

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 July 2015

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

Decision (including any steps ordered)

1. The complainant submitted a set of requests to the Foreign and Commonwealth Office (FCO) seeking information about any discussions between the FCO and Greek government for the period October 2013 to October 2014 about the Elgin/Parthenon Marbles (the Marbles). The FCO confirmed that it held one piece of information but considered this to be exempt from disclosure on the basis of section 27(1)(a) of FOIA. The Commissioner has decided that the FCO have correctly relied on this exemption.

Request and response

2. The complainant submitted the following requests to the FCO on 26 October 2014:

'(1)...During the period 23 October 2013 to present day has the Foreign Secretary and or any member of the FCO's ministerial team with direct responsibility for European affairs and or any of Britain's diplomatic representatives in Greece met with any elected member of the Greek Government to discuss the issue of the Elgin/Parthenon Marbles. In the case of each meeting can you please provide a full list of those present as a well as a date [sic], time and venue.

(2)...During the aforementioned period has the Foreign Secretary and or any member of the FCO's ministerial team with direct responsibility for European affairs and or any of Britain's diplomatic representative (s) in Greece met with any employee and or representative of the Greek Government (including diplomats) to discuss the issue of the

Elgin/Parthenon Marbles. In the case of each meeting (s) can you please provide a full list of those present as well as a time, date and venue.

(3)...During the aforementioned period has the Foreign Secretary and or any member of the ministerial team with direct responsibility for European affairs and or any of Britain's diplomatic representatives in Greece exchanged correspondence and communications including emails with any elected member of the Greek Government. Please note that I am only interested in correspondence and communications which in any way relate to the issue of the Parthenon marbles. If the answer is yes can you please provide copies of this correspondence and communications including emails.

(4)...During the aforementioned period have Britain's diplomatic representatives in Greece and or the Foreign Office's European desk exchanged correspondence and communications including emails with any of the following organisations. Please note that I am only interested in correspondence and communications including emails which relates to the issue of the Elgin/Parthenon Marbles. If the answer is yes can you please provide copies of the correspondence and communications including emails. The organisations concerned are The Greek Foreign Ministry and or the Greek Embassy in London.'

3. The FCO responded on 16 December 2014. It explained that it did not hold any information falling within the scope of requests 2, 3 and 4. In relation to request 1, it explained that there have been no meetings with any employee and/or representative of the Greek Government (including diplomats) to discuss the issue of the Marbles. However, on one occasion, the matter was raised with a British diplomatic official in the margins of a meeting on another subject. The FCO explained that it had concluded that the details relating to that discussion were exempt from disclosure on the basis of section 27(1)(a) of FOIA.
4. The complainant contacted the FCO on 6 January 2015 in order to ask for an internal review of its decision to rely on section 27(1)(a).
5. The FCO informed him of the outcome of the internal review on 18 February 2015. The review upheld the application of the exemption.

Scope of the case

6. The complainant contacted the Commissioner on 18 February 2015 to complain about the FCO's decision to withhold the information that it had located on the basis of section 27(1)(a) of FOIA.

Reasons for decision

7. Section 27(1)(a) provides that information is exempt if its disclosure would, or would be likely to, prejudice relations between the UK and any other State.

The FCO's position

8. The FCO argued that disclosure of the details of a conversation between a British official and a representative of the Greek government in the margins of another meeting could weaken the mutual trust and confidence between Greece and the UK. This would reduce the flow of information between Greek officials and elected representatives to the UK on a variety of subjects, not just the Marbles. It therefore argued that disclosure of the withheld information would be likely to prejudice the UK's relations with Greece.
9. In order to support its position the FCO provided the Commissioner with further submissions which referred directly to the content of the withheld information. The Commissioner cannot reproduce the detailed content of these submissions in this notice without revealing the content of the information itself. However, he has taken these submissions into account in reaching his conclusion regarding the application of section 27(1)(a).

The complainant's position

10. The complainant argued that the withheld information could be disclosed without any real or serious likelihood of prejudice occurring to UK-Greek relations. In order to support this position he noted that:
11. The respective positions of the Greek and UK governments regarding the Marbles are very well known. Therefore it was unlikely that the content of the information would come as a surprise to either government.
12. The complainant specifically noted that Greece regularly makes its position on the issue public and has not been afraid to criticise the authorities in Britain. He gave the recent example of when the British Museum announced that it had lent part of the Marbles to The Hermitage in St Petersburg. Indeed the complainant noted that Greece was considering launching a high profile legal challenge over the Marbles, hiring the British lawyers Geoffrey Robertson and Amal Alamuddin Clooney.
13. The complainant therefore suggested that the authorities in Greece see no reason to hide their position and they presumably do not think that

their own pronouncements on the issue are a threat to Anglo-Greek relations.

