

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 June 2016

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) seeking information about the kidnapping and death of four British citizens in Chechnya in 1998. The FCO provided the complainant with various press cuttings it held but sought to rely on the following exemptions within FOIA to withhold the remaining information: section 27(1)(a) – international relations; section 35(1)(a) – government policy; sections 38(1)(a) and (b) – health and safety; section 40(2) – personal data; section 41(1) – information provided in confidence; section 42(1) – legal professional privilege; section 43(2) – commercial interests. It also sought to rely on section 23(5) (security bodies) of FOIA to refuse to confirm or deny whether it held any further information falling within the scope of this request.
2. The Commissioner is satisfied that the withheld information is exempt from disclosure on the basis of the various exemptions cited by the FCO. He has also concluded that the FCO is entitled to rely on section 23(5) in the manner in which it did. However, the Commissioner has concluded that the FCO breached section 17(3) by failing to complete its public interest test considerations within a reasonable timeframe.

Request and response

3. The complainant submitted the following request to the FCO on 28 February 2014:

'I would like documents concerning the abduction and death of British citizens Peter Kennedy, Darren Hickey, Rudi Petschi and Stan Shaw in Grozny, Chechnya which occurred during October-December 1998. I

am primarily interested in English language documents concerning this case.'

4. The FCO acknowledged receipt of the request on 31 March 2014 and confirmed that it held information falling within the scope of the request. The FCO explained that it believed that the requested information was exempt from disclosure under section 27 FOIA, the international relations exemption, however it needed further time consider the balance of the public interest test.
5. The FCO continued to send the complainant further letters extending the time it needed to complete its public interest considerations until 21 August 2015 at which point the FCO informed him that it had completed its public interest deliberations. The FCO provided him with some of the information falling within the scope of his request, namely various press cuttings. However, the FCO explained that it considered the remaining information to be exempt from disclosure on the basis of the following exemptions in FOIA:
 - Section 27(1)(a) – international relations
 - Section 35(1)(a) – government policy
 - Sections 38(1)(a) and (b) – health and safety
 - Section 40(2) – personal data
 - Section 41(1) – information provided in confidence
 - Section 42(1) – legal professional privilege
 - Section 43(2) – commercial interests
6. The FCO also sought to refuse to confirm or deny whether it held any further information on the basis of sections 23(5) (security bodies) and 24(2) (national security).
7. The complainant contacted the FCO on a number of occasions in September 2015 in order to clarify the basis upon which it was seeking to rely on section 38 of FOIA.
8. On 22 September 2015 the complainant formally asked the FCO to conduct an internal review into the handling of his request. He explained that his grounds of complaint were as follows:
 - He was unhappy that it took nearly 18 months for the FCO to complete its public interest test considerations.
 - He was dissatisfied with the lack of clarity to the FCO's refusal notice and its follow up responses.
 - He asked for *'a review of the application of all the FOI sections denying the release of any documents covering this matter'*.

9. The FCO informed the complainant of the outcome of the review on 27 November 2015. The review concluded that the delays in considering his request were unavoidable given the nature and volume of information being reviewed. The review also concluded that the various exemptions cited in the refusal notice had been correctly relied upon.

Scope of the case

10. The complainant contacted the Commissioner on 29 November 2015 to complain about the way his request for information had been handled. He explained to the Commissioner that he disputed the FCO's reliance on the various exemptions it had cited in its refusal notice. During the course of the Commissioner's investigation the FCO confirmed that it was no longer seeking to rely on section 24(2) albeit it was still seeking to rely on section 23(5) of FOIA.

Reasons for decision

Section 27 – international relations

11. Some of the requested information has been withheld on the basis of section 27(1)(a) of FOIA. This exemption provides that information is exempt if its disclosure would, or would be likely to, prejudice relations between the UK and any other State.
12. The FCO argued that disclosure of the information would prejudice the UK's relations with Russia. This was because the withheld information includes details of the UK's discussions with Russia regarding the kidnapping. The FCO emphasised that the material included information which the Russians had clearly provided in confidence. Moreover, the FCO argued that the effective conduct of international relations depends upon maintaining trust and confidence between governments. Disclosure of the information detailing the UK's relationship with the Russian government would clearly damage this relationship. The FCO took the view that the passage of time did not alter the risks of this prejudice occurring given the content and sensitivity of the withheld information.
13. The complainant drew attention to the fact that Boris Yeltsin was in charge at the point the kidnapping took place, and the transformation of the country during Vladimir Putin's reign, including his reported repudiation of Yeltsin's years in power. In the complainant's view this meant that the FCO's rationale for arguing that disclosure would endanger the UK-Russian relationship, especially as it happened 18 years ago, was questionable.

