

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 August 2016

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested a copy of a file listed by the National Archives, but retained by the Home Office, concerning a request from the Garda Siochana to the Metropolitan Police for the services of an executioner. The Home Office disclosed some of this information, but withheld the remainder under the exemption provided by section 27(1)(a) (prejudice to international relations) of the FOIA.
2. The Commissioner's decision is that the Home Office cited section 27(1)(a) correctly so it was not obliged to disclose the withheld content. The Commissioner also found, however, that the Home Office breached section 17(1) of the FOIA by failing to respond to the request within 20 working days of receipt.

Request and response

3. On 14 August 2015 the complainant wrote to the Home Office and requested the following information listed by the National Archives, but retained by the Home Office:

"The document detailed below is presently unavailable at the National Archives in Kew and I would like to apply for access to it under the Freedom of Information Act.

Reference: HO 325/84

Description: Request by the Garda (Republic of Ireland police) to Metropolitan Police Special Branch (instead of through Government channels) for the services of an executioner: Home Office not in favour and drafted suggested reply for Metropolitan Police to Garda.

Date: 1976 Jan 01-1976 Dec 31"

4. After a delay, the Home Office responded on 7 October 2015. The request was refused, with the exemptions provided by the following sections of the FOIA cited:
 - 27(1)(a) (prejudice to international relations)
 - 31(1)(a) (prejudice to the prevention or detection of crime)
 - 31(1)(b) (prejudice to the apprehension or prosecution of offenders)
 - 31(1)(c) (prejudice to the administration of justice)
5. The complainant responded on 12 October 2015 and requested an internal review. After a further delay, the Home Office responded with the outcome of the review on 22 March 2016. Some information from the requested file was disclosed to the complainant at this stage. In relation to the remainder of the file, which continued to be withheld, the Home Office withdrew the citing of the subsections from section 31 that it had relied on previously, but now also cited section 40(2) (personal information) as well as maintaining that section 27(1)(a) applied.

Scope of the case

6. The complainant contacted the Commissioner on 30 March 2016 to complain about the part refusal of his information request. The complainant indicated that he did not agree with the reasoning of the Home Office for withholding this information.

Reasons for decision

Section 17

7. Section 17(1) of the FOIA provides that a response that refuses an information request must be sent within 20 working days of receipt of the request. In this case the Home Office failed to respond to the request within 20 working days of receipt and, in so doing, breached this requirement of section 17(1). The Commissioner comments further on this delay and on the delay in the completion of the internal review in the Other matters section below.

Section 27

8. The Home Office cited section 27(1)(a) of the FOIA. This section provides an exemption where the disclosure of requested information would, or would be likely to, prejudice relations between the UK and any other State. Consideration of this exemption is a two stage process. First the exemption must be engaged as a result of prejudice relevant to the exemption being at least likely to occur. Secondly, this exemption is qualified by the public interest, which means that the information must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.
9. Covering first whether the exemption is engaged, the reasoning of the Home Office as to why this exemption was engaged was that disclosure of the withheld information would be likely to prejudice relations between the UK and Ireland. In order for the Commissioner to accept that prejudice would be likely to result, there must be a real and significant likelihood of this outcome occurring, rather than this being a remote possibility. The question here is, therefore, whether there is a real and significant chance of prejudice to relations between the UK and Ireland through disclosure of the information in question.
10. The reasoning of the Home Office was that relations between the UK and Ireland remain sensitive and hence disclosure of the withheld content would have a considerable impact. The Commissioner's approach to section 27(1)(a) is that prejudice to international relations can be real and significant if it would call for a diplomatic damage limitation exercise, which is in line with the approach of the Information Rights Tribunal.
11. As noted in the wording of the request, the withheld information concerns a situation in which, following defendants in a criminal case in Ireland being sentenced to death, the Metropolitan Police were approached by the Garda Siochana for assistance in procuring the services of an executioner. The Commissioner has had sight of the withheld information and, whilst she cannot disclose its content here, can comment on its general nature and on what impact its disclosure may have on relations between the UK and Ireland, as well as the wider context.
12. The Commissioner recognises that this information was drafted in the expectation that it would remain confidential. It is exchanged within the UK Government of the time on the issue of this request for assistance. It was intended that these would remain within those confines, including that they would not be made available to the Irish authorities. She also recognises that this information is sensitive, as a result both of relating to the continued possibility for capital punishment at that time in Ireland

and of what it reveals about the UK authorities' opinion of this approach by the Garda to the Metropolitan Police.

13. The question here, however, is what the impact may have been of disclosing this information at the time of the request, at which point this information was close to 40 years old. Clearly breaching an expectation of confidence in relation to this information would have less impact now given this passage of time and that the issues of the death penalty in Ireland and any possibility that any UK authority could assist in locating an executioner are by now obsolete.
14. The Commissioner recognises, however, that the relationship between the UK and Ireland retains elements of sensitivity. The information in question dates from the period of the "The Troubles" and the Commissioner also recognises that matters relating to the legacy of that period require sensitive handling by the UK and Irish authorities. Having had sight of the withheld information, the Commissioner accepts that this content is sufficiently sensitive, both in itself and in the context of UK – Ireland relations, that disclosure of it would necessitate a diplomatic damage limitation exercise. Her conclusion is, therefore, that prejudice to international relations would be likely to occur through disclosure of this information, so the exemption provided by section 27(1)(a) of the FOIA is engaged.
15. Having found that the exemption is engaged, it is necessary to go on to consider the balance of the public interests. In forming a conclusion on the balance of the public interests here, the Commissioner has taken into account the public interest in avoiding prejudice relevant to the exemption – that is, the public interest in avoiding prejudice to the international relations of the UK – and what evidence there is of a public interest in the specific information in question. This is in addition to the general public interest in the transparency and openness of decision-making and other activities of public authorities.
16. Covering first factors in favour of disclosure of the information, brief research has not revealed any particular public interest in this information. Whilst at that time this latter day resort to capital punishment in Ireland (although the sentences were later commuted), and the issue of the UK authorities being approached in connection with this, may have been a matter of considerable public interest, the passage of time has had the result that this incident appears to now be largely forgotten. As a result it is no longer a matter of strong public interest. Similarly, whilst the issue of the death penalty in Ireland and any involvement that UK authorities or citizens may have had with this may at one time have been a matter of strong public interest, the abolition of capital punishment in Ireland has closed this issue. For these reasons, the Commissioner does not believe that there is strong public

interest in the disclosure of this information on the basis of its subject matter.

17. The Commissioner does, however, recognise that information that adds to public understanding of the relationship between the UK and Ireland is of public interest. The fraught situation in and in relation to Northern Ireland at the time covered in the withheld information means there remains a particular public interest in information that sheds light on the relationship between the UK and Ireland at that time. This is a legitimate public interest factor in favour of disclosure of this information.
18. Turning to factors in favour of maintenance of the exemption, the public interest inherent in the exemption is referred to above. This is the public interest in avoiding prejudice to international relations, in particular in this case between the UK and Ireland. In their representations to the ICO in this case, the Home Office made the point that the Government is committed to strong relations with Ireland. The Commissioner accepts that it is of significant public interest for the UK to have a strong relationship with Ireland and has referred above to the sensitivities that continue to exist in this relationship. Avoiding a disclosure that would be likely to prejudice relations between the UK and Ireland is a factor in favour of maintenance of the exemption of considerable weight.
19. In conclusion, the Commissioner has recognised public interest in favour of disclosure on the basis that this would add to public knowledge about the relationship between the UK and Ireland around the time that the withheld information was recorded. However, her view is that the weightiest factor here is that relating to avoiding harm to the relationship between the UK and Ireland and that this tips the balance of the public interests. The Commissioner's finding is, therefore, that the public interest in maintaining the exemption outweighs the public interest in disclosure and so the Home Office was not obliged to disclose this information.

Other matters

20. As well as her finding above on the breach of the FOIA through the delay to the refusal notice, the Commissioner also wishes to record here her concern over that delay, combined with the delay to the internal review. This meant that it was more than seven months from the date of the request to the provision of the internal review outcome, which she regards as clearly excessive. The Home Office must ensure that it deals with requests and internal reviews promptly. The Commissioner will continue to monitor how promptly the Home Office is providing

responses and may intervene in relation to these matters if she believes this is necessary.

Right of appeal

21. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

22. 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.
23. 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

Ben Tomes
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