Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **23 April 2019**

Public Authority: **The 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 a copy of the document '*Public order capability and capacity assessment of Sri Lanka Police Service'* which reported the findings of an assessment Police Scotland undertook in 2015. The FCO sought to withhold the document on the basis of sections 27(1)(a), (c) and (d), 27(2) (international relations) and 40(2) (personal data) of FOIA. The Commissioner has concluded that the withheld information is exempt from disclosure on the basis of sections 27(1)(a), (c) and (d) of FOIA and that in all the circumstances of the case the public interest favours maintaining these exemptions.

Request and response

2. The complainant submitted the following request to the FCO on 12 June 2018:

> *'Under the FOIA 2000, please can the FCO provide a copy of the following document:*
>
> *"Public order capability and capacity assessment of Sri Lanka Police Service"*
>
> *I understand that this document was compiled with support from the British High Commission in Colombo in 2015/16 and consists of an "in-depth study of the current resource capability, training and tactics used by the Sri Lanka Police Service (SLPS) Anti-Riot Squad and the Special*

Task Force (STF) and to assess the capacity of tactical and operational leaders to absorb alternative strategies and tactics in accordance with new and improved, human rights compliant, deployment options".

Please include the "15 recommendations" presented in the study to enhance the public order capability and capacity of the SLPS and STF to manage public gatherings and protests in an effective manner whilst respecting fundamental human rights and upholding the underlying principles of the Sri Lanka Constitution.

Please also include the exact date the report was completed and the number of pages.

I anticipate that redactions to personal information such as the names of any junior officers could be made.'

3. The FCO responded to the request on 29 June 2018. It explained that the requested report was completed on 30 December 2015 and that it contained 33 pages. However, the FCO explained that the report itself, including the 15 recommendations, were exempt from disclosure on the basis of the following exemptions within FOIA sections 27(1)(a), (b) and 27(2) (international relations), 41 (information provided in confidence) and 40(2) (personal data).

4. The complainant contacted the FCO on 16 July 2018 and asked it to conduct an internal review of this response.

5. The FCO informed her of the outcome of the review on 14 August 2018. The review upheld the application of the various exemptions cited in the refusal notice, albeit it noted that section 40(2) of FOIA did not apply to the 15 recommendations presented within the study.

Scope of the case

6. The complainant contacted the Commissioner on 11 September 2018 in order to complain about the FCO's refusal to provide her with the information she requested.

7. During the course of the Commissioner's investigation the FCO explained that it was no longer seeking to rely on section 41(1) of FOIA and that section 27(1)(b) was cited in error in correspondence with the complainant. However, the FCO explained that it remained of the view that the report was exempt from disclosure on the basis of sections 27(1)(a), (c) and (d) of FOIA and that certain parts of the report were also exempt from disclosure on the basis of sections 27(2) and 40(2) of FOIA.

Reasons for decision

Section 27 – international relations

8. Sections 27(1)(a), (c) and (d) of FOIA state that:

> *'Information is exempt information if its disclosure under this Act 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'*

The FCO's position

9. In its internal review response the FCO explained that the report in question contained assessments relating to the capability and capacity of the Sri Lankan Police Service. It explained that the report was based on information provided by the Sri Lankan authorities in confidence and as such release of this information into the public domain would breach that confidence. The FCO argued that this would in turn damage the international relations between the UK and Sri Lanka which depend upon maintaining trust and confidence. The FCO explained that this trust and confidence allows for the free and frank exchange of information on the understanding that it will be treated confidentially. The FCO explained that if the UK does not respect such confidences, its ability to protect and promote UK interests through international relations will be hampered. The FCO argued that the government of Sri Lanka may be reluctant to share sensitive information with the UK in the future and may be less likely to respect the confidentiality of information supplied to the UK government to the detriment of UK interests.

