

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2023

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested minutes and emails of meetings with an external organisation from the Home Office (the "HO"). The HO refused to provide the requested information relying on sections 27(1)(a)(b) (International relations) and 35(1)(a) (Formulation of government policy) of FOIA.
2. The Commissioner's decision is that the HO was entitled to rely on section 27 to refuse the request. No steps are required.

Background

3. The HO has explained:

"Thorn: this is a US-based organisation that was established in 2012, by American actors and notable celebrities Ashton Kutcher and Demi Moore, with a primary aim of building tools and technology to combat online child sexual exploitation abuse. Thorn has built up a significant public profile in this space and works with international partners and industry and others to address the online sexual exploitation and abuse of children, and the importance of technology and each sector playing its part to tackle this crime. Thorn has continued to build its team and focus areas of work, including having formed a taskforce with some of industries most significant players like Meta and Twitter, where they work to

produce technological solutions to child sexual exploitation and abuse threats on their platforms.

The Home Office has been engaging with Thorn for several years through a range of meetings, engagements and involving them in events we have participated in. Thorn has an internal policy team who we have discussed policy development and international developments with, in relation to tackling online child sexual exploitation and abuse. Thorn representatives also virtually participated in the UK-hosted G7 summit in 2021 to provide an overview of their work, shared insights and perspectives on these important issues through other forums, including engaging with Five Country partners (a specific alliance of the UK, USA, Canada, Australia and New Zealand who work together with tackling child sexual exploitation and abuse as a common priority) and through other events the UK has facilitated on these important issues. The UK Government also engages with Thorn through the WeProtect Global Alliance and its Board, among other international forums, which all have implications for this particular FOI request”.

Request and response

4. On 22 February 2022, the complainant wrote to the HO and requested information in the following terms:

“I would kindly ask for a list of all meetings by officials and all minutes and e-mails relating to such meetings with representatives of the organisation Thorn on issues of child safety and/or encryption”.

5. On 23 February 2022, the complainant confirmed that his request was:

“... meant to cover the timeframe from July 1st, 2019 up to the present”.

6. On 25 March 2022, the HO advised the complainant that it was considering the public interest in the exemption at section 35 of FOIA and therefore required additional time.
7. The HO responded on 4 May 2022 and refused to provide the requested information, citing sections 27(1)(b)(c) and 35(1)(a) of FOIA.
8. On 9 May 2022, the complainant requested an internal review.
9. On 24 August 2022, the HO provided an internal review. It maintained its position.

10. In subsequent correspondence with the Commissioner, the HO clarified that it had cited sub-sections (b) and (c) of section 27(1) in error and that its response should have read section 27(1)(a) and (b); it confirmed that the arguments put forward were applicable to sub-sections (a) and (b).

Scope of the case

11. The complainant contacted the Commissioner on 25 August 2022 to complain about the way his request for information had been handled. He disagreed with the application of section 27 on the basis that Thorn is a private concern rather than an international body or State, saying that: "Any disclosure made by Thorn is unlikely to harm the UK's external relations". He argued:

"... I was denied access to exchanges (e-mails, meeting minutes) with Thorn, an organisation registered as non-profit in the US which is offering software for the detection of child sexual abuse material (CSAM). The Home Office denied access under Section 27, subsections 27(1)(b) and 27(1)(c). I contend that this provision was misapplied. ICO guidance states that a prejudice test must be made to weigh the likelihood of harm occurring to the UK's external relations. I argue that the documents I requested deal with a private actor, not an international body or state. Any disclosure made by Thorn is unlikely to harm the UK's external relations, while I would not assume the Home Office to disclose information prejudicial to its interest to a foreign charity with a profit motive. Regarding the exemption under section 35(1)(a) invoked by the Home Office, I argue that the general direction of the UK's policy on fighting child sexual abuse and the dissemination of related material is already public information. Furthermore, while the subject matter itself may be considered sensitive, the fight against CSAM has a strong impact on the exercise of fundamental rights including the right to free speech and privacy. I contend that there is substantial public interest in disclosure, as any discussion of the particulars and technical details of the fight against child abuse can not be seen separate from the measures' general fundamental rights impact. As pointed out in the ICO's guidance on this exemption, in general, there is often likely to be significant public interest in disclosure of policy information, as it is likely to promote government accountability, increase public understanding of the policy in question, and enable public debate and scrutiny of both the policy itself and how it was arrived at. In the present case, widest possible disclosure should be given to allow of a broad discussion on how different fundamental rights can be weighed in the fight against child abuse".

