

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 November 2022

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

Decision (including and steps ordered)

1. The complainant has requested information relating to a charter flight.
2. The Foreign, Commonwealth & Development Office ('FCDO') provided the majority of the requested information but refused to disclose the cost of the charter flight, citing section 43(2) of FOIA.
3. The Commissioner's decision is that the withheld information engages section 43(2) and the public interest favours maintaining the exemption.
4. The Commissioner does not require the public authority to take any steps.

Request and response

5. On 21 March 2022, the complainant wrote to the FCDO and requested the following information:

"This is an information request concerning the costs of flying Mrs. Zaghari-Ratcliffe from Muscat to RAF Brize Norton on 16 March 2021. The flight was undertaken on a Boeing 757-200 (registration G-POWH) of Titan Airways.

Please provide the following information:

- What was the cost of chartering the aircraft?
- How many crew of Titan Airways were aboard (both flight and cabin crew)?
- How many other passengers (apart from Mrs Zaghari-Ratcliffe, Mr Ashoori and crew were aboard the aircraft?

- How much was spent on catering overall? Additionally, please itemise the wines, spirits, champagnes, other hard liquors and soft drinks that were available on board.
 - Were commercial flight options instead of chartering options considered prior to the flight on Titan Airways from Muscat to RAF Brize Norton?
 - Which minister of the FCDO authorised the flight?"
6. The FCDO responded on 20 April 2022. It provided responses to all of the complainant's questions except the first one, withholding the cost of chartering the aircraft under section 43(2).
 7. The complainant requested an internal review on 21 April 2022. The complainant argued that establishing and comparing the costs of chartering planes is a simple process and it was already in the public domain which charter company and aircraft were used for the flight.
 8. The FCDO provided the outcome to its internal review on 12 May 2022. It upheld its original position.

Reasons for decision

Section 43(2) – commercial interests

9. Section 43(2) states:

'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).'
10. The Commissioner's guidance¹ states 'A commercial interest relates to a legal person's ability to participate competitively in a commercial activity. The underlying aim will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent.'
11. Section 43(2) is a qualified exemption. This means that, even if the exemption is engaged, the information can only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosure.

¹ [Section 43 - Commercial interests | ICO](#)

12. In its refusal notice the FCDO explained to the complainant 'there are clear commercial sensitivities about releasing details of the flight costs, which might be used to undermine our ability to secure the best value for money for future repatriations of British nationals during a crisis.'
13. The Commissioner acknowledges the complainant's concern that the charter company and aircraft details are already in the public domain but he doesn't agree that it would be possible to identify the exact amount the FCDO paid in this instance.
14. The Commissioner agrees with the FCDO that disclosure of this information would provide future charter companies with a starting point upon which to negotiate their services because it will confirm what the FCDO paid for that aircraft, from that company, at that time and in what circumstances. Repatriation occurs in exceptional circumstances and it might require an aircraft to be procured on short notice and for an uncertain amount of time. Therefore, the fee paid by the FCDO in this instance might not be directly comparable to any public-facing quotes that the charter company may have.
15. Even though the FCDO is first and foremost a public authority, it must still be able to operate in a commercially competitive environment. Any information that may strengthen a charter company's negotiating position also has the potential to prejudice the FCDO's ability to obtain value for money.
16. Since the Commissioner considers the exemption engaged, he will now go on to consider whether the public interest lies in maintaining the exemption or in disclosure.
17. On the one hand, the matter involves a significant amount of money. With this comes the need for openness, transparency and accountability. On the other hand, there is the prejudice that disclosure would cause as outlined above.
18. The Commissioner considers that the public interest in this matter has been met, to a certain extent, by the information that the FCDO disclosed in response to the request. It has provided as much information as possible without prejudicing its commercial interests, including informing the complainant that 'commercial options were considered but did not meet operational requirements. The arrangements had to be flexible as discussions with Iran were ongoing and there was uncertainty about timings and flight routes.'
19. Ultimately, bearing in mind the work that the FCDO undertakes, the Commissioner considers that the public interest lies in maintaining the exemption and not compromising the FCDO's ability to enter into negotiations with any third party in the likely event that similar services will be required.

Right of appeal

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

20. 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.
21. 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

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF