

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 October 2021

Public Authority: Foreign, Commonwealth & Development Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant submitted a three part request to the Foreign and Commonwealth Office (FCO, now the Foreign, Commonwealth & Development Office, FCDO) seeking information about communications with a third party contractor concerning Cameroon. The FCO explained that it did not hold any information falling within the scope of the first two parts of the request, and although it held information falling within the last part of the request it considered this to be exempt from disclosure on the basis of the following sections of FOIA: 26(1)(b) (defence), 27(1)(a) and (d) (international relations), 40(2) (personal data) and 43(2) (commercial interests). During the course of the Commissioner's investigation the FCDO subsequently disclosed some information to the complainant.
2. The Commissioner's decision is that the remaining information is exempt from disclosure on the basis of 26(1)(b), 27(1)(a) and (d), 40(2) and 43(2). However, the Commissioner has also concluded that the FCDO breached section 17(3) by failing to conclude its public interest test considerations and provide the complainant with a substantive response to his request within a reasonable timeframe.
3. No steps are required.

Request and response

4. The complainant submitted the following request to the FCO¹ on 10 July 2020:

'1) In the published data here

<https://www.gov.uk/government/collections/foreign-officespend-over-25000#2020> between January 1st 2018 and July 10th 2020 there are a number of payments made to TORCHLIGHT SOLUTIONS LTD or TORCHLIGHT GROUP LTD. Could you answer the following. a) Are any of these payments for work in Cameroon? b) Please supply a copy of the relevant invoice for those payments that were made for work carried out in Cameroon c) Please state what those payments were for d) Please supply a copy of the contract to which those relevant payments relate to

2) Please supply a copy of any contracts or agreements between the FCO and Torchlight Group Ltd or Torchlight Solutions Ltd in relation to work carried out or ongoing in Cameroon between January 1st 2018 and July 10th 2020.

3) Please supply all correspondence via email between Torchlight Group Ltd (<https://beta.companieshouse.gov.uk/company/07672340>) or TORCHLIGHT SOLUTIONS LTD (<https://beta.companieshouse.gov.uk/company/09206434>) at the domain names @torchlightgroup.com or @torchlight-solutions.com and the Africa section in charge of Cameroon (including the British High Commission in Cameroon) of the FCO in relation to any work carried out or ongoing in Cameroon between January 1st 2018 and July 10th 2020.'

5. The FCO responded on 7 August 2020 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 section 43 (commercial interests) of FOIA and it needed additional time to consider the balance of the public interest test. The FCDO sent the complainant a similar letter on 7 September 2020.
6. The FCDO provided the complainant with a substantive response to his request on 30 October 2020. The FCDO explained that as his request

¹ The FCO merged with the Department for International Development on 2 September 2020 to form the FCDO. This decision notice is therefore served on the FCDO but refers to the FCO where it was the body that took certain actions in relation to the request.

was made to the former FCO, i.e. prior to the creation of FCDO, its reply only took into account any relevant information held by the FCO at the time his request was received. The FCDO explained that it did not hold any information falling within the scope of questions 1 and 2 of his request. The FCDO explained that it did hold information falling within the scope of question 3 of the request but it considered this to be exempt from disclosure on the basis of the following sections of FOIA: 26(1)(b) (defence), 27(1)(a) and (d) (international relations), 40(2) (personal data) and 43(2) (commercial interests).

7. The complainant contacted the FCDO on 2 November 2020 and asked it to conduct an internal review of this response and argued that there was a significant public interest in the disclosure of information falling within the scope of his request.
8. The FCDO informed him of the outcome of the internal review on 2 December 2020. The review upheld the application of the various exemptions.

Scope of the case

9. The complainant initially contacted the Commissioner on 7 October 2020 in order to complain about the FCDO's delays in providing him with a substantive response to his request. Subsequent to the FCDO's response and internal review, the complainant explained that he disagreed with the decision to withhold the information falling within the scope of question 3 of his request on the basis of the various exemptions cited. He argued that for the reasons set out in his request for an internal review he believed that the public interest favoured disclosure of the information.
10. During the course of the Commissioner's investigation the FCDO provided the complainant with five documents falling within the scope of his request, with redactions made to these documents on the basis of the following sections of FOIA: 40(2), 26(1)(b), 27(1)(a) and (d), and 43(2). The FCDO maintained its view that the remaining three further documents in the scope of the request were exempt in their entirety on the basis of sections 27(1)(a) and (d) and 43(2) of FOIA.

Reasons for decision

Section 26(1)(b) - defence

11. Section 26(1)(b) states that:

'Information is exempt information if its disclosure under this Act would or would be likely to prejudice-... ...

(b) the capability, effectiveness or security of any relevant forces.'

12. In order for a prejudice based exemption, such as section 26, to be engaged the Commissioner believes 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.
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., disclosure would be likely to result in prejudice or disclosure would result in prejudice. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.

The FCDO's position

13. The FCDO argued that the disclosure of the information redacted under this exemption would be likely to provide those with a hostile intent with detailed information on how and where military equipment/training aides are delivered to a military barracks.

The Commissioner's position

14. With regard to the first criterion of the test set out above, the Commissioner accepts that the type of harm that the FCDO believes would be likely to occur if the information was disclosed is applicable to the interests protected by section 26(1)(b) of FOIA. Furthermore, having considered the nature of the specific information that is being withheld, which consists of the logistical arrangements for the delivery/receipt of the military equipment in the UK, the Commissioner is satisfied that there is causal relationship between the potential disclosure of the information and that the likelihood of prejudice occurring is one that is more than a hypothetical risk. The Commissioner is therefore satisfied

that the second and third criteria are met and the exemption is engaged.

Public interest test

15. Section 26 is a qualified exemption and therefore the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemption contained at section 26(1)(b) outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosure

16. In support of his view that the public interest favoured disclosing the information falling within the scope of his request the complainant argued that:
17. Any British involvement either directly by the UK government or through contractors with parts of the Cameroonian military or police should be on the public record due to the ongoing Cameroonian civil war which has led to thousands of deaths. The complainant pointed to media reporting on the actions carried out by a variety of sections of the Cameroonian military.² In light of this, he argued that there was a public interest in the disclosure of information in order to establish whether there has been any UK involvement in this, even if only by the training of security forces.
18. The complainant argued that the public interest in disclosure is further aided by the FCDO's own @UKinCameroon Twitter account which posted that the UK has increased aid funding to the country by a further £4.5 million, highlighting the need for aid in a longstanding civil war.³ The complainant argued that if further aid, funded by the UK taxpayer, is needed to ameliorate the situation on the ground due to the conflict, then surely information on how UK taxpayer money is being spent to train forces involved in this very same conflict should be disclosed for the sake of transparency.
19. Finally, the complainant argued that the British public have a right to know whether the UK, through taxpayers money, has in any way funded either the training or other involvement in Cameroonian military or police affairs in the context of the current conflict in the country. He added that taxpayers money, used to fund training or military

² <https://www.bbc.co.uk/news/av/world-africa-45599973>

³ <https://twitter.com/UKinCameroon/status/1303677509838557185>

involvement in a country going through an ongoing civil war that has caused the loss of thousands of lives, should be documented.

Public interest arguments in favour of maintaining the exemption

20. The FCDO argued the public interest in withholding this information lay in the UK's ability to influence effective defence capability and capacity in West Africa. It argued that release would risk the ability of contractors and supporting units to carry out their duties, and therefore the ability of a government department to continue operating in Cameroon, which cannot be in the public interest.

Balance of the public interest

21. The Commissioner agrees that there is public interest in disclosing information which would help the public understand that nature of the UK's involvement with, and support of, Cameroon, particularly in the context of ongoing conflict in that country. However, in the Commissioner's view the information withheld on the basis of this exemption would add little, if at all, to the public's understanding on this issue. In contrast, disclosure would assist those with hostile intent to understand the logistical arrangements in place for the delivery of military equipment and result in the prejudice described above. In light of the above, the Commissioner is satisfied that the public interest favours maintaining section 26(1)(b) of FOIA.

Section 27 – international relations

22. Sections 27(1)(a) and (d) of FOIA state that:

'(1) 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...

...(d) the promotion or protection by the United Kingdom of its interests abroad.'

