

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 January 2023

Public Authority: Foreign, Commonwealth and Development Office

Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant submitted a request to the Foreign, Commonwealth and Development Office (FCDO) seeking two specific files dating from the 1940s concerning the Netherlands. The FCDO refused to disclose the files on the basis that they were exempt from disclosure under section 23(1) (security bodies) and sections 27(1)(a) and 27(2) (international relations) of FOIA.
2. The Commissioner's decision is that the requested information is exempt from disclosure on the basis of section 23(1) of FOIA.
3. No steps are required.

Request and response

4. The complainant submitted the following request to the FCDO on 5 November 2021:

'As a follow-up of our research and book about the attempt of the Secret Intelligence Service and the Dutch government-in-exile to exfiltrate two Dutchmen to London in 1941/1942...we are currently preparing a historical study of the Dutch and British secret services during the first three years of the Second World War...In the Dutch National Archives, documentation can be found about the relationship between SIS [Secret Intelligence Service] and the Dutch government,

but it would be extremely helpful if we would have access to two files in the British National Archives, which are labelled as 'retained' in the catalogue of TNA: FO 1093/207 (<https://discovery.nationalarchives.gov.uk/details/r/C13430573>) and FO 1093/267 (<https://discovery.nationalarchives.gov.uk/details/r/C13430690>).

It would be of great value for our research if you could grant us permission to consult the above mentioned files about the SIS-operations in the Netherlands. Of course, we will be glad to give you more information about the research project and our background.'

5. The FCDO responded on 2 December 2021 and confirmed that it held the requested information but considered this to be exempt from disclosure on the basis of sections 23(1) (security bodies) and 27(1)(a) (international relations) of FOIA.
6. The complainant contacted the FCDO on 20 December 2021 and asked it to conduct an internal review of this refusal.
7. The FCDO informed him of the outcome of the internal review on 4 February 2022. The review upheld the application of the exemptions cited in the refusal notice and found that the requested information was also exempt from disclosure on the basis of section 27(2) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 7 March 2022 in order to complain about the FCDO's decision to withhold the information falling within the scope of his request.

Reasons for decision

Section 23 – security bodies

9. The FCDO argued that all of the withheld information was exempt from disclosure on the basis of section 23(1) of FOIA. This 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 subsection (3).'
10. To successfully engage the exemption at section 23(1), a public authority needs only to demonstrate that the relevant information was

directly or indirectly supplied to it by, or relates to, any of the bodies listed at section 23(3).¹ This means that if the requested information falls within this class it is absolutely exempt from disclosure under FOIA. There is no requirement on the public authority to demonstrate that disclosure of the requested information would result in some sort of harm. In the circumstances of this request, this exemption is not subject to a balance of public interests test.²

The complainant's position

11. The complainant argued that in relation to section 23(1) of FOIA, there were a number of exceptions where UK public authorities had released information supplied by, or relating to, bodies dealing with security matters. He also emphasised that the passage of time had meant that the contents of the files was arguably less sensitive.

The Commissioner's position

12. The Commissioner is satisfied that the information sought by the request falls within the scope of section 23(1) of FOIA. The file FO 1093/207 has the catalogue description "'C', Chief of the Secret Intelligence Service (SIS): Netherlands" on The National Archives (TNA) website. Furthermore, the TNA website explains that file FO 1093/267 comes within the "Subseries within FO 1093 - SECOND WORLD WAR: INTELLIGENCE – OPERATIONAL". The Commissioner also notes that based on the complainant's submissions both to him and the FCDO, he appears to accept that the requested information was supplied by or relates to, one of the intelligence bodies, namely SIS.
13. Furthermore, any previous releases of information by UK public authorities in relation to information about the security bodies does not set any precedent that the FCDO should or could follow in this case. In addition, given that this is a class based exemption any perceived lack of sensitivity in terms of the content of the information because of the passage of time is an irrelevant factor in determining whether the exemption is engaged. For the same reason, the availability of

¹ A full list of the bodies detailed in section 23(3) is available here: <http://www.legislation.gov.uk/ukpga/2000/36/section/23>

² By virtue of section 64(2) of FOIA, section 23(1) is subject to the public interest test when it is applied to information in a historical record held by The National Archives (TNA). However, in this case the information in question has not been transferred to TNA but has been retained by the FCDO. In the circumstances of this request the exemption is therefore not subject to the public interest test.

information on the same topic in the Dutch National Archives is also an irrelevant factor in determining whether the exemption is engaged.

14. For the above reasons the Commissioner is therefore satisfied that the requested information is exempt from disclosure on the basis of section 23(1) of FOIA.
15. In light of this finding the Commissioner has not considered the FCDO's reliance on sections 27(1)(a) and 27(2) of FOIA.

Right of appeal

16. 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

17. 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.
18. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF