

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 April 2020

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) seeking information about the UK's funding of certain projects in Bahrain. The FCO confirmed that it held some information falling within the scope of the request but considered this to be exempt from disclosure on the basis of sections 27(1)(a), (c) and (d) (international relations) and 43(2) (commercial interests) of FOIA. The FCO also sought to refuse to confirm or deny whether it held any further information falling within the scope of the request on the basis of the exemptions contained at sections 23(5) (security bodies) and 24(2) (national security) of FOIA.
2. The Commissioner has concluded that the FCO is entitled to rely on sections 27(1)(a), (c) and (d) to withhold information. She has also concluded that the FCO is entitled to rely on sections 23(5) and 24(2) to refuse to confirm or deny whether it holds any further information.
3. The Commissioner does not require the FCO to take any steps.

Request and response

4. The complainant submitted the following request to the FCO on 1 February 2018:

'I am writing to request information under the Freedom of Information Act (2000).

Further to the written answers provided by Alistair Burt on 11 December 2017 (116299) and 15 January 2018 (121119), regarding the FCO's funding of £1.52 million allocated to technical assistance programmes in Bahrain, please disclose the following information for the financial year 2017-2018:

- 1) A Breakdown of the programmes and/or projects in Bahrain funded by the Integrated Activity Fund (IAF)*
 - 2) A Breakdown of the programmes and/or projects in Bahrain funded by the Global Britain Fund (GBF)*
 - 3) The financial spending for each IAF and GBF programme/project*
 - 4) Any internal documents or correspondence relating to the UK funding of Bahrain's programmes.'*
5. The FCO responded on 27 March 2018 and confirmed that it held information falling within the scope of the request but it considered this to be exempt from disclosure on the basis of sections 23(1) (security bodies), 27(1)(a) (international relations) and 43(2) (commercial interests) of FOIA.
6. The complainant contacted the FCO on 17 April 2018 in order to ask for an internal review of this refusal notice.
7. The FCO informed the complainant of the outcome of the internal review on 25 June 2018. The review confirmed that it held some information falling within the scope of the request and that it considered this to be exempt from disclosure on the basis of sections 27(1)(a), (c) and (d) and 43(2) of FOIA. The FCO no longer sought to rely on section 23(1) of FOIA but explained that it was refusing to confirm or deny whether it held any further information falling within the scope of the request on the basis of the exemptions contained at sections 23(5) and 24(2) (national security) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 24 September 2018 in order to complain about the FCO's handling of his request. The complainant disputed the FCO's reliance on the various exemptions both on the grounds that it had failed to demonstrate that they are engaged and furthermore that even if they were then the public interest favoured disclosure of the information.

Reasons for decision

Section 27 – International relations

9. The FCO has argued that the withheld information which it holds is exempt from disclosure on the basis of sections 27(1)(a), (c) and (d) of FOIA which 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

10. The FCO explained that the UK's prosperity and security is dependent on successful foreign policy. The FCO further explained that the UK's foreign policy itself has many aspects, including safeguarding the UK's national security by countering terrorism and weapons proliferation and working to reduce conflict; building the UK's prosperity by promoting UK interests and business around the world; helping to build strong, functioning and peaceful States; promotion of sustainable development, democracy, good government and human rights; fighting drugs and international crime; and supporting British nationals around the world through modern and efficient services.
11. The FCO emphasised that successful conduct of international relations is founded on the ability to influence, persuade, negotiate, build alliances and reach consensus. It explained that the UK's ability to influence and persuade is based largely on mutual trust and confidence with its foreign

interlocutors and that without that mutual trust and confidence, its influence and ability is severely compromised.

12. In the context of this case the FCO emphasised that diplomatic relations between the UK and Bahrain date back over 200 years and the UK continues to enjoy a close, friendly and trusting relationship. The FCO noted that these ties covered diplomatic, political, economic and military areas.
13. Against this context and background, the FCO went on to provide the Commissioner with detailed and specific submissions to explain why, in its view, disclosure of the withheld information would be likely to undermine the UK's relationship with Bahrain and in turn lead to a negative impact on the UK's ability to protect and promote its interests in the region. The Commissioner cannot elaborate on the nature of these submissions in this decision notice without revealing information that is itself considered to be sensitive.
14. With regard to the complainant's argument (as discussed below) that similar information had been disclosed in the past, the FCO drew a distinction between that information and the information which was the subject of this complaint. More specifically the FCO explained that programmes were previously supported through the Conflict, Stability and Security Fund (CSSF) which operates on a broader geographic basis and has openly committed to sharing information on the majority of its projects and programmes, as appropriate and according to Freedom of Information requirements. As a result, additional information regarding the Bahrain Technical Assistance Programme was shared in relation to the 16/17 CSSF-supported projects.

