

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 October 2022

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

Decision (including any steps ordered)

1. The complainant has requested information connected to munition supplies to the Kingdom of Saudi Arabia.
2. The Commissioner's decision is that Foreign, Commonwealth & Development Office correctly relied upon section 27(1)(a) 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

4. On 1 March 2021, the complainant wrote to Foreign, Commonwealth & Development Office ("FCDO") and requested information from it by saying as follows:

"In February 2012, the British Embassy in Riyadh made an 'urgent' request to the Ministry of Foreign Affairs of the Kingdom of Saudi Arabia (KSA) for the British Ambassador, Sir Tom Phillips, to meet with Prince Salman bin Abdulaziz Al Saud, Minister of Defense, or meet his deputy Prince Khalid bin Sultan bin Abdulaziz Al Saud.

The Ambassador wished to discuss preliminary measures and follow-up procedures by the United Kingdom government regarding the US

government decision to reject the request of the company Raytheon to sell Paveway IV bombs to the KSA.

The time suggested was either the afternoon of Sunday 12 February 2012 or the morning on Monday 13 February 2012 so that senior ministers could be informed for their own discussions to take place in the UK in that week.

In reference to the above context please provide the following information.

1. All minutes, records, written communications held by your department of meetings between Sir Tom Phillips and any KSA ministers from the seven day period Sunday 12 February 2012 to Sunday 19 February on the subject of the US Government refusal to allow Raytheon to sell Paveway IV bombs to KSA.
2. All minutes, records, written communications held by your department of UK ministerial discussions of the same issue from the seven day period Sunday 12 February 2012 to Sunday 19 February 2012".
5. On 23 March 2021, the FCDO responded to the complainant's request but denied holding the requested information.
6. The complainant requested an internal review on 25 March 2021. FCDO sent her the outcome of its internal review on 23 April 2021. It revised its position and informed her that it held requested information. However it cited the following exemption, as its basis for withholding the information from her:
 - Section 27(1)(a) of the FOIA

Scope of the case

7. The complainant contacted the Commissioner on 23 June 2021 to complain about the way her request for information had been handled.
8. The Commissioner considers he has to determine whether the FCDO correctly relied on section 27(1)(a) to withhold from disclosure the requested information.

Reasons for decision

9. Section 27(1)(a) states that information is exempt from disclosure if its disclosure would, or would be likely to, prejudice relations between the United Kingdom and any other State.

FCDO Submissions

10. The FCDO argues that "Saudi Arabia puts strong emphasis on the importance of private diplomatic engagement. Disclosure would likely be seen as a breach of trust by key Saudi decision-makers. There are a small group of key decision-makers in Saudi Arabia and their personal views on HMG and our senior officials is essential for pursuing UK objectives. Revealing private discussions between our former Ambassador and the then defence minister could impact the current Ambassador's access".
11. The FCDO also maintains that there is also a risk that disclosure of the requested information would result in damage to the United States/UK relationship on Saudi Arabia and defence matters.
12. A further short submission from the FCDO is given in the confidential annex to this decision notice. The reason for the confidential annex is that it contains material that if made public may cause the prejudice envisaged by section 27(1)(a).

Commissioner's Reasonings

13. 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 were 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 – i.e., 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;
there must be a real and significant risk.

14. 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.
15. The Commissioner is 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 been necessary'.
16. The Commissioner is satisfied that the alleged harm – namely prejudice to UK relations with Saudi Arabia and the United States relates to the applicable interest in section 27(1).
17. The FCDO has persuaded the Commissioner, for the reasons it has given above, that releasing the withheld information would likely cause harm to the relationship between the United Kingdom and Kingdom of Saudi Arabia at ambassadorial level and as argued in the confidential annex betwixt the United Kingdom and the United States . Section 27(1)(a) is therefore engaged.

Public interest test

Complainant's submissions

18. "There is a far greater public interest in disclosure of any details of this specific meeting than their continued secrecy as the meeting apparently concerned UK government actions to enable the supply of Paveway munitions to KSA at a time when US authorities were refusing to allow this supply. Disclosure would inform the intense and ongoing public debate over UK-Saudi military relations in the context of known Saudi-coalition war crimes carried out with Paveway munitions in the war in Yemen since 2012".

FCDO submissions

19. It acknowledges the public interest in the subject matter of the request, and the wider public interest in knowing more about the UK's relations with Saudi Arabia. However, it considers that, in this case, the public interest in withholding the material concerned outweighs that in its disclosure.

Commissioner's reasonings

20. The Commissioner recognises that there is a considerable public interest in protecting the ability of the UK to protect and promote its interests

with other States such as Saudi Arabia. In accepting that the exemption at section 27 is engaged the Commissioner has accepted that disclosure of the requested information would be likely to prejudice UK-Saudi and UK-USA relations.

21. Having particular regard to the content of the information in question, the Commissioner is not persuaded that the benefit of disclosure would justify or mitigate this prejudice. Whilst the Commissioner has deeply considered the arguments put forward by the complainant, he does not agree that the factors raised constitute a weighty enough public interest factor in favour of disclosure, especially given the strength of the public interest in favour of maintaining the exemption.
22. In particular, it has to be recognised, that Saudi/UK and USA/UK relations are much wider spread than the single issue relating to the provision of the Paveway munitions.
23. For the reasons set out above the Commissioner is of the view that the public interest in maintaining the exemption at section 27(1)(a) clearly outweighs the public interest in disclosure of the requested information. Accordingly, he finds that the exemption was properly relied on by FCDO not to provide the complainant with the requested information.

Right of appeal

24. 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

25. 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.
26. 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 FOI
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF**