

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 October 2023

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information relating to the Lockerbie bombing. The Cabinet Office refused to disclose the requested information, citing multiple exemptions including sections 23 (security bodies) and section 24 (national security) of FOIA.
2. The Commissioner's decision is that the information is exempt from disclosure under section 23 and section 24, in the alternative.
3. The Commissioner does not require further steps.

Request and response

4. On 22 March 2022, the complainant wrote to the Cabinet Office and requested:

"I understand that in the Cabinet Office temporary possession are various folders to do with the Pan Am 103 bombing that were previously available at the National Archive. They are listed on the National Archive website and comprise of the following:

<https://discovery.nationalarchives.gov.uk/details/r/C16748009>¹

<https://discovery.nationalarchives.gov.uk/details/r/C16854833>²

<https://discovery.nationalarchives.gov.uk/details/r/C17325988>³

<https://discovery.nationalarchives.gov.uk/details/r/C16561828>⁴

Given that your department "temporary possession" denies the public to currently view these folders at the National Archive, I therefore ask that copies be released to me."

5. The Cabinet Office responded on 1 July 2022. It refused to provide the requested information under the following exemptions:
- section 22(1) (information intended for future publication)
 - section 23(1) (security bodies)
 - section 24(1) (national security)
 - section 27 (international relations)
6. The complainant requested an internal review on 4 July 2022.
7. The Cabinet Office provided the outcome to its internal review on 22 September 2022. It upheld its previous position.

¹ [DISASTERS. Lockerbie: Pan Am 747 air crash; part 3b | The National Archives](#)

² [DISASTERS. Lockerbie: Pan Am 747 air crash; part 4 | The National Archives](#)

³ [DISASTERS. Lockerbie: Pan Am 747 air crash; part 5 | The National Archives](#)

⁴ [DISASTERS. Lockerbie bombing: Pan Am 747 air crash, 21 December 1988; part 3a | The National Archives](#)

Scope of the case

8. The complainant is concerned with the Cabinet Office's application of section 22 which led them to make a further request on 27 October 2022 relating to the application of section 22. The complainant has brought a separate complaint to the Commissioner about this request and it's being dealt with under the reference IC-212511-G6K7.
9. However, the complainant is, first and foremost, concerned with the Cabinet Office's decision not to disclose the information they requested on 22 March 2022.
10. The scope of the Commissioner's investigation is to determine whether the information should be withheld. He will consider the Cabinet Office's application of section 23(1) and section 24(1), as he considers these the most appropriate exemptions cited. Depending on his findings, he may go onto consider the other exemptions cited.

Reasons for decision

Section 23(1) (Security bodies)

Section 24(1) (National security)

11. The content of the requested files is obvious from their titles – they relate to the bombing of the Pan Am 103 flight and Lockerbie bombing. The Commissioner has considered similar requests⁵ in the past.
12. These exemptions have been cited, in the alternative.⁶
13. Section 23(1) states that information is exempt if it was directly, or indirectly, supplied to a public authority by, or relates to, any of the security bodies listed in 23(3) of FOIA.⁷
14. Section 24(1) states that information is exempt if it's required for the purpose of safeguarding national security which in this case means the security of the United Kingdom and its people. The exemption exists to protect all information that could impact national security, even if there

⁵ [ic-166219-l9n8.pdf \(ico.org.uk\)](#); [ic-214984-j1d8.pdf \(ico.org.uk\)](#); [ic-226506-m5p6 \(ico.org.uk\)](#)

⁶ [how sections 23 and 24 interact foi.pdf \(ico.org.uk\)](#)

⁷ [section 23\(3\) of FOIA](#)

is no evidence that an attack is imminent. Although there has to be a real possibility that the disclosure of requested information would undermine national security, the impact does not need to be direct or immediate.

15. Sections 23(1) and 24(1) are mutually exclusive which means they cannot be applied to the same information. However, the Commissioner recognises that the fact that section 24(1) can only be applied to information that is not protected by section 23(1) can present a problem if a public authority does not want to reveal whether or not a section 23 security body is involved in an issue. To overcome this problem, the Commissioner will allow public authorities to cite both exemptions 'in the alternative' when necessary. This means that although only one of the two exemptions can actually be engaged, the public authority may refer to both exemptions in its refusal notice.
16. A decision notice which upholds the public authority's position to apply section 23 and 24 in the alternative will not allude to which exemption has actually been engaged. It will simply say that the Commissioner is satisfied that one of the two exemptions cited is engaged and that, if the exemption is section 24(1), the public interest favours withholding the information.
17. As stated previously, the Commissioner has dealt with similar cases relating to the Lockerbie bombing and is familiar with the type of information that the files contain. The Commissioner won't replicate the type of information that is contained within the files within this decision notice, as he can't do so without compromising the content of the withheld information itself or undermining the purpose of citing these exemptions in the alternative. The Commissioner appreciates this will be frustrating for the complainant.
18. However, from his experience in dealing with such cases the Commissioner is satisfied that the withheld information either falls within the scope of the exemption provided by section 23(1) of FOIA or falls within the scope of the exemption provided by section 24(1) of FOIA, and that if the exemption engaged is section 24(1), then the public interest favours maintaining the exemption.
19. Therefore, the Commissioner's decision is that the Cabinet Office was entitled to rely on sections 23(1) and 24(1) in the alternative, to withhold the requested files. The Commissioner doesn't deem it necessary to consider any further exemptions cited by the Cabinet Office.

Right of appeal

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

Website: 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