

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

### **Decision notice**

**Date:** 21 June 2023

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

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

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1. The complainant requested information, relating to the Migration and Economic Development Partnership with Rwanda, that the Government applied to be withheld.
2. The Home Office confirmed that it held the requested information but that it was exempt from disclosure under sections 27(1)(a), (c) and (d) (international relations), 35(1)(a) (formulation of government policy) and 40(2) (personal information) of FOIA.
3. The Commissioner has investigated its application of section 27.
4. The Commissioner's decision is that the withheld information is exempt from disclosure on the basis of section 27(1).
5. The Commissioner requires no steps to be taken as a result of this decision.

### **Request and response**

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6. On 17 August 2022, the complainant wrote to the Home Office and, in relation to a newspaper article entitled 'Ministers ask court to keep sections of Rwanda rights document secret', requested information in the following terms:  
  
"Provide the information that you applied to the High court [sic] to be kept secret".
7. The request was made using the 'whatdotheyknow' website.

8. The Home Office responded on 31 August 2022, citing section 32 (court records) of FOIA.
9. Following an internal review, the Home Office wrote to the complainant on 4 November 2022. It revised its position, citing sections 27(1)(a), (c) and (d) (international relations), section 35(1)(a) (formulation of government policy) and section 40(2) (personal information) of FOIA. It confirmed it was no longer relying on section 32.

## Scope of the case

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10. The complainant contacted the Commissioner on 5 November 2022 to complain about the way their request for information had been handled.
11. By way of background to the requested information, the Home Office told the Commissioner:

“The information requested is the evidence that the government applied to be withheld from disclosure in the UK/Rwanda Migration and Economic Development Partnership (MEDP) litigation under public interest immunity (PII). The MEDP was announced on 14 April 2022 and is part of the New Plan for Immigration (NPI) Programme

[..]

The application for permission to withhold the information on public interest grounds was heard in the High Court before Lewis LJ [Lord Justice] on 16 August 2022”.

12. The Commissioner acknowledges that the requested information has been considered, and a judgement passed, in that context.
13. However, the Commissioner’s duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part I of FOIA.
14. When asked which section(s) of the public authority’s response they wished to challenge, and why, the complainant responded by saying that they believe that the public interest is best served by disclosure.
15. The Commissioner recognises that the complainant is an experienced user of FOIA, and is therefore aware that, where information is withheld by virtue of section 40(2), there is no public interest test.
16. Accordingly, the Commissioner considers the scope of his investigation is to determine whether the Home Office was entitled to apply sections 27 and/or 35 to the information withheld by virtue of those exemptions.

17. The Home Office confirmed that it considers that section 27 and section 35 apply equally to the information within the scope of the Commissioner's investigation.

## Reasons for decision

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### Section 27 international relations

18. Section 27(1) of FOIA states that:

'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,

[...]

(c) the interests of the United Kingdom abroad, or

(d) the promotion or protection by the United Kingdom of its interests abroad".

19. The Commissioner's guidance on section 27<sup>1</sup> acknowledges that there is some overlap between the different provisions set out in the exemption. It also recognises that the interests of the UK abroad, and the UK's international relations, cover a broad range of issues.
20. The Home Office provided the Commissioner with full and reasoned submissions about its application of section 27(1) to the withheld information. The Commissioner is limited in what he is able to say about those submissions without disclosing the nature of the withheld information.
21. With regard to the risk of prejudice occurring as a result of disclosure, the Home Office told the Commissioner:

"Section 27(1)(a) is engaged as disclosure of the information in the view of the Home Office would prejudice relations between the UK and Rwanda; a view shared by the FCDO [Foreign, Commonwealth

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-27-international-relations/>

& Development Office] who we have consulted for their expert views”.

