

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 17 February 2023

**Public Authority:** Department for Transport  
**Address:** Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

#### **Decision (including any steps ordered)**

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1. The complainant has requested two files relating to the Lockerbie bombing.
2. The DfT refused to provide the requested information, citing several exemptions.
3. The Commissioner's decision is that the entire files are exempt under section 24(1) (national security).
4. The Commissioner does not require the public authority to take any steps.

## Request and response

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5. On 15 January 2022, the complainant wrote to the DfT and made the following request:

“I would like the release of two folders relating to the 21st December 1988 bombing of Pan Am flight 103. The references are:

BT 384/410 - Terrorist bombing and destruction of Pan Am flight 103 near Lockerbie, Scotland, 21... | The National Archives

BT 384/411 - Terrorist bombing and destruction of Pan Am flight 103 near Lockerbie, Scotland, 21... | The National Archives.”
6. The DfT responded on 24 February 2022. It confirmed that the requested information was exempt under section 24(1) (National Security), section 27(1)(a) (International Relations) and section 40(2) (personal information) of FOIA.
7. The complainant requested an internal review on 28 February 2022.
8. On 1 April 2022 the DfT provided the outcome to its internal review. It upheld its previous position.
9. During the scope of this investigation the DfT confirmed to both the complainant and the Commissioner that it was also relying upon section 38 (health and safety).
10. The Commissioner will first consider the DfT’s application of section 24(1). Depending on his findings, he may then go onto consider the other exemptions cited.

## Reasons for decision

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### Section 24(1) – National Security

11. Section 24(1) of FOIA states that information is exempt if it is required for the purpose of national security.
12. The content of the two files is obvious from their titles – they relate to the bombing of the Pan Am 103 flight and Lockerbie bombing. The DfT is concerned that disclosure of the files would compromise national security.
13. The complainant raised concern that the requested information is over 30 years old and, due to the developments in aviation security, the information would be irrelevant to national security today.

14. The Commissioner acknowledges the complainant's concern. He also acknowledges that in its refusal notice and internal review outcome the DfT did not explain **how** it envisaged disclosure would, or would be likely to, compromise national security. However, the DfT has explained its rationale to the Commissioner. The Commissioner doesn't deem it appropriate to replicate this rationale in this decision notice, due to its sensitivity, which he appreciates will be frustrating for the complainant.
15. National security means the security of the United Kingdom and its people. The Commissioner is mindful that the exemption exists to protect all information that could impact national security, even if there is no evidence that an attack is imminent. Having considered the DfT's rationale, and the subject matter of the files, he is satisfied that the two files, in their entirety, engage section 24(1).
16. Whilst there is an obvious and weighty public interest in protecting national security, section 24(1) is not an absolute exemption, it is a qualified exemption. This means that it is subject to the public interest test.
17. The DfT has acknowledged that disclosure of the files would demonstrate accountability and transparency and allow the public to scrutinise the government's response to the terrorist incident. It may also lead to more informed debate around the Lockerbie bombing.
18. However, the Commissioner agrees with the DfT, the public interest in disclosure does not outweigh the need to protect national security. For this reason, the DfT was correct to withhold the requested information under section 24(1).
19. With the above in mind, the Commissioner doesn't deem it necessary to go onto consider the DfT's application of section 27(1)(a), section 40(2) or section 38.

## **Right of appeal**

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20. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

21. 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.
22. 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**