

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 March 2015

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

Decision (including any steps ordered)

1. The complainant has requested records of exchanges between Tony Blair and George W Bush that took place in the run up to the invasion of Iraq in March 2003. The Cabinet Office cited provisions of section 27 (International relations exemption) as its basis for refusing to provide this information. It upheld this position following internal review.
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 27(1)(a) and section 27(1)(c) as its basis for refusing to provide the requested information.
3. No steps are required.

Request and response

4. On 10 June 2014, the complainant requested information of the following description:

"I understand there is some reluctance to release the exchanges between Tony Blair and the President of the United States in the lead up to the Iraq war.

There is an overriding public interest in this matter and I would be grateful if you could release the information to me".
5. On 16 June 2014, the Cabinet Office responded. It refused to provide the requested information. It cited the following exemptions within section 27 (international relations exemption) as its basis for doing so:

- section 27(1)(a),(b),(c) and (d); and
 - section 27(2).
6. The complainant requested an internal review on 16 June 2014. The Cabinet Office sent him the outcome of its internal review on 15 July 2014. Focussing on section 27(1)(a), (b), (c) and (d), it upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 5 August 2014 to complain about the way his request for information had been handled. He said he wished to see all the information caught by the scope of the request and was not satisfied that the public interest could be met by the disclosure of the gist of conversations or correspondence between George W Bush and Tony Blair.
8. The Commissioner has therefore considered whether the Cabinet Office is entitled to rely on all the provisions of section 27 that it has cited as its basis for withholding the requested information. The Cabinet Office admitted to the Commissioner that it had not addressed section 27(2) in its internal review letter to the complainant although it still wished to rely on this exemption.

Reasons for decision

Background

9. The information in question and similar information has been considered at the Information Tribunal in a case (the "Plowden case") involving the Foreign and Commonwealth Office ("FCO").¹ Paragraphs 15-24 of the judgement, which can be accessed at Note 1, sets out the key stages of the appeal in the Plowden case. The judgement at Note 1 also sets out the Tribunal's latest view on the merits of the Plowden case.

¹ . http://www.informationtribunal.gov.uk/DBFiles/Decision/i1177/EA-2011-0225_0228_28-01-2014.pdf

10. The key issue under consideration in this case follows on from the Tribunal's comment at paragraphs 37 and 38 of judgement linked at Note 1. Here the Tribunal states:

"For all those reasons [set out in previous paragraphs of the judgement] we conclude that the FCO was entitled to withhold all the disputed information in July 2010 and accordingly that the FCO's appeal succeeds and Mr Plowden's fails.

We have stressed throughout this decision and repeat again that it relates back to the situation as it stood in July 2010. Obviously the public interest balance can change over time. Since July 2010, over three years have passed, Alistair Campbell's diaries have been published, and American troops have left Iraq; eventually decisions will be made on "declassification" and the Iraq Inquiry report will be published; all these are matters which may impinge one way or another on that public interest balance in the future should another similar request be made".

11. In summary, the Tribunal in the Plowden case, which related to broadly similar information, decided that the exemptions were engaged as at the time of that request and that the public interest in maintaining those exemptions outweighed the public interest in disclosure at the time of the request.
12. The request under consideration in this case was made in June 2014. Following the most recent ruling in the Plowden case, the Commissioner has therefore considered whether the passage of time means that a) the exemptions are no longer engaged and b) where they are still engaged, whether the balance of public interest now favours disclosure.

Section 27 International Relations

13. Section 27(1) provides 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,
- (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."

14. Section 27(2) provides that –

“Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.”

15. In other words, section 27(1) focuses on the effects of the disclosure of the information, while section 27(2) relates to the circumstances under which it was obtained and the conditions placed on it by its supplier, and does not relate primarily to the subject of the information or the harm that may result from its disclosure. In the Information Commissioner's view, such information is confidential for as long as the state, organisation or court expects it to be so held.

