

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 March 2023

Public Authority: Foreign, Commonwealth & Development Office

Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant requested from the Foreign, Commonwealth & Development Office ('the FCDO'), a copy of a European Union ('the EU') report into violence which occurred in Gujarat, India, in February and March 2002. The FCDO refused the request on the basis that section 27 of FOIA applied (international relations).
2. The Commissioner's decision is that the FCDO was correct to withhold the information under section 27(a) and (b) of FOIA.
3. The Commissioner does not require the FCDO to take any steps.

Request and response

4. On 16 December 2021, the complainant wrote to the FCDO and requested information in the following terms:

"I am writing to make a request for information, under the Freedom of Information Act.

I would like to request a copy of the EU report referred to in the cutting from the FT reproduced below (and attached) regarding violence in Gujarat, India, in February and March 2002.

I would like to limit my request to the period 28 February 2002 to 31 May 2002."

5. The FCDO responded on 9 June 2022. It disclosed a redacted copy of the document concerned, however it redacted sections under section 27(a) and (b) of FOIA (international relations).
6. Following an internal review, the FCDO wrote to the complainant on 6 September 2022. It upheld its initial decision.

Reasons for decision

7. Section 27 of FOIA provides that:

"(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

- (a) relations between the United Kingdom and any other State,
- (b) relations between the United Kingdom and any international organisation or international court,
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad."

8. Section 27 of FOIA therefore allows a public authority to withhold information whose disclosure would be likely to harm the UK's relations with other countries or international organisations, or the promotion of its interests abroad.

The FCDO's position

9. The FCDO argues that a disclosure of the information would affect its relationship with both the EU and with India. It argues that affecting its relationship with these parties would affect the interests of the UK, and the promotion and protection of its interests abroad.
10. It argues that the information was disclosed to it whilst the UK was a member of the EU, with a classification of 'restricted', and with the expectation that the report would not be disclosed further. It argues that disclosing the document would therefore undermine the confidence which the EU has in the UK being able to hold classified information which it has provided to the UK out of the public domain.
11. As a result, representatives of the EU would be much less likely to engage with the UK (or, if they did, would be much less frank) if they were concerned that the content of classified discussions and reports it provides to the UK in confidence would subsequently enter the public domain.
12. The FCDO further argues that a disclosure of the report would be likely to prejudice the UK's relationship with the Indian government. It argues that the Indian government remains sensitive about the issues concerned, and that a disclosure of the report would undoubtedly be considered unfavourably by it, thereby detrimentally affecting the UK's relationship with the Indian government.

The complainant's position

13. The complainant questions the sensitivity of the document given that they understand that it was only disclosed to the UK government with a classification of 'restricted'. The complainant argues that this classification suggests that the importance of the document to UK relations with the EU is being overblown, and that the report can therefore be disclosed without damaging UK relations.
14. The Commissioner notes this argument, but also notes that the information was provided to the UK Government at a time when it was a member state of the EU. A disclosure of a classified EU document, both now at the time of the request, would be likely to have an influence upon the ongoing discussions surrounding information sharing and security matters following the UK's exit from the EU. This would be detrimental to those discussions and to the UK's national interests. It could undermine the EU's confidence in the UK Government's ability or willingness to keep sensitive information provided to it out of the public domain.

15. The complainant further argues that the report was written and published by the EU, not by the UK Government. They argue, therefore, that it is unlikely that a disclosure by the UK government would prejudice relations between the UK and the Indian government.
16. The Commissioner does not consider this to be a strong argument. The disclosure of the report into the wider public domain in response to this request would be by the UK government, not by the EU. Therefore, it is reasonable to assume that the Indian government would attribute its disclosure to the UK government's actions, not the EU's.
17. The complainant also argues that the issue relates to an Indian state, Gujarat, not the Indian state itself. Again, the Commissioner considers that this argument holds little strength. Whilst the issues involved relate to the actions of an individual state, the Commissioner is satisfied that its disclosure would be politically sensitive to the Indian government as a whole.
18. The complainant has also submitted other arguments which the Commissioner has taken into account in his consideration of this case. These include arguments relating to the likelihood of harm being caused, the time which has past since the incident occurred, and how the sensitivity of the information is likely to be impacted by other information which is in the public domain.

The Commissioner's conclusions

19. Having considered the arguments of both parties, the Commissioner is satisfied that a disclosure of the requested information would prejudice the UK's relationship with both the EU and the Indian government. The exemption in section 27 is therefore engaged by the requested information.
20. The Commissioner has therefore gone on to consider the public interest test required by section 2(2)(b) of FOIA. The test is whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The public interest test

The public interest in the disclosure of the information

21. The FCDO acknowledged that releasing information on this issue would increase public knowledge.

22. It said that it has provided a redacted version of the information in question in recognition of the public interest in increasing public knowledge. However, it considers that the public interest factors in favour of the exception being maintained outweigh that in an unredacted copy of the report being disclosed.
23. The complainant has highlighted a number of public interest arguments which weigh in favour of the information being disclosed. These include:
- A public interest in transparency about the issue the information relates to.
 - A public interest in transparency and accountability, to promote public understanding and to safeguard democratic processes.
 - A public interest in good decision-making by public bodies, in upholding standards of integrity, in ensuring justice and fair treatment for all.
 - An informed and involved public helps to promote good decision making by public bodies.
 - Revealing information about wrongdoing may help the course of justice.
 - A public interest in... presenting a full picture
 - The public interest test is about what is in the best interests of society in general, and this includes citizens of other countries.

The public interest in the exemption being maintained

24. The FCDO notes that the UK government is currently in discussions with the EU regarding its future relationship, post-Brexit, across a range of areas of mutual interest, including European security, energy, trade, migration, and responding to shared geopolitical threats. It argues that it is also in the midst of sensitive negotiations with the EU on issues in relation to the UK's exit from the EU. It argues that disclosure would impact on trust and hamper efforts to build a strong relationship with an important ally.
25. The Commissioner accepts that a disclosure of a classified EU document, both at the time of the request and at this point in time, would not be conducive to ongoing relations and could have an impact upon the various areas of discussions which are ongoing. The Commissioner therefore notes a strong public interest in the exemption being

maintained in order to protect the ongoing relationship between the parties.

26. Similarly, the UK Government and the Indian Government are in ongoing discussions regarding a closer trading relationship¹. In May 2021, the two governments announced an enhanced trade partnership with a view to entering a free trade agreement between them in the future². Again, a disclosure of information over issues which the Indian government remains sensitive about would be likely to damage the ongoing relationship, and potentially weaken the UK's position in the free trade negotiations.
27. There is a strong public interest in protecting the ability of the UK government to negotiate such deals, unhindered by the additional issues such a disclosure might give rise to.
28. The Commissioner notes that the arguments submitted by the complainant outlined a strong public interest in the disclosure of the information. However, the UK was, and is, in the process of negotiating its position with both the EU and with the Indian Government at the time of the request, and the Commissioner accepts that a disclosure of the information would be likely to negatively impact the relationship between the parties.
29. The Commissioner is therefore satisfied that the public interest in the exemption being maintained outweighs that in the information being disclosed. The FCDO was therefore correct to apply section 27 to withhold the information in this instance.

¹ <https://www.gov.uk/government/news/pm-announces-1bn-new-commercial-deals-on-landmark-india-visit>

² <https://lordslibrary.parliament.uk/uk-and-india-collaboration-roadmap-to-2030/#:~:text=In%20May%202021%2C%20the%20then,in%20negotiating%20a%20comprehensive%20FTA.>

Right of appeal

30. 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

31. 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.
32. 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

Ian Walley
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