14. In order for a prejudice based exemption, such as section 27(1)(a), to be engaged the Commissioner considers that three criteria must be met:
- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. 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.
15. 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
16. 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 Russia clearly relates to the interests which the exemption contained at section 27(1)(a) is designed to protect.
17. With regard to the second criterion, the Commissioner is satisfied that disclosure of this information has the potential to harm the UK's relations with Russia. He has reached this conclusion because, having examined the content of the withheld information, it is clear that it does

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

– as the FCO explained above – draw on information provided by Russian officials in confidence and also details other aspects of discussions between the UK and Russia in relation to the kidnapping. In the Commissioner's view, it is self-evident that if information provided in confidence by representatives of other States was disclosed by the UK then it would be logical to conclude that the UK's relations with the confider could be harmed. 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.

18. With regard to the third criterion, the Commissioner accepts that nearly twenty years have passed since this information was created and as the complainant has emphasised there have been significant political changes in Russia. However, despite the passage of time the Commissioner is satisfied, having reviewed the withheld information and considered its contents, that Russia would be dissatisfied with its disclosure under FOIA. Therefore in the Commissioner's view disclosure of the withheld information *would* – as opposed to simply being *likely to* – prejudice the UK's relations with Russia. Section 27(1)(a) is therefore engaged.

Public interest test

19. 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.
20. The FCO acknowledged that disclosure of the withheld information would increase public knowledge about the UK's relations with Russia. However, it argued that there was significant public interest in the UK being able to maintain effective relations with other States. Without this trust and confidence the UK would not be able to protect and promote UK interests in Russia which would not be in the public interest.
21. The Commissioner agrees that disclosure of the information would provide a clear and detailed insight into the UK's liaison and discussions with Russia regarding the kidnapping. However, in the Commissioner's view there is a very strong public interest in protecting the UK's relations with other States, in this case with Russia. In the Commissioner's view this argument attracts additional weight given that

disclosure would prejudice these relations rather than simply being likely to. The Commissioner has therefore concluded that the public interest favours maintaining the exemption contained at section 27(1)(a).

Section 35(1)(a) – formulation and development of government policy

22. The FCO argued that some of the withheld information was exempt from disclosure on the basis of section 35(1)(a) of FOIA. This exemption states that:

'Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

(a) the formulation or development of government policy'

23. Section 35 is a class based exemption, therefore if information falls within the description of a particular sub-section of 35(1) then this information will be exempt; there is no need for the public authority to demonstrate prejudice to these purposes.

24. The Commissioner takes the view that the 'formulation' of policy comprises the early stages of the policy process – where options are generated and sorted, risks are identified, consultation occurs, and recommendations/submissions are put to a Minister or decision makers. 'Development' may go beyond this stage to the processes involved in improving or altering existing policy such as piloting, monitoring, reviewing, analysing or recording the effects of existing policy.

25. Whether information relates to the formulation or development of government policy is a judgement that needs to be made on a case by case basis, focussing on the precise context and timing of the information in question.

26. The Commissioner considers that the following factors will be key indicators of the formulation or development of government policy:

- the final decision will be made either by the Cabinet or the relevant Minister;
- the government intends to achieve a particular outcome or change in the real world; and
- the consequences of the decision will be wide-ranging.

27. The FCO argued that information withheld under this exemption related to the formulation and development of the government's kidnap policy. It acknowledged that although the overarching policy was already established, the handling methods and detail within it are kept under review for each individual case.
28. In general, the Commissioner would not generally consider the government's response to a particular event to involve the formulation and development of government policy. Rather the government's response would generally be seen as involving the implementation of existing policy which had already been formulated and developed. However, as the Commissioner's guidance on this exemption explains, a variety of different processes can encompass government policy making. More specifically, the guidance notes that, depending on the facts of a case, processes involving policy making can include unusually sensitive or high-profile operational decisions.² In the particular circumstances of this case the Commissioner is persuaded that the government's response to this kidnapping is an example of such policy making. Although the government had an established kidnap policy, it is clear that this situation presented new and novel challenges not least because of the political situation in Chechnya, and as a result required a number of high profile operational decisions which included the involvement of Ministers. Moreover, the Commissioner is satisfied that the decisions were intended to achieve a specific outcome in the real world.
29. The Commissioner is therefore satisfied that the information can be said to relate to the formulation and development of government policy and thus is exempt from disclosure on the basis of section 35(1)(a) of FOIA.

