

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 FCO seeking a copy of the 'Wine Cellar Stock Report'. The FCO initially cited sections 21 (reasonably accessible) and 22 (information intended for future publication). At the internal review stage the FCO disclosed the 'Wine Cellar Stock Report' but redacted small parts of it on the basis of section 43(2) (commercial interests) of FOIA. The Commissioner has concluded that the redacted information is exempt from disclosure on the basis of section 43(2) of FOIA 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 2 May 2018:

'My request concerns the Government hospitality / wine cellar which I understand is still housed at Lancaster House. I understand the cellar is the responsibility of the Foreign Office.

1...Can you please provide an up-to-date copy of the document which lists those wines, spirits, champagnes and other drinks which are currently held by Government Hospitality and or the wine cellar which is based at Lancaster House. The document, which is sometimes referred to as the Government Hospitality report or The Government Stock Report will include the title of every bottle in the collection, the date it entered the collection and any advice and information about

when and how it should be used. The list will include a grading system which applies to all the spirits, wines, liquors and champagnes in the cellar. It will also include feedback from those who were either hosts or guests at particular events which were supplied by the cellar'.

3. The FCO contacted the complainant on 12 June 2018 and confirmed that it held information falling within the scope of his request. However, it considered the exemptions contained at section 22 (information intended for future publication) and section 43 (commercial interests) of the Freedom of Information Act (FOIA) applied and it needed additional time to consider the balance of the public interest test.
4. The FCO provided him with a substantive response to his request on 22 June 2018. The FCO explained a list of all wines and spirits used from the government wine cellar is published each year and directed the complainant to a website link containing the figures for 2016-17 and explained that such information was therefore considered to be exempt from disclosure on the basis of section 21 (information reasonably accessible) of the FOIA. The FCO explained that a further statement for the period 2017-18 would be made later in the year and this was considered to be exempt from disclosure on the basis of section 22 (information intended for future publication) of FOIA. The FCO also explained that it considered some information to be exempt from disclosure on the basis of section 43(2) (commercial interests) of FOIA.
5. The complainant contacted the FCO on 23 June 2018 and asked it to conduct an internal review of this decision. He suggested that the link provided by the FCO, ie to the annual statement, was not the information which he had requested; rather he had sought a copy of the government stock report.
6. The FCO informed him of the outcome of the internal review on 15 November 2018. The FCO explained that the link provided did include a document which was a version of the stocklist and the information contained on it would have satisfied most of his request. The FCO explained that it would provide the complainant with a hardcopy of the stocklist but some redactions would be made on the basis of section 43(2) of FOIA.

Scope of the case

7. The complainant complained to the Commissioner on 21 November 2018 about the FCO's handling of his request. More specifically, he argued that despite the comments in the FCO's internal review response, he remained of the view that the information contained at the website link did not fulfil his request. He also explained that he was also dissatisfied

with the FCO's decision to redact information from the hardcopy of the stocklist provided to him on the basis of section 43(2) of FOIA. Finally, the complainant was unhappy with the time it took the FCO to complete its internal review response.

8. During the course of the Commissioner's investigation of this complaint, the FCO explained that the limited information redacted from the copy of the 'GH Wine Cellar Stock Report' provided to the complainant comprised information about prices paid by Government Hospitality (GH), the value of individual items, the amounts paid to GH for items sold, or amounts likely to be charged. The only exception to this was one comment about a particular wine by a named individual. The FCO explained that it considered all of these redactions to be exempt from disclosure on the basis of section 43(2), with the redacted comment also being exempt from disclosure on the basis of sections 40(2) (personal data) and 41(1) (information provided in confidence).

Reasons for decision

What information falls within the scope of the request?

9. As explained above, the majority of the information redacted from 'GH Wine Cellar Stock Report' comprised information about prices paid by GH, the value of individual items, the amounts paid to GH for items sold, or amounts likely to be charged. However, the FCO noted that the complainant's request did not in fact ask for details of costs or pricing of the stock.
10. In the Commissioner's view the request clearly sought a copy of the latest version of 'the Government Hospitality report or The Government Stock Report.' Whilst the complainant then went on to describe the nature of information he envisaged would be contained in this document, and this description did not include details of costs or pricing, in the Commissioner's view this does not mean that such information falls outside the scope of the request. Rather, the complainant asked for a copy of a particular document, namely the 'GH Wine Cellar Stock Report' and this report included a range of information, including pricing and cost information. The entire contents of the 'GH Wine Cellar Stock Report', including information about costs and pricing, therefore falls within the scope of the request.

Section 21 – information reasonably accessible by other means

Section 22 – information intended for future publication

11. Section 21 provides an exemption for information which is reasonably accessible to the complainant by other means. Section 22 provides an exemption if the public authority intends to publish information in the future.
12. As explained above, in the Commissioner's view the '*GH Wine Cellar Stock Report*' is the information falling within the scope of this request. Whilst some of the information contained in this report was contained at the website links provided to the complainant, not all of the information was. Therefore, the Commissioner has concluded that section 21 was incorrectly applied to his request given that not all of the requested information was reasonably accessible to him.
13. For similar reasons, the Commissioner has concluded that section 22 of FOIA was not applicable to the request. Again, the Commissioner would reiterate that the '*GH Wine Cellar Stock Report*' is the information falling within the scope of this request. The information to be published later in the year would not have fulfilled that request as it did not extend to the entire contents of the stock report.

Section 43(2) – commercial interests

14. Section 43(2) states that:

'Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).'

15. In order for a prejudice based exemption, such as section 43(2), 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.

