

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 4 December 2023

**Public Authority:** The National Archives  
**Address:** Ruskin Avenue  
Kew  
Richmond  
Surrey TW9 4DU

### Decision (including any steps ordered)

---

1. The Commissioner's decision is that the National Archives is entitled to withhold information in 'FCO 40/3624/1 - Closed extracts: Folios 5, 8 and attachments From the open parent piece FCO 40/3624: Sino-British Joint Declaration on Hong Kong', under section 27(1)(a) of FOIA. This is because disclosing it would prejudice relations between the UK and other States. The National Archives breached section 17(1) of FOIA as it didn't provide a refusal notice within the required timescale.
2. It's not necessary for the National Archives to take any corrective steps.

### Request and response

---

3. The complainant requested 'FCO 40/3624/1 - Closed extracts: Folios 5, 8 and attachments From the open parent piece FCO 40/3624: Sino-British Joint Declaration on Hong Kong' from the National Archives (TNA) on 28 February 2023.
4. TNA's final position was that the requested information was exempt from disclosure under section 27(1)(a) of FOIA.

## Reasons for decision

---

5. This reasoning covers TNA's application of section 27(1)(a) to the information the complainant has requested. It also covers the timeliness of TNA's refusal.
6. Under section 27(1)(a), information is exempt information if its disclosure would, or would be likely to, prejudice relations between the United Kingdom and any other State.
7. The Commissioner considers three tests when he's considering whether information engages the exemption under section 27(1)(a).
8. First, TNA's position is that disclosing the withheld information would be likely to would harm the UK's relations with China and Hong Kong. The Commissioner is satisfied that the harm TNA envisions is one that section 27 is designed to protect, namely the relations between the UK and other States.
9. Second, the Commissioner's satisfied that there's a causal link between disclosing the information and the envisioned harm. TNA has summarised the withheld information for the Commissioner. He agrees with TNA that the withheld information is information about which the parties would have a deeper expectation of confidentiality or is more sensitive.
10. TNA's submission goes into more detail about the information it's withholding and why disclosing that information would prejudice the UK's relations the other States. However, to protect the confidentiality of the withheld information the Commissioner doesn't intend to detail the information or reasoning in this notice.
11. The Commissioner's satisfied that the parties involved would have a reasonable expectation that sensitive matters discussed would remain confidential and wouldn't be disclosed to the wider world under FOIA. If it were to be disclosed, relations between the parties would become more difficult, trust between the UK and the other States would be diminished and future discussions would become less candid.
12. Finally, regarding the level of likelihood, TNA's view is that the prejudice **would** occur as a consequence of disclosure. To support that view, TNA has referred to the Information Tribunal's decision in EA/2006/0040. The Information Tribunal argued that "in our judgment prejudice can be real and of substance if it makes relations more difficult or call for particular diplomatic response to contain or limit damage which would not otherwise have been necessary." TNA has also referred to the Commissioner's decision in FS50863348. The Commissioner had

explained that “if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not otherwise have been necessary,” the prejudice can be real and of substance.

13. On the basis of the information being withheld and the earlier decisions that TNA has discussed, the Commissioner accepts that the envisioned prejudice is more likely to happen than not and that the higher threshold of likelihood is met.
14. Because the above three tests have been met the Commissioner finds that TNA has correctly applied section 27(1)(a) to the information it's withholding. He's gone on to consider the related public interest test.

### **Public interest test**

15. In their complaint to the Commissioner, the complainant says the public interest arguments for preventing the UK from “losing a right and preventing unjust war or armed conflict are so compelling it's a no brainer.”
16. The Commissioner has found that disclosing the withheld information would be likely to prejudice international relations. He hasn't been presented with a public interest argument for disclosure that's so compelling that it outweighs the extremely strong public interest in the UK's relationship with China and Hong Kong remaining open and cooperative.
17. The public interest in transparency has been met satisfactorily through other information in the parent file that's open to the public and the Commissioner's satisfied that the balance of the public interest favours maintaining the section 27(1)(a) exemption.
18. The Commissioner's decision is that TNA correctly applied section 27(1)(a) of FOIA to the information it's withholding and that the public interest favours maintaining the exemption.

### **Procedural matters**

---

19. In respect of exempt information, section 17(1) of FOIA requires that a public authority provide an applicant with a refusal notice within 20 working days of receiving their request.

20. The Freedom of Information (Time for Compliance with Request) Regulations 2004 introduced a variation to the 20-working day limit for information contained in public records – the variation is a further 10 working days.
21. TNA has acknowledged that it received the request on 28 February 2023.
22. It says that, in accordance with section 66 of FOIA, it consulted with the transferring department (the Foreign, Commonwealth and Development Office - FCDO) and concluded that the information contained in the record was exempt information under section 27 (1)(a) of FOIA.
23. Section 27(1)(a) is a qualified exemption and therefore TNA and FCDO conducted a public interest test, which was approved by the Advisory Council on National Record and Archives (ACNRA). ACNRA's members independently evaluate this process, and the Secretary of State, as required under section 66 of the Act.
24. TNA says that in cases such as this one, where the information involves considering a qualified exemption and complex public interest test considerations, the process can be lengthy. TNA sent a section 17 refusal notice to the complainant on 4 August 2023.
25. TNA responded within 106 working days and has acknowledged that this is non-compliant with the timeframes set out in section 10 [and in section 17] of FOIA and the Freedom of Information (Time for Compliance with Request) Regulations 2004.

## **Right of appeal**

---

26. 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)

27. 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.
28. 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**

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**