Public interest test

30. Section 35 is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption contained at section 35(1)(a) outweighs the public interest in disclosing the information.
31. The complainant argued that there was a public interest in the disclosure of information which would reveal how the Blair government handled a crisis such as this. He explained that it was his understanding that procedures were implemented after the death of the hostages to ensure mistakes were not repeated. Therefore, he argued that it is in

² <https://ico.org.uk/media/for-organisations/documents/1200/government-policy-foi-section-35-guidance.pdf>

the public interest to see what the standard operating procedures were within the FCO for dealing with kidnappers and negotiators.

32. The FCO argued that officials need to be able to conduct rigorous and candid risk assessments of their policies and programmes including the consideration of the pros and cons without there being premature disclosure which might close off better options and inhibit the free and frank discussion of all policy options. The FCO suggested that disclosure of the information withheld under this exemption could undermine the effectiveness of discussions in relation to any future kidnapping cases.
33. In considering the balance of the public interest arguments outlined above, the Commissioner has taken into account the comments made in a key Information Tribunal decision involving the application of section 35(1)(a).³ In that case the Tribunal confirmed that there were two key principles that had to be taken into account when considering the balance of the public interest test: firstly the timing of the request and secondly the content of the requested information itself.
34. With regard to attributing weight to the chilling effect arguments, the Commissioner recognises that civil servants are expected to be impartial and robust when giving advice, and not easily deterred from expressing their views by the possibility of future disclosure. Nonetheless, chilling effect arguments cannot be dismissed out of hand and are likely to carry some weight in most section 35 cases. If the policy in question is still live, the Commissioner accepts that arguments about a chilling effect on those ongoing policy discussions are likely to carry significant weight. Arguments about the effect on closely related live policies may also carry weight. However, once the policy in question is finalised, the arguments become more and more speculative as time passes. It will be difficult to make convincing arguments about a generalised chilling effect on all future discussions.
35. The Commissioner recognises that the information in this case is nearly twenty years old. However, it is also the case that the withheld information contains a detailed and frank assessment of the issues considered by the government when dealing with this particular kidnapping. The Commissioner is persuaded that given the candour of these discussions and the sensitive matters discussed, the disclosure of this information even after such a period of time could still risk prejudicing the candour of future discussions on other kidnapping cases. That said, the Commissioner agrees with the complainant that there is a

³ *DFES v Information Commissioner and Evening Standard (EA/2006/0006)*

significant interest in the public being able to understand the actions and decisions taken by the government in relation to this case. Nevertheless, the Commissioner believes that this interest is outweighed by the need to ensure that the government is able to have effective internal discussions when dealing with future kidnapping cases. The public interest therefore favours maintaining the exemption.

Section 41 – information provided in confidence

36. The FCO argued that some of the withheld information was exempt from disclosure on the basis of section 41(1) of FOIA. This exemption states that:

'(1) Information is exempt information if—

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.'

37. Therefore for this exemption to be engaged two criteria have to be met; the public authority has to have obtained the information from a third party and the disclosure of that information has to constitute an actionable breach of confidence.

38. With regard to whether disclosure would constitute an actionable breach of confidence the Commissioner follows the test of confidence set out in *Coco v A N Clark (Engineering) Ltd* [1968] FSR 415. This judgment suggested that the following three limbed test should be considered in order to determine if information was confidential:

- Whether the information had the necessary quality of confidence;
- Whether the information was imparted in circumstances importing an obligation of confidence; and
- Whether an unauthorised use of the information would result in detriment to the confider.

39. The FCO explained that the information withheld under this exemption was received from a number of third parties, the key ones being Granger Telecom, BT and Control Risks. The FCO argued that it was clear from the nature of the information, and the manner in which the companies provided this to the government, that it was considered to be confidential. In terms of the consequences of disclosure, the FCO argued that disclosure could be detrimental to the companies involved, and also

to the FCO's ability to receive information from private companies, in confidence, in the future.

40. The Commissioner is satisfied that the information withheld on the basis of this exemption was provided to the FCO by third parties. Furthermore the Commissioner accepts that the information was shared with the FCO with the clear expectation that it would be treated confidentially. In the Commissioner's view this is clear both from the content of the withheld information and the circumstances in which it was passed to the FCO, namely during sensitive discussions about securing the release of the hostages. Moreover, the Commissioner is satisfied that disclosure of the information could be detrimental to the companies in question. In reaching this finding, the Commissioner recognises that the complainant has noted that Granger Telecom was dissolved in 2006. However, the Commissioner is satisfied that disclosure could still be detrimental to the other third parties identified by the FCO.
41. Although section 41 is an absolute exemption, the law of confidence contains its own built in public interest test with one defence to an action being that disclosure is in the public interest. The FCO argued that there was no obvious argument to mount such a defence. Rather disclosure, in addition to the detriment caused to the third parties, could also cause widespread damage to the FCO's ability to obtain information in confidence in future cases such as this as well as in wider work. The FCO argued that it was vital that it was able to obtain such confidential information in kidnapping cases and that sources of information would be likely to dry up if would be suppliers believed that information, provided in confidence, would not be treated confidentially.
42. As the Commissioner has recognised elsewhere in this notice, he accepts that there is a public interest in disclosure of information which would shed light on how the government handled this particular kidnapping. Disclosure of the information provided to it, in confidence by the various parties identified above, would go a significant way to meeting this public interest. However, in the Commissioner's view, despite the passage of time it is clear that disclosure of such information would still be likely to have detrimental consequences for the third parties in question, albeit with the exception of Granger Telecom for the reasons noted by the complainant, but could also have potentially detrimental consequences for the FCO if third parties reached the view that the FCO could not be trusted to protect confidential information. In the Commissioner's opinion such an outcome would be firmly against the public interest as it would impact on the UK government's ability to effectively deal with cases such as this in the future. The Commissioner has therefore concluded that there is no public interest defence to a breach of confidence. Therefore, the FCO is entitled to rely on section 41.

Section 38 – health and safety

43. The FCO also withheld some information on the basis of the exemptions contained at section 38(1) of FOIA. These provide that

'Information is exempt information if its disclosure under this Act would, or would be likely to—

*(a) endanger the physical or mental health of any individual, or
(b) endanger the safety of any individual.'*

44. The FCO explained that it applied these exemptions for two reasons. Firstly, because if material concerning UK policy and operations in respect of kidnapping was disclosed then this could endanger the safety of current and future hostages. Secondly, it explained that some of the information was withheld because of the potential impact on the families of the victims if this information was disclosed. In respect of this line of argument the FCO emphasised the particularly distressing circumstances of these kidnappings.
45. The complainant emphasised that in previous FOI requests he had made to the FCO regarding the death of British citizens abroad, concerns about the potential impact of disclosure in respect of the families of the deceased had not been used as grounds upon which to withhold information. Therefore, he argued that the FCO was adopting an inconsistent approach in this case.
46. Section 38 is a prejudice based exemption and therefore the three criteria set out at paragraph 14 must be met in order for the exemption to be engaged.
47. With regard to the first criterion, the Commissioner is satisfied that the nature of the harm envisaged by the FCO clearly relates to the applicable interests which sections 38(1)(a) and (b) are designed to protect. Furthermore, having had the opportunity to review the information itself, the Commissioner is satisfied that there is some causal relationship between the disclosure of this information and harm occurring to both future kidnapping victims and to the families of the victims in this case. Finally, the Commissioner is satisfied that the likelihood of this harm occurring is clearly one that is more than hypothetical; rather in his view there is a real and significant risk of this occurring. In respect of the harm to future kidnap victims, the Commissioner has reached this conclusion because disclosure of the withheld information would clearly provide an insight in to the UK's operational approach to kidnap cases, and in particular how this applied to a real life scenario. With regard to the impact on the victims' families the Commissioner has reached this conclusion given the detailed nature

of the withheld information. Disclosure of such information, in the Commissioner's view, would be very likely to be distressing to the victims' families. In reaching this finding the Commissioner recognises the point the complainant made in respect of previous disclosures of information. However, each case has to be considered on its own merits and in the circumstances of this case the Commissioner is satisfied that disclosure would be distressing to the families of the victims for the reasons outlined above. Therefore the Commissioner finds that the exemptions at section 38(1)(a) and (b) are engaged.

Public interest test

48. Section 38 is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemptions contained at section 38(1)(a) and (b) outweighs the public interest in disclosing the information.
49. The Commissioner recognises that disclosure of the information withheld under these exemptions could inform the public about security arrangements the UK government has in place for individuals who have been kidnapped and how it handles such situations. Disclosure would also provide the public with a greater insight into the particular circumstances of this kidnapping. However, the Commissioner is satisfied that such interests are significantly outweighed by the public interest in ensuring that the health and safety both of future hostages, and that of the victims' families in this case, is not harmed.