The FCO's position

16. The FCO argued that disclosure of the cost and value of the wines would be likely to prejudice the commercial interests of (i) the government (or more specifically GH); (ii) its suppliers (wine merchants and producers); and (iii) the FCO.
17. In relation to GH the FCO argued that releasing stock and pricing details of sales to GH in the London wine market is very likely to be picked up by other wine purchasers, and could result in pressures on the suppliers which would be likely to lead them to end their discounting arrangements with GH.
18. In support of this position, the FCO cited the case of *John Conner Press Associates Limited v The Information Commissioner* EA/2005/0005 (25 January 2006) where the Tribunal accepted that '*the commercial interests of a public authority might be prejudiced if certain information in relation to one transaction were to become available to a counterparty in negotiations on a subsequent transaction*'. The FCO noted that the Tribunal explained that whether or not the prejudice was likely '*would depend on the nature of the information and the degree of similarity between the two transactions*.' The FCO argued that there was a clear similarity here: the cost of one wine-purchase transaction necessarily and directly would impact another wine-purchase transaction with the same or another seller.
19. With to the commercial interests of GH's suppliers, the FCO argued that their interests would be likely to be harmed in two ways. First, releasing the prices charged by a supplier under this particular arrangement would prejudice its ability to negotiate with GH in future – giving its competitors an advantage. Second, releasing those prices might also impact that supplier's relationship with its other consumers who have different arrangements in place.
20. The FCO argued that disclosing commercially sensitive information relating to a third party is also likely to prejudice its interests by risking its ability to enter future commercial arrangements with parties who will

need to think twice about the risk of their prices and other information being disclosed if they were to enter into an agreement with or involving the FCO.

21. Furthermore, the FCO argued that in relation to the comment it had redacted, it explained in its view disclosure of this would be likely to prejudice the commercial interests of the wine maker in question given the identity of the person who made it and the impact such comments can have on the reputation of wine makers.

The Commissioner's position

22. 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 exemption contained at section 43(2) is designed to protect.
23. With regard to the second criterion, the Commissioner is satisfied that disclosure of the information about costs and pricing has the potential to harm the commercial interests of GH and its suppliers for the reasons set out by the FCO. Furthermore, she is persuaded that the resultant risk of prejudice occurring is clearly one that is more than hypothetical and therefore the third criterion is met. In reaching this view, in the Commissioner's opinion it is logical to assume that if GH's suppliers face pressures to sell at a discounted rate to other purchasers, it is plausible that to avoid such pressure they end or reduce the discounts that they are prepared to offer to GH thus impacting on the GH's commercial interests. Equally, the Commissioner accepts that if details of the prices that suppliers have been prepared to sell a particular wine at to GH were released then there is a real and significant risk to that supplier's negotiating position when it comes to selling such products to other buyers.
24. With regard to the risk of prejudice occurring to the FCO's commercial interest, the Commissioner accepts that it is, in theory, plausible that other suppliers will reconsider entering into commercial arrangements with the FCO if it had previously disclosed commercially sensitive information. The second criterion in relation to this information is therefore met. However, the Commissioner is not persuaded that the chances of such prejudice is anything more than hypothetical.
25. Finally, in relation to the comment attributed to a particular individual, the Commissioner accepts that taking into account the content and author of this comment it is plausible that disclosure of it would not only potentially harm the commercial interests of the particular winemaker but there would be a real risk of such prejudice occurring.

26. Section 43(2) of the FOIA is therefore engaged.

Public interest test

27. Section 43(2) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of the 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.
28. The FCO acknowledged that one of the main factors in favour of release of the information is the public interest in transparency in the expenditure of public funds. However, it explained that against this is the potential for the commercial interests of GH, and thus ultimately the FCO, to be damaged, and the commercial interests of its suppliers. The FCO argued that in its view the public interest is best served by withholding the information redacted from the stock-list because disclosure is likely to adversely affect GH's relationship with its suppliers, which enables them to obtain significant price discounting on a confidential basis. The FCO argued that as a public authority it has to achieve the best possible value for money, and in its view the value for money arrangements in question would be compromised by the disclosure of the stock pricing and costing details currently redacted.
29. The Commissioner agrees that there is a public interest in the disclosure of information in order to inform the public about how public funds are being spent. Disclosure of the withheld information would provide the public with an insight, albeit a relatively limited one given the small amount of information that has actually been redacted, into the prices and cost of some of wines held by GH. However, the Commissioner agrees with the FCO that there is a considerable public interest in ensuring that GH achieves best value for money when managing the government wine cellar. Furthermore, in the Commissioner's opinion there is very strong and inherent public interest in ensuring fairness of competition and in her view it would be firmly against the public interest if the suppliers' commercial interests are harmed simply because they entered into a commercial relationship with GH. In light of the combined weight of these factors the Commissioner has concluded that the public interest favours maintaining the exemption contained at section 43(2).
30. In light of this finding the Commissioner has not considered whether the redacted comment is also exempt from disclosure on the basis of sections 40(2) and 41(1) of FOIA.

Other matters

31. As noted above, the complainant expressed his concern to the Commissioner about the length of time it took the FCO to complete its internal review. FOIA does not impose a statutory time within which internal reviews must be completed albeit that the section 45 Code of Practice explains that such reviews should be completed within a reasonable timeframe. In the Commissioner's view it is reasonable to expect most reviews to be completed within 20 working days and reviews in exceptional cases to be completed within 40 working days.
32. In handling this request the FCO took 103 working days to complete the internal review. The FCO explained to the Commissioner that this delay was due to confusion with another request submitted by the complainant and the internal review in relation to this request was overlooked. The Commissioner accepts that administrative errors can occur at times; however, she hopes that in the future the FCO will complete its internal reviews within the timeframes set out in her guidance.

Right of appeal

33. 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

34. 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.
35. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF