that it is an important partner in the region. More specifically, the strength of the UK's relations with Uganda allows it to effectively promote and protect UK interests in the country, including the activities of Tullow Oil. In the Commissioner's view it would be firmly against the public interest if the UK's ability to support such interests was impaired.
53. With regard to the public interest in favour of disclosing the withheld information, in the Commissioner's opinion the purpose of EIR is to promote transparency about the UK government and the public authorities covered by the legislation. Therefore, any interest that people of another country have in greater transparency about *their* government and *their* public authorities is not relevant to the public interest test under EIR. Consequently, in the Commissioner's view the complainant's arguments which focus on the benefits to the Ugandan public in disclosure of this information are not relevant to the balance of the public interest test.
54. Nevertheless, the Commissioner accepts the complainant's line of argument that the integrity of Ugandan public affairs is of relevance to UK residents to the extent that it relates to the value for money the British taxpayer is receiving in respect of aid provided by DFID. Moreover, the Commissioner accepts that it could be argued that there is a public interest in disclosure of the withheld information to the extent that it provides an insight into how the UK government liaises with another State in order to protect and promote UK interests.
55. However, in the Commissioner's view the disclosure of the information that has been redacted from the three documents on the basis of regulation 12(5)(a) would only provide a relatively limited insight into such matters. In contrast, whilst such insight would be limited, disclosure would undoubtedly adversely affect UK relations with Uganda. The Commissioner has therefore concluded that the public interest favours maintaining the exception.

Regulation 12(5)(e) – confidentiality of commercial information

56. This regulation states that a public authority may refuse to disclose information to the extent that its disclosure would affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
57. In order for the exception to be engaged, four criteria must be met:
- The information is commercial or industrial in nature.
 - Confidentiality is provided by law.
 - The confidentiality is protecting a legitimate economic interest.
 - The confidentiality would be adversely affected by disclosure.
58. The Commissioner has set out below the FCO's submissions to justify why this exception is engaged and then summarised his position in relation to this exception.

The FCO's position

59. With regard to the first criterion, the FCO explained that this exception had been applied to information that was commercial in nature. This is because it considered the information to relate to the 'companies', ie rather than simply Tullow Oil's, future plans, financial and business viability, commercial negotiations with the Ugandan government and associated matters.
60. With regard to the second criterion, the FCO argued that Tullow Oil had shared this information on an understanding that it would be treated confidentially given that Tullow Oil believed that its disclosure would harm its confidential interests. The FCO did not refer to receiving information from any other third parties.
61. With regard to the third criterion, the FCO argued that Tullow Oil had a legitimate economic interest as a major UK company operating in a competitive overseas environment. It argued that release of this information would put Tullow Oil at a competitive disadvantage over its rivals. It noted that it had consulted Tullow Oil and it had confirmed to the FCO that it did not want such information to be disclosed.

The Commissioner's position

62. Having reviewed the redacted information and the FCO's submissions the Commissioner is of the view that not all of the redacted information can be said to be exempt from disclosure on the basis of regulation 12(5)(e). This is because not all of the information meets each of the four criteria set out above. The Commissioner has explained his findings

in as much detail as possible below without compromising the content of the withheld information itself.

63. The Commissioner accepts that all of the redacted information meets the first criterion given that it relates in some way to a commercial activity.
64. With regard to the second criterion, the Commissioner accepts that the majority of the redacted information has been provided to the FCO by Tullow Oil with a clear expectation that such information would be treated confidentially. In the Commissioner's view the exceptions to this are the following redactions: document 2 – paragraph 5; document 3 – paragraphs 3 and 10. In relation to these redactions, the Commissioner does not accept that such information can be said to have been provided by Tullow Oil. Rather they appear to have come from other external sources or simply comprise FCO's own commentary on the events under discussion. Nor does this information even reflect the content of information provided to the FCO by Tullow Oil.
65. With regard to the information that has been provided by Tullow Oil, the Commissioner is prepared to accept that its disclosure would harm its commercial interests given that it discusses aspects of Tullow Oil's activities in Uganda and if disclosed would provide its competitors with an insight and potential advantage in respect of their commercial activities. The Commissioner accordingly accepts that the third and fourth criteria are met.
66. The Commissioner therefore accepts that such information is exempt from disclosure on the basis of regulation 12(5)(e).

Public interest test

67. Regulation 12(5)(e) is also a qualified exception and therefore the Commissioner must consider whether the public interest in maintaining the exception outweighs the public interest in disclosing the requested information.

Public interest in favour of maintaining the exception

68. The FCO argued that the failure to protect this information would limit Tullow Oil's and other companies' trust and confidence in the FCO and therefore limit the sources of information and interlocutors available to the FCO. It argued that this would limit the FCO's ability to promote the British economy and lobby for the interests of British business overseas, an outcome that would be firmly against the public interest.

Public interest in favour of disclosing the information

69. The complainant's arguments to support his view that there is a public interest in the disclosure of this information are set out above.

Balance of the public interest test

70. As noted above the Commissioner accepts that there is a public interest in the disclosure of information that would provide the UK public with a greater understanding and insight into how the UK interacts with other States, and in particular, works to protect and promote the interests of UK interests abroad. Disclosure of the information that the Commissioner accepts is exempt on the basis of regulation 12(5)(e) would provide some insight to this. However, as with the information that has been withheld on the basis of regulation 12(5)(a), the extent of this insight is relatively limited.
71. With regard to the public interest arguments in favour of maintaining the exception, the Commissioner does not consider that it is in the public interest that third parties (such as Tullow Oil) have their commercial interests harmed simply because they have been supported in their interests abroad by the UK government. The Commissioner believes that such an argument will always attract significant weight. Moreover, the Commissioner considers that there will always be some inherent public interest in maintaining the principle of confidentiality and the relationship of trust.
72. In conclusion, the Commissioner accepts that the public interest in disclosure of the redacted information cannot be dismissed lightly. However, he believes that this is outweighed by the combined effect of the negative impact on Tullow Oil's commercial interests, the risk to the flow of confidential information to the FCO in the future, and because in his view the degree to which the withheld information would be genuinely informative is quite limited.

