

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 2 March 2020

**Public Authority:** Cabinet Office

**Address:** 70 Whitehall

London

SW1A 2AS

### Decision (including any steps ordered)

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1. The complainant has requested information on the book "Inside Intelligence" by Anthony Cavendish contained in a specific file he identified in The National Archives catalogue.
2. The Commissioner's decision is that the Cabinet Office has appropriately relied on the exemption at section 23(1) – Information supplied by, or relating to, bodies dealing with security matters, to withhold the requested information.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

### Request and response

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4. On 5 December 2018, the complainant wrote to the Cabinet Office and requested information in the following terms:

"I understand that the Cabinet Office has a folder dedicated to the book INSIDE INTELLIGENCE by Anthony Cavendish.

<http://discovery.nationalarchives.gov.uk/details/r/C16204475>

As I understand it, the folder is currently in possession of the Cabinet Office. I would like to have copies of the documents within this folder to be released to me."

5. The Cabinet Office responded on 4 January 2019 with a refusal notice in reliance of section 23(1) FOIA.

6. Following an internal review the Cabinet Office wrote to the complainant on 4 February 2019. It stated that it upheld the reliance on section 23(1) and in addition relied on sections 38(1) Health and safety and 41(1) Information provided in confidence to withhold the requested information.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 16 March 2019 to complain about the way his request for information had been handled. The complainant made the following points:
  - “The file is historical and has already been indexed into the National Archive database and its status is to be reviewed in 2019 anyway.
  - The book is a published memoir by a former MI6 officer, Anthony Cavendish and relates to historical matters that are 50-80 years old now. All the information in the book is now in the public domain.
  - It appears that the government was not aware of the exact content of Cavendish’s book but the fear of what could be in there.
  - There was also a lot of information leaked about the contents of the book to the press. Is the Cabinet Office claiming information that is already in the public domain now also subject to section 23.”
8. The Commissioner considers the scope of her investigation to be whether the Cabinet Office is entitled to rely on the exemptions at section 23, 38 and 41 FOIA to withhold the requested information.

## Reasons for decision

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### **Section 23(1) – information supplied by or relating to bodies dealing with security matters**

9. Section 23 FOIA states:

“(1) 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)<sup>1</sup>”

10. 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). This means that if the requested information falls within this class it is absolutely exempt from disclosure under FOIA. There is no requirement on the public authority to demonstrate that disclosure of the requested information would result in some sort of harm. This exemption is not subject to a balance of public interests test.

11. The Cabinet Office provided the Commissioner with submissions to support its position that the information was either supplied by, or relates to, the security bodies listed in section 23(3) of FOIA.

12. At the time of the submission, 19 August 2019, the Cabinet Office advised the Commissioner:

“We will, under the terms of the Memorandum of Understanding, issue a Letter of Assurance from an appropriate person detailing that section 23 of the Act applies to material within the file.”

13. Unfortunately, despite emails chasing the provision of the Letter of Assurance, the letter was not forthcoming.

14. On 18 December 2019 the Commissioner served an Information Notice ordering the Cabinet Office, within 30 days of the date of the notice, to furnish her with a copy of the Letter of Assurance referenced in its submission of 19 August 2019.

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<sup>1</sup> For the full text of section (3) see <http://www.legislation.gov.uk/ukpga/2000/36/section/23>

15. Unfortunately, the Letter was still not forthcoming and was eventually received on 17 February 2020. Following receipt of the Letter the Commissioner was able to progress with her investigation.
16. The Letter from a senior official with the experience and authority to validate the content of the withheld information provided the Commissioner with the required detail. This official assured the Commissioner that section 23(1) applied to the entirety of the withheld information and outlined why this was the case. The official provided a reasoned explanation for the Cabinet Office's submission.

### **The Commissioner's position**

17. The Commissioner's approach to investigating cases involving the application of section 23(1) is set out in a Memorandum of Understanding ("MoU"). 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.
18. The Commissioner has considered the submissions made by the Cabinet Office in respect of the application of section 23(1). She accepts that in the circumstances of this case, the assurance provided by the official in question with regards to the application of section 23(1) and the additional explanation provided are sufficient for her to conclude that the withheld information is exempt from disclosure on the basis of section 23(1) of FOIA.
19. Section 23(1) is an absolute exemption which means that there is no requirement to carry out a public interest test to determine whether or not the information withheld on that basis should have been disclosed in any event in the public interest.
20. In light of this decision the Commissioner has not considered the Cabinet Office's reliance on sections 38(1) and 41(1) of FOIA to withhold parts of the withheld information.

## Right of appeal

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21. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

22. 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.
23. 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 .....**

**Susan Hughes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**