The complainant's position

15. The complainant argued that it was unclear why the disclosure of the requested information, with regards to human rights reform programmes, would prejudice the UK-Bahraini relationship.
16. Furthermore, the complainant argued that the position adopted by the FCO was inconsistent with previous years as both it and the Cabinet Office have set a precedent in disclosing information on UK-funded technical assistance projects in Bahrain projects. For example, on 21 September 2016, the Cabinet Office provided a response to an FOI request in which it disclosed the figure allocated from the CSSF to the beneficiaries, namely the 'Ministry of Interior's Ombudsman, the Prisoners' and Detainees' Rights Commission and Special Investigation Unit'. Additionally, in December 2016 the FCO disclosed the name of each project, the fund supporting the project and the name of each UK implementing body overseeing the projects in Bahrain.

The Commissioner's position

17. 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.
18. 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
19. 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 content of the withheld information and taking into account the FCO's submissions to her, the Commissioner is satisfied that there is a causal link between disclosure of this information and prejudice occurring to the UK's relations with Bahrain. Furthermore, she is satisfied that the resultant prejudice would

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

be real and of substance. Moreover, the Commissioner is satisfied that there is a more than a hypothetical risk of prejudice occurring and therefore the third criterion is met. For the reasons discussed above, the Commissioner cannot expand upon why she has reached this conclusion without revealing details of the withheld information itself, and/or parts of the FCO's sensitive submissions to her. The Commissioner accepts that this is likely to prove frustrating for the complainant. However, she can assure the complainant she has given careful consideration to the points he has raised in respect of section 27 and she is satisfied that disclosure of the withheld information would be likely to prejudice the UK's relations with Bahrain. In particular, the Commissioner is satisfied that the circumstances between the disclosure of the information withheld in response to this request and the information previously disclosed by the FCO and Cabinet Office are sufficiently different and do not undermine the FCO's reliance on section 27(1)(a), (c) and (d) in this present case.

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 in favour of disclosing the withheld information

21. The complainant argued that there was a compelling case for the disclosure of information falling within the scope of this request. In support of this he noted that the Bahraini authorities have repeatedly been accused of enabling and whitewashing human rights abuses, including torture, suppression of civil society, revocation of citizenship and the use of capital punishment. International bodies such as the UN and Amnesty International have condemned Bahrain's deteriorating human rights record.
22. As a result, he argued that UK-funded projects that engage with Bahraini actors and institutions associated with widespread human rights abuses are of significant public interest. By way of an example he noted that the UK government had provided training to several officers within Bahrain's police force. Brigadier Fawaz Hassan Al Hassan directly received training provided by the FCO in Belfast in August 2015. He is currently head of the Muharraq Police Station, wherein female human rights activist, Najah Ahmed Yousif, was sexually and physically assaulted in 2017.

23. The complainant explained that the UK had supported Bahraini human rights oversight bodies such as the Ministry of Interior Ombudsman, Prisoners and Detainees Rights Commission and National Institution for Human Rights. However, in May 2017 the UN Committee Against Torture expressed concern over the fact that these bodies *'are not independent, that their mandates are unclear and overlap, and that they are not effective given that complaints ultimately pass through the Ministry of the Interior. [The Committee] is also concerned that their activities have had little or no effect'*.²
24. The complainant explained that the Bahrain Institute for Rights and Democracy and Reprieve published a joint report on 15 May 2018, which highlighted the extent of British complicity in Bahrain's repressive regime. He noted that this had received wide media coverage.³ Furthermore, he explained that the FCO's work with Bahrain, and its lack of transparency about such work had been a subject of concern raised in Parliament. The complainant highlighted the Foreign Affairs Committee report *'Global Britain: Human Rights and the Rule of Law'*, which analysed the human rights work conducted by the FCO with regard to the Kingdom of Bahrain. The report concluded that the FCO lacked transparency regarding the technical assistance programme, stating: *'The FCO should be clearer about how all such funding is allocated and used and what it achieves, and should inform us in its response to this report how it plans to increase transparency in this respect'*.⁴
25. Finally, the complainant noted that The Times also published a leading article on the lack of transparency by the FCO with regards to the Integrated Activity Fund and *'freedom of information requests [being] turned down on the basis of security issues'*.⁵ The article called *'for Britain to give a public and independent accounting of how its aid money is spent in the Gulf states'*. The Times also published an in-depth analysis of the Integrated Activity Fund, and raised concerns from

2

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fBHR%2fCO%2f2-3&Lang=en

³ <https://reprieve.org.uk/wp-content/uploads/2018/05/TRAINING-TORTURERS-THE-UK'S-ROLE-IN-BAHRAIN'S-BRUTAL-CRACKDOWN-ON-DISSENT.pdf>

⁴ <https://publications.parliament.uk/pa/cm201719/cmselect/cmfaff/874/874.pdf>

⁵ <https://www.thetimes.co.uk/article/dire-straits-qtz28jd6>

human rights organisations, such as Reprieve, and members of Parliament, namely Lord Scriven.⁶

Public interest arguments in favour of maintaining the exemption

26. The FCO argued that it would be firmly against the public interest if its relations with Bahrain were harmed because this would undermine the UK's ability to support programmes such as those which are the subject of this request and furthermore would undermine the UK's ability to work effectively with Bahrain in a range of other political, diplomatic and military areas.