10. The FCO provided the Commissioner with more detailed submissions to support its reliance on these exemptions. Such submissions referred directly to the content of the withheld itself and therefore the Commissioner is limited as to how much of these submissions she can include in this decision notice. However, the Commissioner can confirm that the FCO's submissions built upon the logic of its arguments set out in the internal review. In particular the FCO emphasised that as the withheld information contained an assessment of the capacity and capability of the Sri Lankan police it was clearly understood by the Sri Lankan government that details of the assessment and its findings would be treated in confidence.

11. Furthermore, the FCO explained that any erosion of trust and confidence in the UK's relationship with Sri Lanka would create a serious and real risk of damage to current and future development projects that the UK is involved in the country. The FCO argued that this would impact negatively on UK interests in the region, particularly in terms of promoting stability, security and human rights, and would be likely to prejudice the UK's ability to protect and promote those interests.

12. Finally, the Commissioner asked the FCO to comment on the complainant's argument that its reliance on the exemptions within section 27(1) of FOIA did not take into account previous disclosures of information about this subject matter. In response the FCO explained that it did not consider that it had disclosed any information in response to previous FOI requests that is in the scope of this request. The FCO noted that the Vice news article cited by the complainant makes clear that it refers to unredacted documents that were disclosed by the FCO unintentionally.

The complainant's position

13. The complainant argued that the FCO's arguments in its responses to her were general statements of risk and did not specify how exactly disclosing the withheld information would prejudice the UK's relationship with Sri Lanka. She noted that there have been numerous media reports since 2013 about the UK's training of Sri Lanka's police and many of these have been highly critical and have even published material which the FCO had sought to redact. For example, the complainant cited the following article:

> *'Our investigation has also found that Britain continued to work with Sri Lanka's police chief, Jayantha Wickramaratna, advising his officers about intelligence-gathering techniques, even though the Foreign Office did not trust him. One document reveals that UK advisers 'congratulated the new [Inspector General of Police] on his appointment', but they tried to censor the fact that they had a 'lack of confidence in his trustworthiness'. Wickramaratna, who was appointed head of police in 2008, was well known to British authorities. He had previously visited Scotland for the first stage of the community policing project in 2007*[1]*'*

14. The complainant argued that it was clear that Police Scotland have continued to work with the Sri Lankan police since this article was

[1] https://www.vice.com/en_uk/article/dp5beq/sri-lanka-british-police-training-phil-miller

published. In fact, the complainant suggested that it appeared that the police training relationship between the UK and Sri Lanka has in fact deepened. Therefore, she argued that it does not seem probable that releasing the withheld information would impair international relations.

The Commissioner's position

15. 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. The anticipated prejudice must be more likely than not.

16. 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'*.

17. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the FCO clearly relates to the interests which the exemptions contained at sections 27(1)(a), (c) and (d) are designed to protect. With regard to the second criterion, having considered the broader context of Police Scotland's assessment, the Commissioner is satisfied that there is a causal relationship between disclosure of this information and harm

occurring to the UK's relationship with Sri Lanka. The Commissioner is of this view given that there was a clear understanding on the part of the Sri Lankan government that Police Scotland's assessment would be treated confidentially. With regard to the third criterion, given this context and taking into account the content of the withheld information the Commissioner is satisfied that there is a more than hypothetical risk of prejudice occurring to the interests which sections 27(1)(a), (c) and (d) are designed to protect. In reaching this conclusion the Commissioner considers it logical and reasonable for the FCO to argue that disclosure of the assessment would lead to an erosion of trust and confidence by the Sri Lankan government in the UK and this turn would be likely to have a negative impact on the UK's interests in the region.

18. In reaching this conclusion, the Commissioner has taken into account the complainant's argument that the availability of information in the public domain about the UK's views on the Sri Lanka's police undermines its reliance on section 27(1). However, the complainant's submissions on this point do not alter her decision. Firstly, this is because the Commissioner considers there to be a distinction between an inadvertent disclosure of information and a disclosure of information in response to an FOI request. It is the Commissioner's understanding that the information referred to in the news article cited by the complainant concerns an inadvertent disclosure of information. Consequently, any prejudice to the UK's relations which may – or may not – have followed from such a disclosure is not necessarily reflective of how prejudicial an official disclosure of information under FOIA would be. Secondly, based on the submissions provided to her by the FCO, including an assessment of the withheld information itself, the Commissioner is satisfied that the information referred to in the news article is different to the information withheld in response to this request.