12. The Commissioner will consider the citing of exemptions. He has viewed the withheld information, which consists of 20 documents, comprising email chains, meeting arrangements and attachments. He is unable to comment further on the content of the actual withheld information as the HO has provided its rationale 'in confidence'.

Reasons for decision

Section 27 – International relations

13. The Commissioner's guidance on the section 27 exemption can be found on his website¹.
14. Section 27(1)(a) applies to information whose disclosure would harm relations between the United Kingdom and any other State. Section 27(1)(b) applies to information whose disclosure would harm the United Kingdom relations with any international organisation or international court.
15. Whilst the HO has separated out its arguments when applying these two limbs of the exemption, section 27(1)(a) has been applied to the information in its entirety whereas section 27(1)(b) has only been applied to some of the information. In practice there is no clear dividing line between protecting the UK's overseas interests and protecting its relationships with international organisations. It is clearly in the UK's interest to preserve friendly relations with an international organisation whose input is being considered in this area of current work.
16. In respect of 27(1)(a), the HO has explained:

"We have emails which are relating to both logistics of organising meetings, involving Thorn in engagements, as well as internal emails relating to discussions and/or policy issues coming out of discussions with Thorn. These documents are wider than just involving Thorn and have implications for our engagement and discussions, on a range of sensitive issues that are part of ongoing policy developments for the UK Government, with USA government counterparts and work with Five Country and G7 partners, hence the application of section 27(1)(a) and (b) as a whole. Releasing

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/section-27-international-relations/>

these documents would be likely to prejudice our relations with those countries and international organisations and to have prejudicial implications for ongoing engagement with them:

USA: The Home Office currently has ongoing engagement with US government counterparts across multiple departments. These discussions are taking place within an expectation of confidence and release of the information marked with 27(1)(a) would prejudice that engagement because it would reveal the details of the engagement we are having with one specific US stakeholder to add, share insights, contribute to and influence discussions, including relating to the UK's perspectives and preferred approach of the development of global standards and work being driven forward with US government counterparts. Some of the information also relates to confidential discussions around encryption and other industry and legislative related developments, that the US government are involved with, and that they, and Thorn, would expect for us to hold in confidence as part of the wider policy development and international diplomacy discussions.

G7 Summit Attendees: The UK releasing sensitive information relating to the planning and ongoings of the G7 summit (which involves the UK, USA, Canada, Italy, Germany, France, Japan and the European Commission as an observer) it was acting as host nation for would be likely to prejudice our relationship with the US government (noting Thorn is also a US-based company), and the other countries represented. It would reveal the processes of how key international engagements are facilitated, and which organisations may be willing to engage and discuss these issues in the future.

Five Country Working Group Partner Nations (UK, USA, Canada, NZ and Australia): Release of some of the information marked with this exemption would prejudice relations with those countries and create wider stakeholder handling challenges in ongoing discussions with five country partners. These discussions also involve engagements with Thorn, as a group collectively as well as individual engagements between each of the five countries and Thorn, and other key international stakeholders to share insights, and hear perspectives on potential legislative and global standards developments, among other things, as we continue to advance policy and legislative approaches to this issue. Again, these discussions took place within an expectation of confidence and release would prejudice relations and affect the frankness of future discussions.