The FCDO's position

23. The FCDO argued that disclosure of information withheld on the basis of these exemptions would be likely to prejudice the UK's relations with Cameroon as the provision of training is provided on the basis that the details of it will remain confidential. In light of this the FCDO argued that disclosure of the more specific details of the training would be likely to harm relations between the UK and Cameroon, and in turn the UK's ability to promote and protect its interests in the region.

The Commissioner's position

24. In relation to the criteria referred to above at paragraph 12, the Commissioner is satisfied that the first criterion is met as the prejudice envisaged by the FCDO is clearly one that is protected by the exemptions contained at sections 27(1)(a) and (d). Given that the details of the training provided by the UK is considered to be confidential, the Commissioner accepts that there is causal link between disclosure of the information withheld under these exemptions and prejudice occurring. The second criterion is therefore met. In relation to the third criterion the Commissioner recognises that parts of the information disclosed to the complainant provides some information about the training aides provided. However, the Commissioner is satisfied that given the content of the remaining information withheld on the basis of these exemptions, along with the fact that the provision of details of the training is considered to be sensitive, disclosure of this information would result in more than a hypothetical chance of the UK's relations with Cameroon being harmed. Furthermore, as a result she accepts that there would be a harmful effect on the UK's ability to protect and promote its interests in the region.
25. The exemptions contained at sections 27(1)(a) and (d) are therefore engaged.

Public interest test

26. Section 27 is a qualified exemption and therefore the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemptions contained at sections 27(1)(a) and (d) outweigh the public interest in disclosing the information.

Public interest in favour of maintaining the exemptions

27. In responses to the complainant, the FCDO argued that the effective conduct of the UK's relationships with international partners, including foreign governments and authorities, depends on the maintenance of mutual trust and confidence. The FCDO argued that if it did not honour its part in this the UK's ability to work with them on a range of issues is likely to be impeded. Furthermore, the FCDO argued that partners may be more reluctant to share sensitive information with the UK Government, and less likely to respect the confidentiality of information supplied by the UK Government to them. This could undermine relations between the UK and international partners and seriously compromise the UK's ability to work with them.
28. In the context of this request, the FCDO argued that it would clearly be against the public interest to undermine the UK's relations with Cameroon as disclosure would directly damage relations with the Cameroonian partner forces, and the UK's ability to support a resolution

to terrorist threats (a part of UK foreign policy), as well as harming the UK's relations with Cameroon more broadly.

Public interest arguments in favour of disclosure

29. The complainant's submissions in relation to the public interest are set out above.

Balance of the public interest

30. As the Commissioner has acknowledged above, she accepts that there is a strong argument for the UK being open and transparent about the nature of support that it is providing to Cameroon. However, to some extent, and in terms of the nature of the information sought by this request, the Commissioner accepts that this is met by the disclosures that the FCDO has now made. Furthermore, in the Commissioner's view disclosure of the specific material withheld on the basis of section 27 would not significantly meet, or advance, the public interest arguments in favour of disclosure. Conversely, disclosure of it would significantly undermine the UK's relations with the Cameroon, specifically in terms of the training provided, but also more broadly given the mutual trust and respect upon which international relations are based. As a result, in the Commissioner's view the public interest tips in favour of maintaining the exemption.

Section 40 – personal data

31. The FCDO explained that the information which it was seeking to withhold on the basis of section 40(2) consisted of names and contact details of junior staff at the FCDO and MOD and the same information in relation to staff at Torchlight.

32. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.

33. In this case the relevant condition is contained in section 40(3A)(a)⁴. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').

⁴ As amended by Schedule 19 Paragraph 58(3) DPA.

34. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.
35. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

36. Section 3(2) of the DPA defines personal data as:

'any information relating to an identified or identifiable living individual'.

37. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
38. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
39. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
40. In the circumstances of this case, the Commissioner is satisfied that the names of the individuals and their contact details both relate to and identify the individuals concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
41. As explained above, the fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
42. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

43. Principle (a), which is contained in Article 5(1)(a) of the GDPR, states that:

'Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject'.

44. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
45. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

46. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

'processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child'⁵.

47. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:-
 - i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

⁵ Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

48. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

49. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. Interests may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
50. In the circumstances of this case, for the reasons discussed above, the Commissioner accepts that there is a legitimate interest in the disclosure of information about this subject. However, she is not persuaded that there is a particularly strong or compelling interest in the disclosure of the names and contact details of junior officials or the individuals at Torchlight.

Is disclosure necessary?

51. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity which involves the consideration of alternative measures, and so a measure would not be necessary if the legitimate aim could be achieved by something less. Disclosure under FOIA must therefore be the least restrictive means of achieving the legitimate aim in question.
52. In the Commissioner's view it is not sustainable to argue that disclosure of the personal data the FCDO is seeking to withhold is necessary; disclosure of such information would not add to the public's understanding of this subject matter.
53. Given this finding the Commissioner has concluded that disclosure of the names would not be lawful and therefore article 6(1)(f) of the GDPR is not met. Disclosure of the names and contact staff at the MOD and FCDO, and the similar information for staff at Torchlight, would therefore breach the first data protection principle and thus such information is exempt from disclosure on the basis of section 40(2) of FOIA.

Section 43 – commercial interests

54. The exemptions considered above provide a basis upon which to withhold all of the material redacted or withheld in full by the FCDO. The only exception to this is small amount of information redacted from an invoice, namely the number of 'simunition' rifles and 'simunition' bought. The FCDO considered such information to be exempt from disclosure on the basis of section 43(2) which 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).'

The FCDO's position

55. The FCDO argued that disclosure of this information, allied to the price paid (which has been disclosed), would provide a price breakdown which would be likely to prejudice Torchlight's commercial interests in that it would assist both its competitors and any future customers.

The Commissioner's position

56. With regard to the first criterion of the test set out above, the Commissioner accepts that the type of harm that the FCDO believes would occur if the information was disclosed is applicable to the interests protected by section 43(2) of FOIA. With regard to the second criterion, the Commissioner is satisfied that disclosure of the information about the actual amount of goods provided has the potential to harm the commercial interests of the supplier, Torchlight, for the reasons set out by the FCDO. Furthermore, she is persuaded that the resultant risk of prejudice occurring to Torchlight's commercial interests 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 argue that if the details of the price breakdown (as opposed to simply a total price) were to be disclosed then this would clearly put Torchlight at a disadvantage when negotiating potential contracts with other parties for similar equipment. That is to say such third parties would be aware of the amount that Torchlight had previously sold specific volumes of equipment for, thus giving them an advantage over Torchlight in any negotiations.

57. Section 43(2) is therefore engaged.

Public interest test

58. The FCDO argued that there was a public interest in allowing commercial organisations the space to conduct their business fairly, without fear of commercially sensitive information being disclosed, and in the circumstances of this request it concluded that the public interest in

withholding information under this exemption outweighs the public interest in its release.

59. For the reasons discussed above, the Commissioner accepts that there is a public interest in the disclosure of information on this subject. Furthermore, in the context of section 43(2), in the Commissioner's view there is also a public interest in the disclosure of information in order to ensure transparency around contractual dealings involving public sector bodies. However, in her view there is also a public interest in ensuring the fairness of competition for commercial third parties. Moreover, as with the other parts of the withheld information she is not persuaded that disclosure of this specific information would particularly serve the public interests in disclosure to any great degree. Therefore, the Commissioner has concluded that the public interest favours upholding section 43(2) and withholding the information redacted on the basis of this exemption in the invoice.

Time taken to respond to the request

60. Section 1(1) of FOIA provides that any person making a request for information to a public authority is entitled, subject to the application of any exemptions:

'(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.'

61. Section 10(1) of FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt. Under section 17(3) a public authority can, where it is citing a qualified exemption, have a 'reasonable' extension of time to consider the balance of the public interest.
62. The Commissioner considers it reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days, which would allow a public authority 40 working days in total. The Commissioner considers that any extension beyond 40 working days should be exceptional and requires the public authority to fully justify the time taken.
63. In this case the complainant submitted his request on 10 July 2020 and the FCO issued its substantive response on 30 October 2020. The Commissioner does not consider this to be a reasonable amount of time in the circumstances of this case and this delay therefore represents a breach of section 17(3).

Right of appeal

64. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

65. 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.

66. 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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