

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 September 2020

Public Authority: The Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested a report provided to the Cabinet Office by the Intelligence and Security Committee to Parliament (ISC).
2. The Commissioner's decision is that the requested information is exempt from disclosure under section 23(1) (security bodies) of the Act.
3. The Commissioner does not require the Cabinet Office to take any steps.

Request and response

4. On 7 January 2020, the complainant wrote to the Cabinet Office and requested information in the following terms:

"Russian interference in UK politics

I am making a Freedom of Information request for the above report which was available and ready to publish before December 12 and which therefore is in a condition to be in the public domain.

This report, being for the use of the public, is properly part of the accountability of government and therefore should be available to members of the public without delay."

5. The Cabinet Office provided its response on 17 January 2020 and withheld the request under section 22(1) of the Act as it was intended for future publication.

6. The complainant requested an internal review on 6 February 2020 and disputed that the public interest lay in withholding the information.
7. On 25 February 2020, the Cabinet Office provided the outcome of its internal review. The Cabinet Office upheld its reliance on section 22 and introduced section 23(1) as the ISC is a security body named in section 23(3).

Scope of the case

8. The complainant contacted the Commissioner on 28 February 2020 to complain about the way his request for information had been handled.
9. The Commissioner confirmed to the complainant that she had already issued decision notices setting out her position regarding the "Russia" report. The complainant confirmed that he wished to proceed with his complaint.
10. As the Commissioner has already considered requests for this information, she is satisfied that she can issue a decision without requiring further submissions from the Cabinet Office.
11. The Commissioner's approach when considering multiple exemptions in relation to the same withheld information is to consider absolute exemptions in the first instance and then only consider qualified exemptions should the absolute exemption not be engaged.
12. The Commissioner will therefore consider the Cabinet Office's reliance on section 23(1) first. Should she determine that section 23 is not engaged, she will consider whether section 22(1) is engaged.

Reasons for decision

Section 23: Information supplied by, or relating to, bodies dealing with security matters

13. Section 23(1) of the Act state:

"Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)."

14. To successfully engage the exemption at section 23(1), a public authority needs only to demonstrate that the relevant information was

directly or indirectly supplied to it by, or relates to, any of the bodies listed at section 23(3)¹ of the Act.

15. This means that if the request information falls within this class, it is absolutely exempt from disclosure under the Act. There is no requirement on the public authority to demonstrate that disclosure of the requested information would result in harm. This exemption is not subject to a balance of the public interest test.

The Commissioner's position

16. The Cabinet Office had confirmed in previous investigations² that the requested report was created and provided to the Cabinet Office by the ISC. The Cabinet Office set out that the ISC is one of the security bodies listed at section 23(3), specifically section 23(3)(o).
17. The Cabinet Office also provided a Letter of Assurance from a senior official within the Cabinet Office with the experience and authority to validate the provenance of the withheld information. This official assured the Commissioner that section 23(1) applied to the entirety of the withheld information.
18. The Commissioner's approach to investigating cases involving the application of section 23(1) is set out in a Memorandum of Understanding³ (MoU).
19. This explains that a public authority will provide the Commissioner with a reasoned explanation to justify the application of section 23(1). The MoU also explains that in all but exceptional cases, it is envisaged that such a reasoned explanation will be sufficient for the Commissioner to satisfy herself that section 23(1) has been correctly applied.
20. The Commissioner has considered the submissions made by the Cabinet office in this case in respect of the application of section 23(1). She accepts that in the circumstances of this case, the requested report has clearly been provided to the Cabinet Office by one of the security bodies

¹ <http://www.legislation.gov.uk/ukpga/2000/36/section/23>

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617888/fs50902636.pdf> & <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617885/fs50899919.pdf>

³ <https://ico.org.uk/media/about-the-ico/documents/1042533/mou-national-security-cases-foia-eir.pdf>

named in section 23(3). She also accepts the assurances of the official at the Cabinet Office that the entirety of the requested information was provided by ISC.

21. The complainant has disputed that section 23 was engaged and provided various arguments regarding why the public interest lay in disclosure. The Commissioner understands the complainant's position and notes that a redacted version of the report has now been published, however, as set out above, there is no requirement to demonstrate that disclosure would prejudice any party and the exemption is not subject to the public interest test. As the information fulfils the criteria at section 23(1), it is exempt from disclosure under the Act.
22. As the entirety of the requested information is exempt under section 23(1), the Commissioner has not gone on to consider whether section 22(1) is engaged as to do so would be academic. She has, however, commented on the Cabinet Office's use of section 22(1) in the previous decisions referenced above.

Right of appeal

23. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.
25. 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

Victoria Parkinson
Senior Case Officer
Information Commissioner's Office
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SK9 5AF