

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 March 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 four documents provided to it by the World Health Organisation concerning the Ebola crisis in the Democratic Republic of Congo. The FCDO withheld the information on the basis of sections 27(1)(a) to (d), section 27(2) (international relations) and section 40(2) (personal data) of FOIA.
2. The Commissioner has concluded that the withheld information is exempt from disclosure on the basis of section 27(2) of FOIA and that in all the circumstances of the request the public interest favours maintaining the exemption.
3. No steps are required.

Request and response

4. The complainant submitted the following request to the FCDO on 9 October 2020:

'I would like the following four documents:

1 - REPORT from WHO - Narrative on EVD Regional Preparedness 1st Phase - 10 Dec 2018 (46022871)

- 2 - REPORT from WHO AFRO - Narrative Report on the 2nd Phase £2.7m of the EVD Regional Preparedness Plan (45728221)
- 3 - REPORT - WHO DRC Management Finance Statement for DFID £3m Contribution to SRP3 Jan-Jun 2019 (51307225)
- 4 - REPORT - WHO Quarterly for July-Sept 2019 (incl. DFID Feedback and Acceptance of Report (52237420)'
5. The FCDO responded on 24 November 2020 and confirmed that it held information falling within the scope of the request but this was exempt from disclosure on the basis of the exemptions contained at sections 27(1)(a) to (d) and sections 27(2) and (3) (international relations) of FOIA.
6. The complainant contacted the FCDO on 25 November 2020 and asked it to conduct an internal review of this refusal, arguing that the FCDO had not taken into account the significant public interest in disclosure of the requested information.
7. The FCDO informed him of the outcome of the internal review on 23 December 2020. The internal review upheld the application of the exemptions cited in the refusal notice and explained that a small amount of information was also exempt from disclosure on the basis of section 40(2) (personal data) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 26 January 2021 in order to complain about the FCDO's refusal to provide him with the information sought. His grounds of complaint to support this position are set out below.

Reasons for decision

Section 27(2) – international relations

9. Section 27(2) of FOIA states that:

'Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.'
10. Section 27(3) of FOIA explains that:

'For the purposes of this section, any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.'

11. Section 27(2) is a class based exemption and is not subject to the prejudice test.

The FCDO's position

12. The FCDO explained that in relying on this exemption it had taken note of the Commissioner's guidance on this exemption which explained that it relates *'not primarily to the subject of the information, nor the harm resulting from its disclosure, but to the circumstances under which it was obtained and the conditions placed on it by its supplier'*¹.
13. The FCDO explained that it had consulted WHO about this request and it had been very clear that the reports it had provided should not be publicly disclosed. The FCDO explained that given these circumstances it was firmly of the view that the information is, as a matter of fact, confidential information provided by an international organisation and that WHO's stated expectation in sharing that information was that it would remain so.

The Commissioner's position

14. The Commissioner is satisfied that the withheld information is exempt from disclosure on the basis of section 27(2). The information was clearly obtained by the FCDO from an international organisation, ie WHO. Furthermore, the Commissioner is satisfied that it provided the reports to the FCDO with the clear expectation that they would be treated confidentially.

Public interest test

15. However, section 27(2) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has therefore considered whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

¹ This quote is taken from a previous iteration of the Commissioner's [guidance](#) on this exemption. Although the wording does not appear in the current [guidance](#), this remains the Commissioner's position.

Public interest in disclosure

16. The FCDO acknowledged that there is a general public interest in transparency and accountability. More specifically, it also accepted that there is also a clear public interest in raising awareness and understanding of how the UK government works at a country level and in how the FCDO's aims to engage with partner governments and international organisations in seeking to reduce poverty.
17. In support of his position the public interest favoured disclosure of the withheld information the complainant provided the Commissioner with detailed submissions which have been summarised below.
18. The complainant explained that he had asked the FCDO for four very specific documents relating to the Ebola response in the Democratic Republic of Congo (DRC) from 2018 to 2020.
19. He explained that these documents were referred to in a 'logframe' published by the FCDO which sets out the targets for the UK's support to the Ebola response and evaluates whether they have been achieved.² The complainant noted that logframe indicated that the FCDO's indicators of success are based on WHO's quarterly reports. Therefore, the complainant explained that he asked for the documents which form the basis of the FCDO's assessment of its funding to the Ebola response - which adds up to over £61 million - a substantial amount of which was given to WHO.
20. The complainant highlighted that on the 'Narrative' sheet of the logframe, there is a link to an article³ regarding the payment by WHO of armed escorts from the Congolese military, police and intelligence services whose human rights violations are well documented. The complainant argued that WHO did not conduct the required human rights due diligence before making those payments, thus potentially providing financial support to units responsible for extrajudicial killings, rape and torture. He noted that there were also reports of mismanagement of funds.⁴

² http://iati.fcdo.gov.uk/iati_documents/54089103.xlsx

³ <https://www.thenewhumanitarian.org/news-feature/2019/10/02/Congo-militarised-Ebola-response-community-resistance>

⁴ <https://www.thenewhumanitarian.org/investigation/2020/06/18/Ebola-corruption-aid-sector>