Balance of the public interest test

27. The Commissioner accepts that in light of the submissions advanced by the complainant there is a genuine public interest in the disclosure of information which would provide insight into the UK's relations with Bahrain in relation to the programmes funded by the IAF and GBF. Disclosure of the withheld information would go some considerable way to meeting this interest. The public interest in the disclosure of this information should not therefore be underestimated.
28. However, the Commissioner considers there to be a very significant public interest in ensuring that the UK can enjoy effective international relations. In the context of this case she agrees that there is a particularly strong public interest in ensuring that the UK's relations with Bahrain remain strong so that it can protect its range of interests within that country.
29. In light of this, the Commissioner has therefore concluded that the public interest favours maintaining the exemptions contained at 27(1)(a), (c) and (d) of FOIA.

Section 23 – security bodies
Section 24 – national security

30. The FCO also explained that it was relying on sections 23(5) and 24(2) of FOIA as a basis to refuse to confirm or deny whether it held any *further* information falling within the scope of the request other than

⁶ <https://www.thetimes.co.uk/article/britain-invokes-spy-clause-to-cover-up-payments-to-bahrain-dlv00c66f>

that which it had already sought to withhold on the basis of section 27(1) of FOIA.

31. Sections 23(5) and 24(2) exclude the duty of a public authority to confirm or deny whether it holds information which, if held, would be exempt under section 23(1) or 24(1) respectively.
32. Information relating to security bodies specified in section 23(3) is exempt information by virtue of section 23(1). Information which does not fall under section 23(1) is exempt from disclosure under section 24(1), if it is required for the purpose of safeguarding national security.
33. By virtue of section 23(5) the duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in section 23(3).
34. By virtue of section 24(2) the duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.
35. The Commissioner does not consider the exemptions at sections 23(5) and 24(2) to be mutually exclusive and she accepts that they can be relied on independently or jointly in order to conceal whether or not one or more of the security bodies has been involved in an issue which might impact on national security. However, each exemption must be applied independently on its own merits. In addition, the section 24 exemption is qualified and is therefore subject to the public interest test.
36. The test as to whether a disclosure would relate to a security body is decided on the normal standard of proof, that is, the balance of probabilities. In other words, if it is more likely than not that the disclosure would relate to a security body then the exemption would be engaged.
37. From the above it can be seen that section 23(5) has a very wide application. If the information requested is within what could be described as the ambit of security bodies' operations, section 23(5) is likely to apply. This is consistent with the scheme of FOIA because the security bodies themselves are not subject to its provisions. Factors indicating whether a request is of this nature will include the functions of the public authority receiving the request, the subject area to which the request relates and the actual wording of the request.
38. The Commissioner finds that on the balance of probabilities, further information about this subject matter, if held, could be related to one or more bodies identified in section 23(3).

39. With regard to section 24(2), the Commissioner again considers that this exemption should be interpreted so that it is only necessary for a public authority to show either a confirmation or a denial of whether requested information is held would be likely to harm national security.
40. In relation to the application of section 24(2) the Commissioner notes that the First Tier Tribunal (Information Rights) has indicated that only a consistent use of a '*neither confirm nor deny*' (NCND) response on matters of national security can secure its proper purpose. Therefore, in considering whether the exemption is engaged, and the balance of the public interest, regard has to be given to the need to adopt a consistent NCND position and not simply to the consequences of confirming whether the specific requested information in this case is held or not.
41. In the context of section 24, Commissioner accepts that withholding information in order to ensure the protection of national security can extend to ensuring that matters which are of interest to the security bodies are not revealed. Moreover, it is not simply the consequences of revealing whether such information is held in respect of a particular request that is relevant to the assessment as to whether the application of the exemption is required for the purposes of safeguarding national security, but the need to maintain a consistent approach to the application of section 24(2).
42. On this occasion the Commissioner is satisfied that complying with the requirements of section 1(1)(a) would be likely to reveal whether or not the security bodies were in any way involved in the subject matter which is the focus of this request. The need for a public authority to adopt a position on a consistent basis is of vital importance in considering the application of an NCND exemption.
43. The Commissioner is satisfied that the public authority was entitled to rely on sections 23(5) and 24(2) in the circumstances of this case. She accepts that revealing whether or not further information, falling within the scope of the request, is held by the FCO would be likely to reveal whether information is held relating to the role of the security bodies. It would also undermine national security and for that reason section 24(2) also applies because neither confirming nor denying if additional information is held is required for the purpose of safeguarding national security.
44. As noted above section 24 is a qualified exemption. However, the Commissioner considers that there is a significant public interest in protecting information required for the purposes of safeguarding national security. Therefore, in the circumstances of this case the public interest in maintaining the exemption at section 24(2) outweighs the public interest in complying with the duty imposed by section 1(1)(a).

45. In light of the above findings, the Commissioner has not considered the FCO's reliance on section 43(2) of FOIA.

46. Right of appeal

47. 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

48. 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.

49. 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
Principal Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**