The Cabinet Office's arguments

16. The Cabinet Office set out a series of arguments for each separate exemption. It argued that all of the information was exempt under section 27(1)(a) and section 27(1)(c). It explained that some of the information was exempt under section 27(1)(b) and section 27(1)(d). It also argued that section 27(2) applied to some of the information.

17. It explained that section 27(1)(a) and section 27(1)(c) applied to all the information because disclosure would contravene the norms of diplomatic behaviour and would undermine the UK's relationship with the United States. This in turn would undermine the interests of the UK abroad where damage to our relationship with such a key international partner were to arise.

18. In support of its position with regard to section 27 in general it referred to the Tribunal's comments in the Plowden case where at paragraph 25 it said:

“It is rightly not in dispute that these exemptions apply to the disputed information. In relation to section 27(1)(a), we consider below in the context of the public interest balance the nature and extent of the prejudice to our foreign relations likely to flow from disclosure. It is obvious in our view that anything recorded as being said during the conversation by Mr Bush must come within section 27(2); we also agree with the FCO that anything said in response which itself reflects what Mr Bush was saying must also come within that section”.

19. It also drew attention to evidence submitted in the Plowden case by an FCO official. At paragraph 21, the Tribunal recounts:

“But we accept the evidence of Mr Lapsley that there would have been a significant risk of a “cooling off” in the extent to which the US would have co-operated with and confided in the UK government in both the

diplomatic and security fields and a significant risk that access and candour would have been restricted. In any event, we readily accept that the US would have been upset and somewhat shocked by the disclosure of the disputed information and, to that extent at least, relations between the two countries would have been prejudiced”.

20. At paragraph 29, it says:

“In this context [communications between the US President and the UK Prime Minister on a sensitive topic] we are bound to accept the FCO’s evidence about the very close and special relationship between the two countries and between the positions of PM and President as their respective leaders. We also accept the evidence that the US have a very strong expectation that an official record of a conversation like this one would remain confidential and not be released to the public and we note in this context the tighter freedom of information regime in relation to such records that applies in the US described at para 31 of the FCO’s open submissions”.

21. In the Commissioner’s opinion, the Cabinet Office is entitled to rely on the opinion of the government department that is well placed to consider the impact of disclosure upon international relations, namely the FCO. Although neither George W Bush nor Tony Blair are now in office, the opinion of the FCO as to the negative consequences of disclosure remains compelling. The Commissioner recognises that there are strongly held views about the decision to go to war against the Iraqi regime of March 2003. However, the Commissioner considers that it remains almost without question that disclosure of the withheld information would have the adverse consequences described in the section 27 exemptions cited. This is particularly the case with reference to the UK’s relationship with the US, a key strategic partner that has clear expectations of confidentiality in discussions held at the highest level between respective political leaders.

22. In light of the above, the Commissioner has concluded that all the withheld information engages the exemptions at section 27(1)(a) and section 27(1)(c). He has not considered in detail whether section 27(1)(c), section 27(1)(d) and section 27(2) are engaged in relation to the information to which they have been applied but he is mindful of the Tribunal’s comments at paragraph 25 of the Plowden case.² He also notes that the complainant’s arguments focus on the balance of public

²“It is rightly not in dispute that these exemptions apply to the disputed information”.

interest rather than the engagement of the exemptions – his request refers to the “overriding public interest in disclosure” of all the requested information.

Balance of public interest test

23. By virtue of section 2 of the FOIA, the Cabinet Office can only rely on the provisions of section 27 that it has cited if the public interest in doing so outweighs the public interest in disclosure.
24. The arguments for and against disclosure have been set out in considerable detail in the judgement at Note 1 and the Commissioner does not think it fruitful to restate them here. The point which was not applicable to the Plowden case but which is very much applicable here is this: has the passage of time altered the balance of public interest such that it now favours disclosure?

The complainant's arguments

25. The complainant made the following powerful and succinct argument to the Commissioner:

“In general I share the view that such conversations should remain confidential but there are such bad feelings over this war and the belief that Blair was too ready to support Bush that every last crumb of information should be in the public domain. I therefore believe that the public interest of disclosure should override any other considerations.”

26. He argued that the passage of time had tipped the balance in favour of disclosure.
27. He also raised particular concerns about the proposed disclosure of the gist of the discussions in question rather than the full detail.

The Cabinet Office's arguments

28. The Commissioner asked the Cabinet Office specifically to address the question of the passage of time as referred to in paragraphs 37 and 38 of the Tribunal's decision in the Plowden case.
29. It argued that the full picture was being considered by the Chilcot Inquiry (also known as the Iraq Inquiry) and that disclosure of the requested information would provide only a partial picture. Without context, any disclosure would be an unhelpful sidetrack to the Chilcot Inquiry report and may well delay its final publication, contrary to the public interest. At this late stage of the Inquiry's activities prior to publication, there is a strong public interest in avoiding further delay.

30. It noted further public interest factors against disclosure:

- In diplomatic terms, the information is of relatively recent provenance;
- The information concerns exchanges at the highest level with the UK's key international partners;
- The remedial measures required to rebuild the damage that would inevitably arise to our relationship with international partners would offset any benefits that could arise from disclosure.
- The probationary period that would occur while the aforementioned remedial measures were undertaken would mean harm to the levels of co-operation between the UK and key international partners during this period. It described these as "opportunity costs".

31. It also drew attention to attention to the Tribunal's comments in the Plowden case at paragraph 28:

"[the request in the Plowden case] had to be considered in the light of the fact that the Iraq Inquiry had been established a year before and was in the process of taking evidence. The disputed information was part of a mass of material which had been provided to the Inquiry by the Government; its existence only emerged because of the Inquiry process; it was still "classified" but the Inquiry had been able to put it to use in its questioning; the Inquiry was considering the whole picture and in due course would be able to make appropriate use of the disputed information in deciding what had happened and what lessons should be drawn and, in so doing, to put it in its proper context. These considerations in our view substantially reduced the weight of the public interest in disclosure of the disputed information in July 2010 under a FOIA request. It follows that we cannot accept Mr Plowden's submission that the existence of the Iraq Inquiry is irrelevant to our considerations."

32. Further the Cabinet Office drew attention to the Tribunal's comments in the same case at paragraph 33:

"Having regard to all the circumstances and in particular the considerations set out in paras 27 to 32 above we have come to the view that, although the public interest on both sides was weighty, the public interest in maintaining the exemptions outweighed that in disclosing the disputed information at the relevant date; the overwhelming considerations are the highly confidential nature of the disputed information and the existence of the Chilcot Inquiry and the stage it had reached. It follows that in our view the FCO [the public

authority in the Plowden case] was entitled to withhold the disputed information.”

The Commissioner's position

33. The Commissioner has accepted the Tribunal's decision in the Plowden case. He considers that it gave appropriate weight to all the relevant factors when determining the balance of public interest and that its conclusion, in favour of maintaining the exemptions cited, was correct.
34. As noted above, he does not propose to rehearse the arguments made in that case but will, instead, focus on the key point for consideration here: does the passage of time affect the balance of public interest?
35. The Tribunal in the Plowden case referred to a number of factors which might affect the balance of public interest in future: "Alistair Campbell's diaries have been published, and American troops have left Iraq; eventually decisions will be made on 'declassification' and the Iraq Inquiry report will be published".
36. The Commissioner notes that senior figures at the heart of the UK government of the time (including Tony Blair) have published memoirs which cover the period in question. He also notes that American combat forces have left Iraq. However, the report of the Iraq Inquiry has not yet been published.
37. The Iraq Inquiry was set up "to examine the United Kingdom's involvement in Iraq, including the way decisions were made and actions taken, to establish as accurately and reliably as possible what happened, and to identify lessons that can be learned. The Inquiry is considering the period from 2001 up to the end of July 2009".³
38. When the Inquiry was first established, its Chair, Sir John Chilcot stated: "The inquiry will have access to all the information held by the Government and may ask any British citizen to appear before it. In the Prime Minister's words – I quote: 'No British document and no British witness will be beyond the scope of the inquiry' – end of quote".
39. In his most recent public statement, Sir John Chilcot explained that the Inquiry is in its final stages and the process of "Maxwellisation" is underway.⁴ This is where individuals who are provisionally the subject of

³ <http://www.iraqinquiry.org.uk/>

⁴ <http://www.iraqinquiry.org.uk/media/55339/2015-01-20%20Chilcot%20to%20Cameron.pdf>

criticism in the report are given the opportunity to respond to those criticisms prior to publication. Sir John also explained that the Inquiry's report would not be published before the UK General Election in May 2015.

40. On the Inquiry's FAQ page, the following question is asked and answered:

"Is the report being delayed because the Government won't declassify Cabinet minutes or records of Blair-Bush conversations?"

No. In his letter of 20 January 2015 to the Prime Minister [see Note 3], Sir John Chilcot confirmed that it has been agreed that the Inquiry will publish 29 Notes from Mr Blair to President Bush, subject to a very small number of essential redactions, alongside its final report. Agreement has also been reached on what material the Inquiry will publish in relation to records of conversations between Mr Blair and President Bush."⁵

41. This statement clearly includes information caught by the scope of the request under consideration in this case.
42. There remain very compelling arguments in favour of disclosure in this case. The public has a clear right to know as much as possible about the government's decision making in the run up to the invasion of Iraq in March 2003. The complainant has asked the Cabinet Office to disclose the information without any redaction because, in his view, there are overwhelming public interest arguments in doing so.
43. While recognising the strength of those arguments, the Commissioner considers that the public interest is best served by awaiting the Inquiry's report. Although it will not be published before the UK General Election in May 2015, it is likely to be published soon after.
44. The Inquiry has considered the requested information in its fullest context. Inevitably, the Commissioner does not have the benefit of doing so. He does not, for example, have access to the range of witnesses who gave evidence to the Inquiry.
45. The Commissioner considers that the public interest is currently best served by allowing the Inquiry to publish the information which it is prepared to publish as and when it is in a position to publish it. He

⁵ <http://www.iraqinquiry.org.uk/faq.aspx#H18>

agrees with the Cabinet Office that publication of the withheld information in isolation would be a distraction from the report itself. Such a distraction from a much-anticipated report is contrary to the public interest. The Commissioner accepts that it would do damage to international relations to publish the information out of context

46. The Inquiry has already made the decision to publish a large proportion of the requested information with other information (see Note 4) when it publishes its report. It may well be that the Inquiry's report prompts further requests under the FOIA to the Cabinet Office or to other public authorities where individuals are dissatisfied with the extent of the Inquiry's eventual disclosure. Future possible dissatisfaction is not a factor which the Commissioner can take into consideration at this juncture.

Section 27 - Conclusion

47. In light of the above, the Commissioner has concluded that all the withheld information is exempt from disclosure under section 27(1)(a) and section 27(1)(c) and that the public interest in maintaining these exemptions outweighs the public interest in disclosure. He has considered the impact of the passage of time and whether that has changed the balance of public interest such that it favours disclosure. There are powerful competing public interests in this case. There remains a potential for harm to international relations following disclosure but there is also a compelling public interest in providing as much information as possible about the UK government's decision making process in the run up to the invasion of Iraq in March 2003. The Commissioner considers that the imminent publication of the Iraq Inquiry report will serve the compelling public interest in disclosure. It remains open to anyone following the publication of that report to make a request for information under the FOIA should they wish to do so.
48. The Commissioner has not gone on to consider any other of the exemptions cited by the Cabinet Office because of his conclusions in relation to section 27(1)(a) and section 27(1)(c).

Right of appeal

49. 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

50. 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.
51. 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

Graham Smith
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