

**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)**

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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 eight 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). The complainant argued that the public interest favoured disclosing the withheld information.
2. The Commissioner's decision is that:
  - 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 but only in respect of certain 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 exception to this finding is 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 2 – paragraph 6 with the exception of the third and fourth sentence of that paragraph;
  - Document 5 – paragraphs 5, 6, 9 and 10;
  - Document 7 – paragraph 4.
3. 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 2 – paragraph 6 with the exception of the third and fourth sentence of that paragraph;
    - Document 5 – paragraphs 5, 6, 9 and 10;
    - Document 7 – paragraph 4.
    - The information redacted from the headers of documents 1, 2, 3, 5, 6 and 7.
4. 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**

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5. The complainant submitted the following request to the FCO on 19 June 2013:

*'Please provide correspondence between the UK High Commission to Uganda and*

- *Tullow Oil*
- *Ugandan State House*
- *UK Foreign and Commonwealth Office*

*That contains reference to:*

- *ENI Oil*
- *The Tullow Oil "Tullow" purchase of Blocks EA-1 and EA-3A from Heritage Oil and Gas Ltd "Heritage"*
- *TKL Holdings*
- *Prime Minister Mbabazi*
- *Minister Hilary Onek*

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

*My request is for information in the time period starting on 01/01/2009 and continuing up to 10/08/2010.*

*Please ensure that you provide correspondence includes:*

- *eGrams*
  - *Emails and attachments*
  - *Letters*
  - *Briefing documents or equivalents (sent and received)*
  - *Transcripts or notes taken in relation to phone calls'*
6. The FCO responded on 12 August 2013 and provided the complainant with a digest of the information contained in eight documents that it held. The FCO explained that it had withheld certain information on the basis that it was not relevant to the request or exempt from disclosure on the basis of one of the following exceptions of the EIR: 12(5)(a) (international relations), 12(5)(e) (commercial confidentiality) or 12(3) (personal data). The FCO provided the complainant with a note detailing which exceptions had been applied to which redaction, or alternatively indicating that information had been redacted because it was considered irrelevant to the request.<sup>1</sup>
  7. The complainant contacted the FCO on 9 October 2013 in order to request an internal review of this decision. He disputed the FCO's decision to redact information on the basis that it was irrelevant to his

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<sup>1</sup> 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.

request. He also argued that the public interest favoured disclosure of the information which had been withheld under the various exceptions.

8. The FCO subsequently informed the complainant of the outcome of the internal review on 6 December 2013. The review concluded that some of the information which had been redacted from two of the documents was in fact within the scope of his request. This additional information was provided. However, the review concluded that the remaining information was either out of scope of the request or was exempt from disclosure on the basis of the exceptions cited in the internal review.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 12 May 2014 in order to complain about the FCO's handling of his request.<sup>2</sup> 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.
10. 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.
11. The complainant contacted the Commissioner on 7 July 2014 and explained that he expected his lawyers to make further submissions on his behalf but this would take up to six weeks. The Commissioner agreed to this.
12. 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.
13. The Commissioner contacted the complainant on 3 September 2014 and explained that as he had now received a substantive response from the

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<sup>2</sup> 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 FER0540831.

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. However, the Commissioner asked the complainant to clarify one issue for him:

*'Given that your request which is the focus of this complaint specifically asked for pieces of correspondence – as opposed to simply information – my provisional view is that the entirety of such correspondence, i.e. including the information that the FCO considered to be irrelevant, would actually be in scope of the request.*

*However, I can confirm that such information does not relate to Tullow Oil, Heritage or ENI Oil or related matters.*

*I am happy to still reach a finding as to whether such information should be disclosed under the EIR, i.e. whether any of the exceptions within the legislation provide a valid basis to withhold such information. However, in light of my comments in the previous paragraph, I wanted to establish whether you would be prepared to drop that aspect of your complaint. If you did, the decision notice would then just focus on the FCO's reliance on the exceptions contained at regulations 13(1), 12(5)(a) and 12(5)(e) to withhold the other information that has been redacted.*

*If you could get back to me by 2 October, that would be most useful.'*

14. Having received no response to this communication the Commissioner contacted the complainant again on 7 October and explained that in the absence of reply to his email of 26 September 2014 he intended to proceed on the basis that the complainant did not want the decision notice to consider the information redacted by the FCO on the basis that it was irrelevant.
15. The complainant's lawyers provided the Commissioner with submissions on 15 October 2014. These submissions confirmed that the complainant did in fact wish the Commissioner to consider the FCO's decision to redact information on the basis that it was irrelevant from the scope of the request. The submissions also argued that the FCO was likely to hold more information that had previously been located and/or disclosed.
16. In light of these submissions the Commissioner contacted the FCO and explained that in his view the information that had previously been redacted from the 8 documents on the basis that it was irrelevant

actually fell within the scope of the request. Therefore the FCO needed to either disclose this information or cite an exception to withhold it.

