

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 November 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) for information about the visits of delegations from foreign nations who were either guests of the UK Government or on a State visit. The FCO provided the requested information with the exception of the names of the hotels used by each of the delegations which was withheld on the basis of sections 24(1) (national security) and 43(2) (commercial interests) of FOIA. The Commissioner is satisfied that the withheld information is exempt from disclosure on the basis of section 24(1) and that in all the circumstances of the case the public interest favours maintaining the exemption.

Request and response

2. The complainant submitted the following request to the FCO on 22 March 2016:

'On your website you have provided information in relation to the cost of providing accommodation, transportation and other expenses to delegations from foreign nations who are either Guests of Government or on a State Visit.

In relation to the following visits that appear on your website please state the number of guests, the number of nights accommodation that was provided in total and the name of the hotel that was used.

- 1 Afghanistan 4-6 Dec 2014
- 2 Singapore 20-24 Oct 2014

3 Ireland 8-11 April 2014'

3. The FCO responded on 4 April 2016 and confirmed the number of guests for each visit as well as the length of stay. However, the FCO refused to disclose the names of the hotels used arguing that it was exempt from disclosure on the basis of section 43(2) of FOIA.
4. The complainant contacted the FCO on 25 April 2016 in order to ask for an internal review of this decision.
5. The FCO informed him of the internal review on 28 June 2016. The review upheld the application of section 43(2) and also concluded that the withheld information was also exempt from disclosure on the basis of section 24 of FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 12 August 2016 in order to complain about the FCO's decision to withhold the information falling within the scope of his request.

Reasons for decision

Section 24 - National security

7. Section 24(1) states that:

'Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security'.

8. FOIA does not define the term national security. However in *Norman Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045 4 April 2007) the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords' observations as follows:
 - "national security" means the security of the United Kingdom and its people;
 - the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;

- the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
 - action against a foreign state may be capable indirectly of affecting the security of the UK ; and
 - reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.
9. Furthermore, in this context the Commissioner interprets 'required for the purposes of' to mean reasonably necessary. Although there has to be a real possibility that the disclosure of requested information would undermine national security, the impact does not need to be direct or immediate.
10. The FCO argued that it was necessary to withhold the names of the hotels falling within the scope of the complainant's request in order to safeguard national security, including the safety and security of international visitors. The FCO explained that it regularly used a number of hotels when booking for State visitors and guests of other States and that most Missions in London use the same hotels for both official and private VIP visits. The FCO also explained that the choice of hotel selected for a State or Guest of Government Visit is usually down to the personal preference of the VIP Visitor or the London Mission. The FCO emphasised that the incoming delegations and their London Missions are acutely aware of risk and ask the FCO to protect details about their VIPs' movements which are vital to their own security. The FCO also emphasised that the threat to the UK from terrorism stood at severe and consequently to reveal where VIPs stayed when in the UK would compromise their security.
11. Given that the particular hotels falling within the scope of the request are likely to be used again by the States in question for any future visits – be it either official or private visits – the Commissioner is persuaded that the exemption contained at section 24(1) is engaged. This is because in the Commissioner's view it is logical to argue that if the withheld information was disclosed this would allow those with malicious intent to establish, with reasonable certainty, where delegations from that State would be likely to stay when next in the UK. The Commissioner is also satisfied that if the security of these delegations was threatened whilst they were in the UK then this would also represent a threat to the UK's own national security. Furthermore, the Commissioner accepts that whilst disclosure of the information would not represent an immediate threat, its disclosure would represent a real possibility of threatening national security given the direct way in which

the information could be used by those intent on attacking delegations from the three States covered by the request when they are in the UK.

Public interest test

12. The FCO explained that it recognised that transparency was important and that is why it released information online about its expenditure on State and Guest of government visits which includes the cost of accommodation. It acknowledged that the disclosure of the names of the hotels used would further support the government's transparency agenda. However, the FCO explained that it was firmly of the view that there was a far greater public interest in ensuring the security of visiting VIP dignitaries.
13. In the Commissioner's opinion there is an obvious and weighty public interest in the safeguarding national security. In the particular circumstances of this case the Commissioner agrees with the FCO that it would be firmly against the public interest to undermine the security of visiting VIP dignitaries. Nevertheless, the Commissioner recognises that section 24 is not an absolute exemption and therefore there may be circumstances where the public interest favours disclosure of information which engages this exemption. However, in the Commissioner's opinion the public interest in disclosing the withheld information in this case is arguably quite limited, especially in light of the fact that the FCO already publishes information about the costs associated with such visits. The Commissioner has therefore concluded that the public interest firmly favours maintaining the exemption contained at section 24(1) of FOIA. In light of this decision, the Commissioner has not gone on to consider the FCO's reliance on section 43(2) of FOIA.

Right of appeal

15. 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

16. 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.
17. 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

Jonathan Slee
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