Section 40 – personal data

50. The FCO also withheld some information on the basis of section 40(2) of FOIA which states that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the Data Protection Act 1998 (DPA).

51. Personal data is defined in section (1)(a) of the 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.'

52. The FCO explained that the information in question concerned the personal data of junior staff, family members of the deceased and individuals from the companies in question who were involved in the negotiations. The Commissioner accepts that such information

constitutes personal data within the meaning of section 1 of the DPA as it relates to identifiable individuals.

53. The FCO argued that disclosure of such 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.'

54. 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;
 - any 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?

55. 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 legitimate interest in disclosure to the public.
56. In considering 'legitimate interests', in order to establish if there is 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.
57. The FCO argued that given the sensitivity of the circumstances, the individuals in question would still have a high expectation that their personal data would not be disclosed. The FCO explained that it was usual practice that information on such sensitive issues is kept private unless explicitly agreed by the individuals as part of the case handling strategy.
58. The Commissioner accepts that, given the usual practice in relation to information concerning kidnapping cases, the individuals in question would have a reasonable expectation that their personal data would not be placed into the public domain. Moreover, the Commissioner accepts that given the sensitivity of the circumstances of this case, and in particular the sensitive nature of some of the personal data itself, disclosure would be likely to cause damage and/or distress to the individuals in question. In view of this the Commissioner finds that it would be unfair to disclose such information and thus the FCO is entitled to withhold this information on the basis of section 40(2) of FOIA.

Section 42 – legal professional privilege

Sections 43 – commercial interests

59. The Commissioner is satisfied that the information withheld on the basis of sections 42 and 43 is also exempt on the basis of one, or more, of the exemptions previously considered in this notice. Therefore, he has not considered the FCO's reliance on these two exemptions.

Section 23 – security bodies

60. Finally, the FCO also explained that it was relying on section 23(5) of FOIA as a basis to refuse to confirm or deny whether it held any further information falling within the scope of the request other than that which it had withheld on the basis of the other exemptions cited in the refusal notice.

61. By virtue of section 23(5) the duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in section 23(3).
62. The test as to whether a disclosure would relate to a security body is decided on the normal standard of proof, that is, the balance of probabilities. In other words, if it is more likely than not that the disclosure would relate to a security body then the exemption would be engaged.
63. From the above it can be seen that section 23(5) has a very wide application. If the information requested is within what could be described as the ambit of security bodies' operations, section 23(5) is likely to apply. This is consistent with the scheme of FOIA because the security bodies themselves are not subject to its provisions. Factors indicating whether a request is of this nature will include the functions of the public authority receiving the request, the subject area to which the request relates and the actual wording of the request.
64. The Commissioner finds that on the balance of probabilities, further information about this subject matter, ie the kidnapping of individuals in Chechnya, if held, could be related to one or more bodies identified in section 23(3). Therefore, he is satisfied that the FCO was entitled to rely on section 23(5) in the circumstances of this case. He accepts that revealing whether or not further information is held about the kidnapping in question would be likely to reveal whether information is held relating to the role of the security bodies.

Section 10 and section 17

65. Section 10(1) of FOIA requires public authorities to respond to a request promptly and in any event within 20 working days of receipt.
66. Section 17(1) of FOIA explains that if a public authority intends to refuse to comply with a request it must provide the requestor with a refusal notice stating that fact within the time for compliance required by section 10(1). Section 17(3) allows a public authority to extend its consideration of the public interest for a reasonable period of time if necessary. The Commissioner believes that this should normally be no more than an extra 20 working days, which is 40 working days in total to deal with the request. Any extension beyond this time should be exceptional and the public authority must be able to justify it.

67. In this case the complainant submitted his request on 28 February 2014 but the FCO did not inform him of the outcome of its public interest considerations until 21 August 2015, 373 working days later.
68. In submissions to the Commissioner the FCO explained that it considered this delay to be unavoidable due to the need for wider consultation and the volume of material initial searches for relevant material located. The Commissioner is not unsympathetic to the challenges this request presented the FCO with. However, he does not accept that such a lengthy period of time for considering the public interest was reasonable in all the circumstances.
69. Consequently the Commissioner has found that the FCO has breached section 17(3) of FOIA by failing to inform the complainant of the outcome of its public interest deliberations within a reasonable timeframe.

Right of appeal

70. 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

71. 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.
72. 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

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