17. In response the FCO confirmed that it accepted this interpretation of the request. As a result it provided the complainant with revised copies of the 8 documents and explained that where information had been redacted it cited an exception.<sup>3</sup>

18. Therefore this decision notice considers:

(a) Whether the FCO holds further information other than the 8 documents that have been located; and

(b) 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.

19. However, the Commissioner wishes to note that ground of complaint (a) was only formally raised with him in October 2014, as was the complainant's wish to dispute the information that had been redacted on the basis that it was irrelevant to his request. This was 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**

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### **Does the FCO hold any further information beyond the information previously located?**

20. 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 disclosed in response to this request. The complainant suggested that this is particularly so in respect of the former High Commissioner, Martin Shearman whom the complainant

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<sup>3</sup> The FCO's amended position is reflected in the annex at the end of this notice.

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 which covered a similar topic and an overlapping time period as that covered by his request. The complainant noted that a large number of emails were located and disclosed by the FCO in relation to that request.

21. 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'.
22. 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.
23. 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.
24. 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.'*

25. 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 pointed out that its guidance to staff explained that it is mandatory to register emails which contain policy decisions relevant to the FCO.



26. The FCO explained that the emails disclosed in response to the Daily Telegraph request referred to by the complainant did not fall within the scope of this request because they were either outside the date range specified by the complainant's request or did not reference the terms specified in his request. The FCO noted that there were two exceptions to this, namely i) an email from eGram Gateway on 27 July 2010 at 10:21; and ii) an email from Kampala on 02 July 2010 at 08:17. The FCO explained that these two emails are eGrams 9458/10 and 8300/10 and were included in its disclosure to the complainant. (They are listed in the annex to this notice as documents 5 and 7.)
27. In light of the FCO's submissions it is clear that the FCO does in fact hold some emails which fall within the scope of this request, namely the documents described in the preceding paragraph. Furthermore, the Commissioner is satisfied that on the balance of probabilities the FCO does not hold any further 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. In particular the Commissioner considers the FCO's submissions regarding the different amount of information returned in relation to this request and the amount of information, including emails, submitted by the Daily Telegraph request to be plausible.

### **Regulation 12(5)(a)**

28. 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 this trust and confidence between the UK and Uganda.
29. 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 Ugandans 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.
30. 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'*.<sup>4</sup>

31. In relation to this 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.
32. 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 UK 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

33. 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*

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

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

*Public interest arguments in favour of disclosing the withheld information*

35. 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.
36. The complainant noted that the UK has a strong and historical relationship with Uganda and is also a major provider of development assistance to the country. The UK's role in Uganda is dependent on UK taxpayers' money, both for the provision of overseas assistance for the development of the country and diplomatic and trade related activities. Therefore the complainant argued that every UK citizen has a direct interest in the activities of the UK overseas missions and its relationships with other state representatives and companies.
37. Furthermore, he argued that the oil sector is likely to have a dramatic impact on the economy and politics of Uganda, and UK government actions and decisions could in themselves have a significant impact on this sector. Such outcomes will have a significant impact on the success of the Department for International Development (DFID) programmes in Uganda, particularly those concerning governance, as well as investment opportunities for UK companies in the country. The complainant therefore argued that there is a significant public interest in the UK releasing further information about this topic.
38. The complainant argued that Uganda's oil belonged to its citizens, held by the government on their behalf. The management of the oil is likely to be one of the most significant factors in deciding the future direction of the country. It will have an impact on politics, the environment, the economy and society with serious implications for its citizens. However, the complainant suggested that the sector has been plagued by secrecy, corruption allegations and mistrust. The complainant argued that Ugandan citizens have often been kept in the dark with little access to accurate information about how their oil is being managed.
39. The complainant suggested that many of the issues and topics discussed in the information that had been disclosed – such as the sale of Heritage Oil's rights, the resulting tax dispute and the role of foreign governments at the time – are critical to gaining a greater understanding of the oil sector in Uganda to date. The complainant argued that as Uganda moved forward in developing its oil sector, its people have a right to know how their oil has been managed to date and what lessons should be drawn from that history.

