

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 November 2022

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

Decision (including any steps ordered)

1. The complainant submitted a request to the Foreign, Commonwealth & Development Office ('FCDO') seeking information about their father who they believed worked for MI6 in the following time period: 1956-1961.
2. The FCDO refused to confirm or deny whether it held any information falling within the scope of the request on the basis of section 23(5) (security bodies) of FOIA.
3. The Commissioner has concluded that the FCDO was entitled rely on section 23(5) to refuse to confirm or deny whether it holds the requested information.
4. No steps are required.

Request and response

5. The complainant submitted the following request to the FCDO on 28 January 2022:

"I am writing to ask for any details or records you hold relating to my father, [name redacted], who worked for MI6 (I believe in the 1950s and 1960s).

Specifically, I am trying to find out the name of his father (my grandfather) as this has been impossible to find out via other routes (my father was born on [date redacted] in [place redacted]).

I can email copies of the various passports I have for him (when he appeared to be resident in [place redacted]), as well as a birth certificate of one of his daughters, which lists my father's profession as [profession redacted]. British subject by birth under section 2 of the British Nationality and Status of Aliens Act 1943."

6. The complainant subsequently clarified that the request was intended to cover the following period: 1956 to 1961.
7. The FCDO responded on 10 March 2022 and refused to confirm or deny whether it held the requested information on the basis of section 23(5) FOIA (security bodies). The FCDO also explained that it was relying on section 17(4) FOIA not to provide any further statement with regards to the use of this exemption¹.
8. The complainant requested an internal review on 14 March 2022 stating:
- "I would like to have the decision not to disclose details relating to my late father reviewed. As I stated in my original email, I am only trying to discover the name of my Father's Father (my Grandfather) and desire no other information about my Father or his work."
9. The FCDO provided an internal review on 7 April 2022 and maintained its reliance on section 23(5) FOIA. It also explained that during its search it had identified a record held at The National Archives (TNA),

¹ Section 17(4) states that a public authority is not obliged to explain in a refusal notice why an exemption applies, or why the public interest favours maintaining an exemption, if the provision of such an explanation would reveal information which is itself exempt from disclosure.

which may assist with their research and FCDO suggested the complainant contact TNA directly about it.

Scope of the case

10. The complainant contacted the Commissioner on 28 April 2022 in order to challenge the FCDO's refusal to provide the information requested.
11. In relation to this complaint it is important to note that the right of access provided by FOIA is set out in section 1(1) and is separated into two parts. Section 1(1)(a) gives an applicant the right to know whether a public authority holds the information that has been requested. Section 1(1)(b) gives an applicant the right to be provided with the requested information, if it is held. Both rights are subject to the application of exemptions.
12. As explained above, the FCDO is seeking to rely on section 23(5) to neither confirm nor deny (NCND) whether it holds information falling within the scope of the request. Therefore, this notice only considers whether the FCDO is entitled, on the basis of this exemption, to refuse to confirm or deny whether it holds the requested information. The Commissioner has not considered whether the requested information – if held – should be disclosed.

Reasons for decision

Section 23 – security bodies

13. Section 23(1) of FOIA states that:

'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 sub-section (3).'
14. Section 23(5) of FOIA states that:

'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 subsection (3).'

15. The full list of bodies specified in section 23(3) can be viewed online.²
16. In the Commissioner's opinion the exemption contained at section 23(5) should be interpreted so that it is only necessary for a public authority to show that either a confirmation or denial of whether requested information is held would involve the disclosure of information relating to a security body. It is not necessary for a public authority to demonstrate that both responses would disclose such information. Furthermore, the Commissioner considers that the phrase 'relates to' should be interpreted broadly. Such an interpretation has been accepted by the First-Tier Tribunal (Information Rights) in a number of different decisions.³
17. Consequently, whether or not a security body was interested or involved in a particular issue is in itself information relating to a security body. Therefore, in the Commissioner's opinion section 23(5) could be used by a public authority to avoid issuing a response to a request which revealed either that a security body was involved in an issue or that it was not involved in an issue.
18. The test of whether a provision of a confirmation or denial would relate to a security body is decided on the normal civil standard of proof, that is, the balance of probabilities. In other words, if it is more likely than not that the provision of a confirmation or denial would relate to a security body then the exemption would be engaged.
19. 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. 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.
20. The FCDO has provided the Commissioner with submissions to confirm its reliance on section 23(5) of FOIA in relation to the complainant's father, namely that FCDO can neither confirm nor deny that it held the requested information about the complainant's father.

² <http://www.legislation.gov.uk/ukpga/2000/36/section/23>

³ See for example *Dowling v Information Commissioner and The Police Service for Northern Ireland*, EA/2011/0118, paras 17 to 22.

21. On the basis of the submissions provided, the Commissioner is satisfied that on the balance of probabilities, confirming whether or not the FCDO holds information falling within the scope of the request about the requester's father would reveal something about the security bodies. For example, if the FCDO confirmed that it held the requested information (if indeed that were the case) this would have the effect of confirming that they hold information on an individual which the request has described as an employee of MI6 (Secret Intelligence Service). The Commissioner is therefore satisfied that the FCDO can rely on section 23(5) to refuse to confirm or deny whether it holds any information falling within the scope of the original request.
22. While the FCDO explained that it considered these submissions to be confidential, the FCDO gave the Commissioner consent to include the submissions at paragraph 20-21 above in this decision notice.

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

Jonathan Slee
Senior Case Officer
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Wycliffe House
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