22. The Home Office also confirmed the higher threshold, ie would prejudice, in relation to section 27(1)(c) and (d).
23. In order for a prejudice based exemption, such as section 27, to be engaged, the Commissioner considers that three criteria must be met:
  - Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption.
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance.
  - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., disclosure would be likely to result in prejudice or disclosure would result in prejudice. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.
24. Furthermore, the Commissioner has been guided by the comments of the Information Tribunal which suggested that, in the context of section 27(1), prejudice can be real and of substance 'if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary'.<sup>2</sup>
25. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the Home Office clearly relates to the interests which the exemptions contained at sections 27(1)(a), (c) and (d) are designed to protect.
26. With regard to the second criterion, having considered the content of the withheld information and taking into account the Home Office's submissions to him, the Commissioner is satisfied that there is a causal link between disclosure of this information and the prejudice which the three limbs of the exemption are designed to protect.

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<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i205/Campaign%20Against%20the%20Arms%20Trade;%20EA.2007.0040%20.pdf>

27. With regard to the third criterion, having duly considered the arguments put forward by the Home Office, the Commissioner's view is that the higher level of 'would occur' has been demonstrated.

28. Sections 27(1)(a), (c) and (d) are therefore engaged.

### **Public interest test**

29. Section 27(1) 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 exemptions cited by the Home Office outweigh the public interest in disclosing the information.

### **Public interest in disclosing the information**

30. The complainant did not put forward any specific public interest arguments. He simply stated that the public interest "is best served by release".

31. The Home Office recognised the general public interest in transparency and openness in Government. With respect to the information under consideration in this case, it acknowledged that disclosure of information in relation to asylum seekers and the MEDP with Rwanda could, for example, improve public understanding of the UK's asylum system and aid public debate.

32. However, it recognised that transparency and the 'right to know' must be balanced against the need to enable effective government and to serve the best interests of the public.

### **Public interest in maintaining the exemption**

33. In favour of maintaining the exemption, the Home Office told the complainant that disclosing the information would provide details of the government research, analysis and assessment on Rwanda as a partner in immigration policy.

34. It argued that it was not in the public interest to disclose information that would prejudice the UK's international relations with Rwanda and damage the UK's international relations. Furthermore, it said that it had also taken into account the strong public interest in the UK being able to protect its national interests.

35. In that respect, the Home Office explained to the complainant:

"It is important that the UK conforms to the conventions of international behaviour, avoids giving offence to other nations and retains the trust of our international partners".

36. In its submissions on the public interest, the Home Office referred the Commissioner to the decision in a previous ICO case (issued under reference FS50467452)<sup>3</sup> and to the aforementioned Information Tribunal decision, both of which it considered had relevance to this case.
37. It considered that the findings in that ICO case “equally apply in this current case” and that the overall public interest is best served by UK officials maintaining good working relationships with international partners.

### **Balance of the public interest**

38. The Commissioner acknowledges that there will always be a general public interest in transparency.
39. In the Commissioners’ view there is also a clear public interest in the disclosure of information which would provide an insight on the UK’s relations with other states. In the specific circumstances of this request, he accepts that there is a general, and legitimate, interest in the public understanding of matters relating to asylum, including the MEDP with Rwanda. Disclosure of the withheld information would directly meet this interest.
40. However, in contrast, the Commissioner considers that there is very strong public interest in ensuring that the UK’s relationships with other states is not harmed or made more difficult and less effective. This is to ensure that the UK can protect and promote its relations and interests abroad and it goes to the heart of the purpose of the exemption.
41. In the context of this request, the Commissioner accepts that disclosure of the withheld information would have a direct, and detrimental, impact on the UK’s relations with the state in question. In his view such an outcome would be firmly against the public interest not only in the context of relations between the UK and Rwanda, but potentially more broadly.
42. In light of the above, the Commissioner has concluded that the balance of the public interest favours maintaining the exemptions contained at sections 27(1)(a), (c) and (d).

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<sup>3</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2013/819674/fs\\_50467452.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2013/819674/fs_50467452.pdf)

43. In light of this decision the Commissioner has not considered the Home Office's application of section 35(1)(a) of FOIA to the same information.

## Right of appeal

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44. 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)

45. 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.
46. 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 .....**

**Laura Tomkinson  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
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Cheshire  
SK9 5AF**