*Balance of the public interest*

40. 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 they are 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 given that the successful of such businesses overseas can directly contribute to the UK's own prosperity.
41. 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.
42. 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. Furthermore, 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 the another State in order to protect and promote UK interests. Disclosure of the withheld information would, in the Commissioner's opinion, provide a notable insight into the UK's views on the Ugandan oil industry.
43. However, despite this, the Commissioner has concluded that the public interest favours maintaining this exception. He has reached this conclusion because although disclosure of the withheld information would provide an insight into the UK's relationship with Uganda regarding its oil industry, such a disclosure risks having a widespread detrimental impact on the UK's relations with Uganda. That is to say, disclosure would not simply have an impact on just on the UK's relations with Uganda in respect of its oil industry but also on a range of other bilateral issues including trade and providing advice and guidance on political and governance issues.

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

44. 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.
45. 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.
46. 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

47. 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.
48. 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.
49. With regard to the third criterion, the FCO argued that Tullow Oil has 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 commercial disadvantage in comparison to its competitors.

#### The Commissioner's position

50. 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 as possible below without compromising the content of the withheld information itself.

51. The Commissioner accepts that all of the redacted information meets the first criterion given that it relates in some way to a commercial activity.
52. With regard to the second criterion, the Commissioner accepts that some 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 2 – paragraph 6 with the exception of the third and fourth sentence of that paragraph; document 5 – paragraphs 5, 6, 9 and 10; document 7 – paragraph 4.
53. In relation to these redactions, the Commissioner does not accept that such information can be said to have been provided by Tullow Oil. Rather it would appear to have come from other external sources or simply comprises the FCO's own commentary on the matters under discussion. Nor does this information reflect the content of information previously provided to the FCO by Tullow Oil.
54. 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 which, if disclosed, would provide its competitors with an insight and potential advantage over Tullow Oil in their activities. The Commissioner accordingly accepts that the third and fourth criteria are met.
55. The Commissioner therefore accepts that such information is exempt from disclosure on the basis of regulation 12(5)(e).

#### Public interest test

56. 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*

57. 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*

58. The complainant's arguments to support his view that there is a public interest in the disclosure of this information are set out at paragraphs 35-39 above.

*Balance of the public interest test*

59. 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 into how the UK does this. 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.
60. 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 public interest in maintaining the exception given the risk of the negative impact on Tullow Oil's commercial interests and the risk to the flow of confidential information to the FCO in the future from other companies if this information was disclosed.

**Regulation 12(3) – personal data**

61. Information is exempt from disclosure on the basis of the exception at regulation 12(3) if it constitutes third party personal data (i.e. 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.
62. 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.'*

63. 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.

64. As mentioned, for regulation 12(3) to apply, either the first or second condition in regulation 13(2) must be satisfied. 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.

65. 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.'*

66. 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?
67. 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.
68. 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 sake 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.
69. The FCO argued that individuals below a senior position have an expectation of privacy and would not expect their names and contact details to be disclosed. The FCO also argued that there was no legitimate pressing social need to disclose their identities.
70. The Commissioner accepts that the junior officials would have had a reasonable expectation that their names 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.
71. 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 and contact details of the officials on the basis of the regulation 12(3).

72. However, the Commissioner does not accept that the information that has been redacted from the headers of documents 1, 2, 3, 5, 6 and 7 can be said to constitute personal data. This is because it does not relate to a living individual. Such information is therefore not exempt from disclosure on the basis of regulation 12(3) and must be disclosed.

## Right of appeal

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73. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

74. 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.
75. 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 5967/09 – UGANDA OIL: GREAT EXPECTATIONS

<b>Information</b>	<b>Redaction applied by FCO</b>	<b>Commissioner's finding</b>
Header (part)	Personal information	Not exempt under 12(3). Needs to be disclosed.
Paragraph 5 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 5 (part)	Regulation 12(5)(e)	Engaged; public interest favours maintaining the exception.
Paragraph 5 (part)	Regulation 12(5)(a)	Engaged; public interest 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)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 11 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 12 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Sign Off (part)	Regulation 12(3)	Engaged, information exempt.