21. The complainant noted that WHO also paid local armed groups thousands of dollars in order to secure access to certain areas. The complainant emphasised that this is illegal under Congolese law and has heightened security risks in the region, as highlighted in a FCDO-commissioned review of the aid sector in DRC.⁵
22. The complainant explained that the UK's support to the Ebola Response came under the scrutiny of the UK Parliament at the end of 2020 when the sexual abuse within the Ebola response was outlined in further reporting in the New Humanitarian, in particular within WHO.⁶
23. Despite these serious concerns, the complainant noted that the FCDO's logframe appears to report that most of the 'milestones' of the FCDO's funding have been achieved. He argued that it was therefore in the public interest to better understand how WHO presented its Ebola response in reports to the FCDO, and this would in turn allow the public to better understand the FCDO's decision-making as well as provide accountability in the use of public funds.
24. Furthermore, the complainant argued that an expectation of confidentiality cannot be maintained in a situation where WHO has misused public funds contributed, paid armed groups (illegally) and security forces with public funds (some of which likely came from the UK) and allowed sexual abuse to take place with no effective grievance mechanism or recourse for the victims. The complainant explained that it was his assumption that this breaks clauses of the contract signed by WHO and the FCDO.
25. The complainant argued that there was a pattern of the FCDO trying very hard not to disclose information about its support to WHO and the Ebola response, a position which in his view served its own interest rather than the public's interest.
26. The complainant also noted that he had submitted an FOI request which asked for the confidentiality agreement that underpins the FCDO's refusal of the requested information in this case but was told that this too is confidential.⁷ The complainant argued that lack of transparency in the FCDO's massive funding of the Ebola response is striking and that it

⁵ <https://reliefweb.int/report/democratic-republic-congo/operational-review-exposure-corrupt-practices-humanitarian-aid> - see page 12.

⁶ <https://publications.parliament.uk/pa/cm5801/cmselect/cmintdev/605/60509.htm>

⁷ The FCDO's handling of that further request is the subject of decision notice IC-88416-X1Y8.

was hard to understand why the FCDO would accept such confidentiality clauses to fund a public health response - and whether such opacity would be accepted by the citizens of the UK and Congo.

Public interest in maintaining the exemption

27. The FCDO argued that there is a very strong public interest in the UK being able to maintain good relations with international organisations with whom it works. The FCDO noted that WHO is a key international partner for the UK with relations extending to a very broad and deep range of interests (for example, trade, regional stability, climate change, migration). The FCDO argued that a breakdown in trust between the UK and WHO caused by the disclosure of the information would have an adverse effect on the UK's ability to pursue these wide-ranging and significant areas of policy interest. Damage to relations with these partners would make it much more difficult for FCDO to carry out the public policy objectives of reducing poverty.
28. In a similar vein, the FCDO argued that there is a very strong public interest in the UK being able to support partner organisations such as WHO in preserving good working relations and essential information flows with their clients and international partners. Disclosing the withheld information would undermine the UN's commitments and obligations to protect information provided to them in confidence. The FCDO argued that it could likely damage relationships with its key partners and impede its ability to promote international development. The FCDO explained that in its view such outcomes were clearly against the public interest.
29. Furthermore, the FCDO argued that there is also a very strong public interest in ensuring that the UK government receives full and frank information from its partners. The FCDO explained that in many cases the information has to be detailed and completely candid if it is to be of value to the organisations concerned. For this to occur, the FCDO argued that those involved must be free of any inhibitions that might interfere with their ability to give full and frank comments, including concerns that the information will be exposed prematurely to public scrutiny or comment.
30. The FCDO also explained that in its view the public interest would be harmed by any negative impact on the exchange of information between the UK and its international partners. This could be either through information no longer being provided to it in future or by a failure of the UK's partners to respect the confidentiality of the information that they receive from the UK government. In the FCDO's opinion such an outcome could reduce the likelihood of open and effective dialogue in the future and would significantly undermine the UK's ability to respond to international development needs.

Balance of the public interest test

31. In the Commissioner's opinion there is an inherent public interest in protecting confidentiality. This is because disclosure of confidential information undermines the principle of confidentiality, which depends on a relationship of trust between the confider and the confidant. Furthermore, in the Commissioner's view there is a public interest in respecting international confidences to ensure that states, international organisations or courts are not deterred from providing information.
32. In terms of the weight that should be applied to the public interest arguments both for and against disclosure consideration has to be given to the likelihood and severity of any harm, the age of the information, how far the requested information will help public understanding and whether similar information is already in the public domain.
33. With regard to the circumstances of this request, the Commissioner accepts that there is a notable public interest in the disclosure of information, beyond information that is already in the public domain, which would provide information about the effectiveness of the UK's support for the Ebola crisis in DRC, and more specifically, about how WHO has used the funds provided it to by the FCDO. The Commissioner has reached this position given the significant amounts of funding provided by the UK, and moreover, given the wider context of this funding. That is to say, the matters referred to in the various articles cited by the complainant and the interest of the UK Parliament into the FCDO's oversight of the funding provided to WHO. The Commissioner is satisfied that disclosure of the withheld information in question would meet these interests and as a result there is a significant public interest in the disclosure of this information.
34. In terms of the public interest in maintaining the exemption, the Commissioner notes that the information provided by WHO to the FCDO was only provided relatively recently, which in his view significantly increases the likelihood of an adverse reaction should the information be disclosed under FOIA. Moreover, the Commissioner accepts the FCDO's position that there is a very strong public interest in the UK being able to maintain effective working relations with WHO. This on the basis that damage to such relations risks undermining the UK's ability to respond to international development needs not simply in the context of an Ebola crisis in DRC but also in other contexts around the world. In the Commissioner's view this risk of a wider negative outcome adds further considerable weight to the public interest in maintaining the exemption.
35. Ultimately, this wider impact of disclosure, allied to the recent nature of the information, has led the Commissioner to conclude that the public interest favours maintaining the exemption despite the weighty arguments in favour of disclosure.

36. In light of this conclusion, the Commissioner has not considered the other exemptions cited by the FCDO.

Right of appeal

37. 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

38. 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.
39. 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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