

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 March 2018

Public Authority: The Cabinet Office

Address: FOI-team@cabinetoffice.gov.uk

Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office seeking information about the assassination of Benazir Bhutto. The Cabinet Office confirmed that it held information falling within the scope of the request but it sought to withhold this on the basis of the following exemptions within FOIA: sections 27(1)(a), (c) and (d) and 27(2) (international relations); sections 31(1)(a), (b) and (g) section (law enforcement); section 38(1)(b) (health and safety); section 40(2) (personal data); sections 31(1)(a), (b) and (g) section (law enforcement); and 41(1) (information provided in confidence). The Commissioner has concluded that the withheld information is exempt from disclosure on the basis of sections 27(1)(a), (c), (d) of FOIA and that in all the circumstances of the case the public interest favours maintaining the exemptions.

Request and response

2. The complainant submitted the following request to the Cabinet Office on 14 March 2017:

'I hereby make a freedom of information request for any documents you hold which were generated between 27/12/2007 and 1/3/2008 and which contain references to the assassination of Benazir Bhutto.'

3. The Cabinet Office responded on 7 April 2017 and confirmed that it held information falling with the scope of his request. However, the Cabinet Office explained that it considered this information to be exempt from disclosure on the basis of the following sections of FOIA:

- Sections 27(1)(a), (c), (d) and 27(2) - international relations

- Section 38(1)(b) – health and safety
 - Section 40(2) – personal data
 - Section 41(1) – information provided in confidence
4. The Cabinet Office also relied on sections 23(5) (security services) and 24(2) (national security) to refuse to confirm or deny whether any further information was held that would engage sections 23 or 24 of FOIA.
 5. The complainant contacted the Cabinet Office on 10 April 2017 in order to ask for an internal review. He explained that he disputed the Cabinet Office's reliance on the various exemptions cited with the exception of sections 23(5) and 24(2).
 6. The Cabinet Office informed him of the outcome of internal review on 26 April 2017. The review upheld the various exemptions cited in the refusal notice and concluded that some of the information was also exempt from disclosure on the basis of the exemptions contained at sections 31(1)(a), (b) and (g) by virtue of section 31(2)(a) of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 29 April 2017 in order to complain about the Cabinet Office's decision to withhold information falling within the scope of his request.

Reasons for decision

Section 27 – international relations

8. The Cabinet Office argued that all of the withheld information was exempt from disclosure on the basis of the exemptions contained at sections 27(1)(a), (c) and (d) of FOIA.

9. These sections state that:

'Information is exempt information if its disclosure would, or would be likely to, prejudice –

(a) relations between the United Kingdom and any other State...

(c) the interests of the United Kingdom abroad, or

(d) the promotion or protection by the United Kingdom of its interests abroad.'

10. In order for a prejudice based exemption, such as section 27(1), 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 to discharge.
11. 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

The Cabinet Office's position

12. The Cabinet Office explained that the withheld information constituted briefing material for the Prime Minister as well as records of head of state to head of state communications between the Prime Minister and both the President of the United States and the President of Pakistan. The Cabinet Office emphasised that disclosure of such information would clearly not conform to the conventions of international behaviour and would risk offending both Pakistan and the US as well as undermining the trust of these partners. The Cabinet Office elaborated on these

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

arguments in submissions to Commissioner which made direct reference to the content of the withheld information itself.

13. The Cabinet Office acknowledged that although there had been a change in government in Pakistan since 2007 it was also clear that a number of individuals from that time have been active in politics or have returned to politics in the intervening period. The Cabinet Office therefore argued that it was not safe to assume that release of information concerning historical actors in Pakistani politics would not cause prejudice in the near future.

The complainant's position

14. The complainant explained that the Foreign and Commonwealth Office (FCO) had provided him with information on this topic and therefore he believed that there was inconsistency between these two government departments and how they applied FOI exemptions to similar information. He also argued that as the events in question had occurred nine years ago (from the date of his request) the impact of release on international relations would be limited.

The Commissioner's position

15. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the Cabinet Office clearly relates to the interests which the exemptions contained at sections 27(1)(a), (c) and (d) are designed to protect.
16. With regard to the second criterion the Commissioner is satisfied that disclosure of the information also has the potential to result in prejudice to the UK's relationship with Pakistan and US and, as a consequence, undermine the ability of the UK to protect and promote its interests abroad. The Commissioner has reached this view because she considers that disclosure of head of state to head of state discussions would clearly be contrary to the accepted norms of international diplomacy. Similarly, the Commissioner accepts that disclosure of the briefing provided to the Prime Minister has the potential to result in the prejudice envisaged by the Cabinet Office given the sensitive content of the information.
17. With regard to the third criterion, the Commissioner has little hesitation in concluding that this is satisfied and that if the withheld information was disclosed there is a real and significant risk of prejudice occurring. Again, she has reached this conclusion essentially because of the nature of material withheld, namely records of conversations between heads of state, and the sensitive content of the information. It is, in the Commissioner's view not at all difficult to understand how disclosure of such information would be likely to make relations between the UK and US and/or Pakistan more difficult or result in a particular damage

limitation response to contain or limit damage which would not have otherwise have been necessary.