Regulation 12(3) – personal data

73. Information is exempt from disclosure on the basis of the exception at regulation 12(3) if it constitutes third party personal data (ie the personal data of anyone other than the individual making the request) and either the first or second condition in regulation 13(2) is satisfied.
74. Personal data is defined in section (1)(a) of the Data Protection Act 1998 (DPA) as:

'.....data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller; and includes any expression of opinion about the individual

and any indication of the intentions of the data controller or any person in respect of the individual.'

75. The FCO withheld the names and contact details of junior officials. The Commissioner accepts that the withheld names and contact details constitute personal data within the meaning of section 1 of the DPA as they clearly relate to identifiable individuals.
76. The first condition in regulation 13(2) states that disclosure of personal data would contravene any of the data protection principles or section 10 of the DPA.
77. The FCO argued that disclosure of the redacted information would breach the first data protection principle which states that:

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

- (a) at least one of the conditions in Schedule 2 is met, and*
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'*

78. 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 (ECHR);
 - the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - particular circumstances of the case, eg 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, ie 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?

79. Furthermore, notwithstanding the data subject'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 public interest in disclosure.
80. 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 data subject, it is also important to consider a proportionate approach, ie 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. The FCO argued that individuals below a senior position have an expectation of privacy and would not expect their names to be disclosed. The FCO also argued that there was no legitimate pressing social need to disclose their identities.
81. The Commissioner accepts that the junior officials would have had a reasonable expectation that their names and contact details will not be disclosed in the context of the request. He accepts that the individuals concerned were carrying out public functions and must therefore have the expectation that their actions in that regard will be subject to a greater scrutiny than would be the case in respect of their private lives. However, he is particularly mindful of the fact that the officials were not in public facing roles and did not exercise any significant level of authority in relation to the documents from which their names were redacted. Therefore, disclosing their names in that context could place them in a similar position with the senior officials whose names were disclosed by the public authority in that they could be seen as having exercised a significant level of authority, as with those senior officials, even though that was clearly not the case.
82. In view of the above, the Commissioner finds that it would have been unfair to disclose the names of the junior officials in question. Disclosure would have contravened the first data protection principle. The FCO was

therefore entitled to withhold the names of the officials on the basis of regulation 12(3).

Other matters

83. FOIA does not impose a statutory time within which internal reviews must be completed albeit that the section 45 Code of Practice explains that they should be completed within a reasonable timeframe. In the Commissioner's view it is reasonable to expect most reviews to be completed within 20 working days and reviews in complex cases to be completed within 40 working days.
84. In the circumstances of this case the complainant requested an internal review on 21 March 2013. The FCO informed him of the outcome on 13 November 2013. It therefore took the FCO 166 working days to complete its internal review. The Commissioner considers this to be unsatisfactory. In the future he expects the FCO to ensure that internal reviews are completed within the timeframes set out within his guidance.

85. **Right of appeal**

85. 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 123 4504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

86. 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.

87. 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

Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex – schedule of requested information

Document 1 - eGram 19076/11 – UGANDA: OIL, BUSINESS AND POLITICS

Information	Redaction applied by FCO	Commissioner's finding
Header (part)	Regulation 12(3)	Engaged, information exempt.
Paragraph 7 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 8 (whole)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 9 (whole)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 11 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 12 (whole)	Regulation 12(5)(e)	Engaged; public interest favours maintaining the exception.
Paragraph 13 (part)	Regulation 12(5)(e)	Engaged; public interest favours maintaining the exception.
Sign Off (part)	Regulation 12(3)	Engaged, information exempt.

Document 2 - Meeting Note – MEETING BETWEEN MINISTER FOR AFRICA AND UGANDAN MINISTER FOR ENERGY AND MINERALS

Information	Redaction applied by FCO	Commissioner's finding
Header (part)	Regulation 12(3)	Engaged, information exempt.
Summary (part)	Not in scope	Not in scope of request.
Detail (part)	Regulation 12(3)	Engaged, information exempt.

Paragraph 3 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 5 (part)	Regulation 12(5)(e)	Exception not engaged. Information needs to be disclosed.
Paragraph 7 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 8 (whole)	Regulation 12(5)(e)	Engaged; public interest favours maintaining the exception.
Paragraph 9 (whole)	Regulation 12(5)(e)	Engaged; public interest favours maintaining the exception.
Paragraph 12 (whole)	Not in scope	Not in scope of request.
Paragraph 14 (part)	Not in scope	Not in scope of request.
Cc (whole)	Regulation 12(3)	Engaged, information exempt.

Document 3 - DIPTTEL 1201334 – UGANDA AND OIL: SOME PROGRESS

Information	Redaction applied by FCO	Commissioner's finding
Summary (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 1 (part)	Regulation 12(5)(e)	Engaged; public interest favours maintaining the exception.
Paragraph 2 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 3 (part)	Regulation 12(5)(e)	Exception not engaged. Information needs to be disclosed.
Paragraph 4 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 5	Regulation	Engaged; public interest

(part)	12(5)(e)	favours maintaining the exception.
Paragraph 7 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 9 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 10 (part)	Regulation 12(5)(e)	Exception not engaged. Information needs to be disclosed.
Paragraph 12 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Sign Off (part)	Not in scope of complaint.	Not in scope of request.