17. In respect of section 27(1)(b), the HO has argued:

“While the information captured in these documents may not relate directly to engagement with Thorn through other international organisations, releasing information that is taken in isolation would likely prejudice ongoing engagements with these organisations if our safe spaces for frank and constructive discussions, contributing to the policy process domestically and on international standards, are seen to be compromised, or will be made publicly available. The relationships we have with relevant international organisations are taken in the spirit of mutual trust and it is crucial that these exchanges, discussions and meetings are able to continue accordingly:

WeProtect Global Alliance: this is an organisation that brings together an international alliance of governments, industry and civil society representatives to tackle online child sexual exploitation and abuse. Both the UK Government and Thorn have representatives on WeProtect Global Alliance’s Board, which the US and other countries participate in, and involves the sharing of documents, perspectives, and insights via email chains as well as in meetings, to influence policy and other developments on these important issues both at domestic and global levels. Disclosure of confidential information in these documents would be likely to result in prejudicing the relationship with WeProtect Global Alliance and its other wide-ranging Board membership, which exists, in part, as a confidential and safe space to share insights, perspectives and feedback as key policies and legislation and other measures are being taken forward by a range of countries and different organisations working on tackling child sexual exploitation and abuse”.

18. The HO further explained that, given the sensitivities of both the specific policy area and the different international relationships between governments and other organisations, it considered that there was a clear causal relationship:

“... between the disruption and harm to our ongoing effective collaboration, sharing of insights and development of global work together that would be caused if we were to release information outlining detail of those discussions, perspectives shared, and any indications of which views and organisations or other countries we have relied on more heavily to influence our policy development and decisions. This would also have a real and actual impact on ongoing engagement and work in this space with international partners”.

19. The HO advised that it was relying on the lower level of prejudice, ‘would be likely to’ occur. It said that disclosure would be likely to prejudice relations with international organisations and/or states: “particularly on such a sensitive subject matter where there are

significant topical issues being considered both within the UK through legislative and policy developments currently, as well as through international forums...".

20. It further explained that disclosure would be likely to: "impact directly and in real time, with the publication of this information, having significant consequences for the trusted relationships between the UK government, Thorn, 5 country partners and G7 member states, and WeProtect Global Alliance, among others". It added that it was considering 'live' policy issues and that it was crucial it was able to: "gather the views and expertise of stakeholders in a confidential and protected way as policy continues to develop and international relations need to be positively preserved".
21. Based on the rationale provided, the Commissioner accepts that both section 27(1)(a) and (b) of FOIA are engaged to cover the information in its entirety.

Public interest test

22. Section 27 is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption contained at sections 27(1)(a) and (b) outweighs the public interest in disclosing the information.

Public interest in favour of disclosure

23. The complainant's arguments are presented in paragraph 11 above.
24. The HO recognised that disclosure could keep the public informed regarding its engagement with a range of international partners. It also understood that disclosing information about its consideration of research and work that is being undertaken overseas could enable further public debate in this field.

Public interest in favour of maintaining the exemption

25. The HO has argued that disclosure risks harming its engagement with states and international organisations. It said that:

"Disclosing information that relates to the work of international organisations and our engagement with other international partners, which seeks to influence our policy development and further discussions on important matters that have international impacts would be likely to have detrimental impacts and potentially jeopardise future engagement".
26. It added that it was important that the UK: "conforms to the conventions of international behaviour and collaboration, including

maintaining confidentiality of certain discussions and potentially joint work strands, and avoiding giving offence to other nations and ensuring that we retain the trust of our international partners. To do otherwise would prejudice our ability to influence on the international stage and learn from other countries and organisations”.

Commissioner’s conclusion

27. The Commissioner has taken into account the complainant’s arguments and also the arguments provided by the HO, both as presented above and in its correspondence with the complainant.
28. The Commissioner recognises that there is a public interest in the disclosure of information falling within the scope of this request. However, the Commissioner agrees with the HO that it would not be in the public interest for the UK’s relations with international parties to be harmed whilst work is being undertaken in this field. The Commissioner has therefore concluded that the public interest favours maintaining the exemption.
29. As section 27 has been cited in respect of all of the withheld information, the Commissioner has not found it necessary to consider the other exemptions cited.

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@hmcts.gsi.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

Carolyn Howes
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