

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 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 memorandum of understanding between the Home Office and its Saudi Arabian counterpart. The Home Office refused to disclose this information and cited 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 this information. However, she also finds 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 13 October 2015 the complainant wrote to the Home Office and requested information in the following terms:

"Please can you provide me with a copy of the Memorandum of Understanding between the Home Office and Saudi Arabia, as referenced in the Saudi Arabia – Country of Concern corporate report (<https://www.gov.uk/government/publications/saudi-arabia-country-of-concern--2/saudi-arabia-country-of-concern>) published on 12 March 2015. The extract which alludes to this MoU is copied below:

In March, the Home Secretary, Theresa May, signed a MoU with her Saudi counterpart to help modernise the Ministry of the Interior, which draws on UK expertise in the wider security and policing arena. This

will complement work going on between the College of Policing and a range of Saudi security bodies."

4. After a delay, the Home Office responded on 15 December 2015. It refused the request and cited the exemptions provided by sections 24(1) (national security) and 27(1)(a) (prejudice to international relations) of the FOIA.
5. The complainant responded on the same date and requested an internal review. The Home Office responded with the outcome of the review on 15 February 2016. The conclusion was that the refusal of the request under the exemptions cited previously was upheld.

Scope of the case

6. The complainant contacted the Commissioner on 20 June 2016 to complain about the refusal of his information request. The complainant did not agree with the reasoning for the refusal of his request and argued in particular that it should have been possible for some of the information within the scope of his request to have been disclosed, with exempt content redacted, rather than a complete refusal.

Reasons for decision

Section 17

7. Section 17(1) of the FOIA requires that a response refusing an information request must be sent within 20 working days of receipt of the request. In this case the Home Office failed to respond within 20 working days and in so doing breached this requirement of section 17(1).

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. The reasoning of the Home Office for the citing of this exemption concerned relations between the UK and the Kingdom of Saudi Arabia (KSA). The Home Office argued that the KSA would disagree with the disclosure of this information and that this would prejudice bilateral relations between the two nations.
10. In order for the Commissioner to accept that prejudice would result, it must be more probable than not that this outcome would occur. 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. The issue for the Commissioner to consider in this case is whether disclosure of the information falling within the scope of the complainant's request would be more probable than not to harm relations between the UK and the KSA, at least by necessitating limitation of damage to that relationship.
11. In its representations to the ICO in this case, the Home Office stated that the UK-KSA relationship is based on trust and argued that disclosure of the information in question would damage the standing of the UK with the KSA. Its reasoning for this was that the KSA would hold an expectation that the information in question would remain confidential and would not agree with it being disclosed.
12. During the investigation of this case the Home Office supplied to the Commissioner an overview of the withheld information. Whilst it would not be appropriate to go into detail here about the content of that overview, the Commissioner notes that this shows that the content of the withheld information is sensitive and she accepts that this supports the representations from the Home Office that both parties to the withheld information – UK and KSA – believed that the matters recorded within were being discussed in confidence and would not expect this information to be disclosed.
13. As noted above, a particular argument of the complainant was that he believed at least some of the information could be disclosed, with particularly sensitive content redacted. However, given that the major factor as to whether the exemption is engaged is the expectations of the KSA, the Commissioner does not believe that redaction of some of the content would be sufficient to prevent section 27(1)(a) from being engaged as a partial redaction would be unlikely to address the concerns of the KSA.
14. On the basis of this overview of the withheld information and the representations from the Home Office, the Commissioner accepts that disclosure of this information would result in prejudice to the relationship between the UK and the KSA in that it would at the least

necessitate a diplomatic damage limitation exercise. Her conclusion is, therefore, that 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. The Commissioner's view is that there are a number of powerful public interest arguments in favour of disclosure in this case. This includes a public interest in the way that the Home Office works with other States, including the KSA. The Commissioner also recognises the strength of the public interest in the UK-KSA relationship given the concerns about human rights and other issues in the KSA which are highlighted in the report to which the request refers.
17. The major public interest factor against disclosure in this case is that in avoiding prejudice to the UK-KSA relationship. The relevant considerations in reaching a judgement on the balance of the public interest therefore extend beyond the actual content of the withheld information itself.
18. In the Commissioner's view it is strongly in the public interest that the UK maintains good international relations. Her view is that it would not be in the public interest if there were to be a negative impact on the effective conduct of international relations as a result of the release of the information at issue in this case.
19. From the evidence she has seen, the Commissioner is satisfied that disclosure of the withheld information represents a significant and real risk to the UK's relations with the KSA. In her view, it is clear that disclosure in this case would not only damage the UK-KSA relationship on the matters covered in the withheld information, but has the potential to harm the relationship between the two nations across a range of issues. The Home Office emphasised in its representations to the Commissioner the important role that the KSA has as a security partner of the UK, hence disclosure in this case could harm the relationship in that area.
20. The Commissioner is satisfied that such a broad prejudicial outcome is firmly against the public interest and finds that this tips the balance towards withholding the information. Her conclusion is, therefore, that

the public interest in the maintenance of the exemption outweighs the public interest in disclosure and so the Home Office was not obliged to disclose this information.

21. In light of this conclusion, it has not been necessary to go on to also consider section 24(1).

Right of appeal

22. 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>

23. 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.
24. 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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