14. Finally, the complainant emphasised that he was only seeking information on one specific issue, ie the Marbles, and thus he disputed the suggestion that disclosure of information on this topic would have a negative impact on bilateral discussions on other topics.

The Commissioner's position

15. In order for a prejudice based exemption, such as section 27(1)(a), to be engaged the Commissioner believes that three criteria must be met:
- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
16. Furthermore, the Commissioner has been guided by the comments of the Information Tribunal which suggested that, in the context of section 27(1), prejudice can be real and of substance '*if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary*'.¹

¹ [Campaign Against the Arms Trade v The Information Commissioner and Ministry of Defence \(EA/2006/0040\)](#), paragraph 81.

17. With regard to the first criterion of the three limb test described above, the Commissioner accepts that potential prejudice to the UK's relations with Greece clearly relates to the interests which the exemption contained at section 27(1)(a) is designed to protect.
18. With regard to the second criterion, despite the public comments and actions of each country in respect of the Marbles, the Commissioner is satisfied that disclosure of this information has the potential to harm the UK's relations with Greece. The Commissioner is therefore satisfied that that there is a causal link between the potential disclosure of the withheld information and the interests which section 27(1)(a) is designed to protect. Moreover, the Commissioner is satisfied that the resultant prejudice which the FCO believes would be likely to occur can be correctly categorised, in light of the Tribunal's comments above, as real and of substance. In other words, subject to meeting the likelihood test at the third criterion, disclosure could result in making relations more difficult and/or demand a particular damage limitation exercise.
19. With regard to the third criterion, the Commissioner has given careful consideration to the points raised by the complainant. However, the Commissioner is satisfied that regardless of the public comments and actions of each country in respect of the Marbles, the withheld information clearly represents a private and confidential discussion between representatives of both countries on this topic. In the Commissioner's view given the nature of this discussion, allied to the specific matters which were actually discussed, it is reasonable to conclude that disclosure of the information would be likely to harm Anglo-Greek relations. In particular, disclosure would clearly undermine the trust and confidence between the two governments. This is particularly so given that the exchange took place in the margins of another meeting and not during a formal meeting convened to discuss the topic. In the Commissioner's view, disclosure in this case would be likely to have the direct consequence of impacting on the future flow of information from Greek officials to UK officials on a variety of topics, not just on future discussions concerning the Marbles.
20. The Commissioner has therefore concluded that section 27(1)(a) is engaged.

Public interest test

21. Section 27 is a qualified exemption and therefore the Commissioner must consider the public interest test and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest in disclosure of the information

22. The complainant suggested that there were strong public interest grounds for disclosing the information the FCO held. He argued that the issue of whether the Marbles should remain in London remains a highly contentious one with strong views on both sides of the debate. The complainant noted that there are voices – on both sides of the debate – who do not accept the British government's repeated claim that the future of the Marbles is a matter for the British Museum and not the British government. The complainant believed that disclosure of the material would go some way to clearing up the confusion on this matter.

Public interest in favour of maintaining the exemption

23. The FCO emphasised that section 27(1)(a) recognised that the effective conduct of international relations depends upon maintaining trust and confidence between governments. It argued that if the UK government does not maintain this trust and confidence, then its ability to protect and promote UK interests through international relations will be hampered, which will not be in the public interest. Consequently, the FCO argued that disclosure of this particular information was not in the public interest as it would be likely to damage the bilateral relationship between the UK and Greece, reducing the UK government's ability to protect and promote UK interests through its relations with Greece.

Balance of the public interest

24. With regard to the balance of the public interest, the Commissioner recognises that there is clearly a public interest in the UK being open and transparent about the way in which it engages with other States. Disclosure of the withheld information in this case would provide the public with an insight, albeit quite a limited one, into the nature of the discussions between the UK and Greece concerning the Marbles. The Commissioner acknowledges that given the historical importance of the Marbles, the nature of the issues involved and the long running history, the public interest in disclosing the information should not be dismissed lightly.
25. However, in the Commissioner's view there is a very strong public interest in protecting the UK's relations with other States. In the particular circumstances of this case, as disclosure risks undermining the UK's ability to enjoy effective diplomatic relations with Greece on a variety of bilateral issues, not just the Marbles, the Commissioner has concluded that the balance of the public interest clearly favours maintaining the exemption.

Right of appeal

26. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Graham Smith
Deputy Commissioner
Information Commissioner's Office
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