18. In reaching this conclusion the Commissioner has considered the information that was disclosed to the complainant by the FCO. Having reviewed this material the Commissioner is satisfied that there is a clear distinction between it and the withheld information which is the focus of this complaint. The material disclosed by the FCO does not constitute, or refer to, the content of the discussions which took place between the Prime Minister and other heads of state. Nor does this material refer to other sensitive information which was included in the briefing to the Prime Minister.
19. Finally, the Commissioner is persuaded by the Cabinet Office's analysis of the political situation in Pakistan that although the information dates from 2007, there remains a real and genuine risk of disclosure causing harm to the UK's relations with Pakistan.
20. The exemptions contained at sections 27(1)(a), (c) and (d) of FOIA are therefore engaged.

Public interest test

21. However, section 27 is a qualified exemption. Therefore, the Commissioner must consider the public interest test contained at section 2 of FOIA and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.
22. The complainant argued that there is an overriding public interest in the release of the withheld information. The complainant argued that disclosure would allow the public to evaluate the foreign policy of the government and scrutinise the manner in which public authorities reach important decisions with significant ramifications including in this case, the disastrous decision to encourage contact between President Musharraf and Benazir Bhutto which paved the way for her return and subsequent murder.
23. Furthermore, the complainant argued that Benazir Bhutto's murder was a setback to the UK's longstanding foreign policy goal of promoting democracy abroad. He argued that her murder by the Pakistan Taliban and their sponsors was a direct challenge to this British foreign policy objective. Moreover, far from the UK objectives being furthered by withholding this information the opposite is true. The complainant argued that publishing this information would help the British policy of furthering democracy by helping expose those who sanction murder to thwart the policy. He suggested that all those elements of Pakistan society that support democracy would like to see this information

published and UK officials, in pursuit of the UK's own interests, should not only support them but also be seen to do so. Finally, the complainant argued that publishing information that would help the public understand what happened to Benazir Bhutto would discourage similar attempts to kill democrats in the future.

24. The Cabinet Office acknowledged that there is a general public interest in openness in public affairs in order to ensure that the public are able to scrutinise the manner in which public authorities reach important decisions. It accepted that this makes for greater accountability, increases public confidence in government decision-making and helps to encourage greater public engagement with political life. The Cabinet Office also recognised that there is a general public interest in being able to evaluate the foreign policy of the government.
25. However, the Cabinet Office argued that there was a very strong public interest in the UK being able to maintain effective international relations in order that it could protect and promote the UK's interests abroad. More specifically, the Cabinet Office emphasised that Pakistan is a key partner in a number of UK objectives, including counter terrorism and migration, and prejudice to relations with both the political leadership and the officials of the Pakistani state and could seriously undermine cooperation both in the UK and abroad.
26. The Commissioner agrees that there is a clear interest in the public being able to understand how the UK conducts its international relations. Disclosure of the withheld information would provide the public with an insight into the UK's reactions to the murder of Benazir Bhutto at the highest level of government. She therefore accepts that there is a genuine public interest in the disclosure of this information. That said, she is not persuaded that disclosure of the information would either directly, or even indirectly, achieve some of the aims identified by the complainant, ie exposing those who sanction murder or that publishing would discourage similar attempts on democratic leaders in Pakistan in the future.
27. Furthermore, the Commissioner agrees with the Cabinet Office that there is a significant public interest in the UK being able to maintain effective relations with other states. In this case, the Commissioner considers that this public interest attracts further, and notable weight, given the significance of the UK's relationship with the US, one of its closest allies, and also the significance of the UK's relationship with Pakistan not least in terms of supporting the policy areas identified by the Cabinet Office. As a result, the Commissioner has concluded that the public interest favours maintaining the exemptions contained at sections 27(1)(a), (c) and (d) of FOIA and thus withholding the information.

28. In light of this finding the Commissioner has not considered whether the withheld information is also exempt from disclosure on the basis of the other exemptions cited by the Cabinet Office.

Right of appeal

29. 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

30. 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.

31. 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

**Gerrard Tracey
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