19. The Commissioner has therefore concluded that sections 27(1)(a), (c) and (d) of FOIA are therefore engaged.

Public interest test

20. However, section 27(1) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has therefore considered whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

Public interest arguments in favour of disclosing the information

21. The complainant explained that she anticipated that the withheld information would refer to the Sri Lankan police's Special Task Force (STF). The complainant explained that UK Home Office is currently

trying to deport several Tamil asylum seekers who allege that they were tortured by the Special Task Force. In light of this the complainant argued that if the withheld information contained information which would lend credence to the asylum seekers claims then there is strong public interest in disclosing this information.

22. The complainant highlighted the following evidence to support her view that there were serious concerns about the Sri Lankan police:

23. After anti-Muslim riots happened in Sri Lanka in March 2018, a Sri Lankan government minister Abdul Haleem MP said "I think Muslims in every village were prepared [to defend their properties]. But what they said was that the STF came and chased them away and allowed the rioters to attack and go. In some other places I was told the police had told you will be given one hour to attack and leave. They have attacked and gone. There are such complaints."

24. In April 2018, an NGO, the International Truth and Justice Project, published a report alleging that the STF was involved in torture and disappearances.[2]

25. The complainant argued that in light of these serious concerns there is a clear public interest in knowing what assessment the UK made of the STF prior to the commencement of the UK's training of the Sri Lankan police in 2016.

26. For its part, the FCO acknowledged that there was a public interest in disclosure of the information which would reveal information about the UK's relations with Sri Lanka and the work the UK is doing to ensure peace and stability in the region.

Public interest in maintaining the exemption

27. However, the FCO argued that there is a clear public interest in it maintaining the trust and confidence of the Sri Lankan government not only to ensure the effective conduct of international affairs but also more specifically so that it could also continue to effectively manage its current and future developmental assistance projects in Sri Lanka. The FCO argued that if it was not able to do so, then its ability to protect and promote the UK's interest in Sri Lanka and the region would be undermined which was firmly against the public interest.

[2] http://www.itjpsl.com/reports/special-task-force

Balance of the public interest arguments

28. The Commissioner agrees that there is a public interest in the disclosure of information which would provide the public with a greater insight in to the UK's work with the Sri Lankan police. In her view this argument attracts significant and notable weight given the concerns the complainant has identified in respect of the STP and more broadly in relation to concerns raised elsewhere about the Sri Lankan police. (For example, Amnesty International's 2017/18 report found that torture and ill-treatment in police custody continued.[3]) Furthermore, the Commissioner agrees that there is a clear public interest in the disclosure of Police Scotland's assessment to provide the public with some insight into the UK's views of the Sri Lankan police prior to commencement of subsequent training. Disclosure of the withheld information would, to some degree, serve these particular interests.

29. However, the Commissioner agrees that there is a very strong public interest in ensuring that the UK's relationship with Sri Lanka is not harmed in order to ensure that the UK is in a position not only to promote stability, security and human rights in the region but also to protect and promote its own interests. Whilst disclosure of the withheld information would provide an insight into the UK's assessment of the Sri Lankan police's public order capability in 2015, disclosure would be likely to have far reaching effects in terms of the UK's ability to continue to support Sri Lanka both in terms of broader security and human rights issues. In light of these broader consequences the Commissioner has concluded that by a narrow margin the public interest favours maintaining the exemptions contained at section 27(1)(a), (c) and (d).

30. In light of this decision the Commissioner has not considered the FCO's reliance on sections 27(2) and 40(2) to withhold parts of the withheld information.

[3] https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF Page 342

Right of appeal

31. 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

32. 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.

33. 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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