**Document 2 - eGram 41286/09 – UGANDA: OIL**

<b>Information</b>	<b>Redaction applied by FCO</b>	<b>Commissioner's finding</b>
Header (part)	Personal information	Not exempt under 12(3). Needs to be disclosed.
Paragraph 2 (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 4 (part)	Regulation 12(5)(e)	Engaged; public interest favours maintaining the exception.
Paragraph 5 (whole)	Regulation 12(5)(e)	Exception not engaged. Information needs to be disclosed.
Paragraph 6 (whole)	Regulation 12(5)(e)	Exception not engaged. Information needs to be disclosed. The only exceptions to this are the third and fourth sentences (both of begin 'Tulloch has...') which the Commissioner accepts are exempt from disclosure on the basis of regulation 12(5)(e) and that the public interest favours maintaining the

		exemption.
Paragraph 8 (part)	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 10 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 12 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 13 (whole)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 14 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Sign Off (part)	Regulation 12(3)	Engaged, information exempt.

**Document 3 - eGram 707/10 – ITALIAN FOREIGN MINISTER VISITS AFRICA: 11-17 JANUARY 2010**

<b>Information</b>	<b>Redaction applied by FCO</b>	<b>Commissioner's finding</b>
Header (part)	Personal information	Not exempt under 12(3). Needs to be disclosed.
Summary (part)	Regulation 12(5)(a)	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)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 4 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 5 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 6 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 7 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Sign Off (part)	Regulation 12(3)	Engaged, information



		exempt.
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**Document 4 - OIL – MEETING BETWEEN FCO AND TULLOW (MARCH 2010)**

<b>Information</b>	<b>Redaction applied by FCO</b>	<b>Commissioner's finding</b>
Paragraph 1 (part)	Regulation 12(3)	Engaged, information exempt.
Paragraph 2 (whole)	Regulation 12(5)(e)	Engaged; public interest favours maintaining the exception.
Paragraph 3 (whole)	Regulation 12(5)(e)	Engaged; public interest favours maintaining the exception.
Paragraph 4 (whole)	Regulation 12(5)(e)	Engaged; public interest favours maintaining the exception.
Paragraph 5 (whole)	Regulation 12(5)(e)	Engaged; public interest favours maintaining the exception.
Paragraph 6 (whole)	Regulation 12(5)(e)	Engaged; public interest favours maintaining the exception.
Paragraph 7 (whole)	Regulation 12(5)(e)	Engaged; public interest favours maintaining the exception.

**Document 5 - eGram 8300/10 – UGANDA: OIL ISSUES**

<b>Information</b>	<b>Redaction applied by FCO</b>	<b>Commissioner's finding</b>
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Header (part)	Personal information	Not exempt under 12(3). Needs to be disclosed.
Paragraph 4 (whole)	Regulation 12(5)(e)	Engaged; public interest favours maintaining the exception.
Paragraph 5 (part)	Regulation 12(5)(e)	Exception not engaged. Information needs to be disclosed.
Paragraph 6 (part)	Regulation 12(5)(e)	Exception not engaged. Information needs to be disclosed.
Paragraph 9 (whole)	Regulation 12(5)(e)	Exception not engaged. Information needs to be disclosed.
Paragraph 10 (whole)	Regulation 12(5)(e)	Exception not engaged. Information needs to be disclosed.
Paragraph 11 (whole)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 12 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Sign Off (part)	Regulation 12(3)	Engaged, information exempt.

**Document 6 - eGram 9017/10 – UGANDA: SCENESETTER FOR MR BELLINGHAM'S VISIT**

<b>Information</b>	<b>Redaction applied by FCO</b>	<b>Commissioner's finding</b>
Header (part)	Personal information	Not exempt under 12(3). Needs to be disclosed.
Paragraph 1 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 2 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 2 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Sign Off (part)	Regulation 12(3)	Engaged, information exempt.

**Document 7 - eGram 9458/10 – UGANDA: VISIT OF MINISTER FOR AFRICA, 21-25 JULY**

<b>Information</b>	<b>Redaction applied by FCO</b>	<b>Commissioner's finding</b>
Header (part)	Personal information	Not exempt under 12(3). Needs to be disclosed.
Summary (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 1 (part)	Regulation 12(5)(a)	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)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 4 (part)	Regulation 12(5)(e)	Exception not engaged. Information needs to be disclosed.
Paragraph 5 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 6 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 7 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 8 (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)(a)	Engaged; public interest favours maintaining the exception.
Paragraph 11 (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.

Sign Off (part)	Regulation 12(3)	Engaged, information exempt.
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**Document 8 - AU SUMMIT: MEETING WITH SAM KUTESA OF UGANDA,  
22-23 JULY 2010**

<b>Information</b>	<b>Redaction applied by FCO</b>	<b>Commissioner's finding</b>
Points to Make (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.
Background (part)	Regulation 12(5)(a)	Engaged; public interest favours maintaining the exception.