

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 April 2017

Public Authority: Foreign and Commonwealth Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant submitted a request to the Foreign and Commonwealth Office (FCO) for correspondence between it and the US State Department concerning a document known as 'The Abu Nidal Handbook.' The FCO provided the complainant with some of the information falling within the scope of this request but sought to withhold the remainder on the basis of sections 23(1) (security bodies) and 27(2) (international relations) of FOIA. The Commissioner has concluded that the FCO is entitled to rely on these exemptions to withhold the remaining requested information.

Request and response

2. The complainant submitted the following request to the FCO on 30 August 2016:

'I would like correspondence between the FCO and the State Department concerning a document known as "The Abu Nidal Handbook".¹

¹ Abu Nidal was the leader of a Palestinian terrorist group. He died in Baghdad in 2002.

This document would have been produced sometime between 1986 and 1991 and would have been passed to the FCO via the State Department.'

3. The FCO responded on 27 September 2016 and confirmed that it held information falling within the scope of this request but it considered this to be exempt from disclosure on the basis of section 27 (international relations) of FOIA and needed further time to consider the balance of the public interest test.
4. The FCO issued a similar letter on 25 October 2016 before providing the complainant with a substantive response to his request on 16 November 2016. The FCO explained that some information would be disclosed and this would be provided to the complainant, which it subsequently was. However, the FCO explained that it considered the remainder of the information to be exempt from disclosure on the basis of section 23 (security bodies) and section 27(2) of FOIA. In respect of the latter exemption, the FCO confirmed that it had concluded that the public interest favoured maintaining the exemption.
5. The complainant contacted the FCO on 17 November 2016 and asked it to conduct an internal review.
6. The FCO informed him of the outcome of the internal review on 18 January 2017. The review upheld the application of both exemptions.

Scope of the case

7. The complainant contacted the Commissioner on 9 February 2017 in order to complain about the FCO's reliance on section 23(1) and section 27(2) to withhold some of the information falling within the scope of his request.

Reasons for decision

Section 23(1) – information supplied by or relating to bodies dealing with security matters

8. The FCO explained that some of the withheld information was exempt from disclosure on the basis of section 23(1). This provides an exemption which states that:

'Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).'

9. To successfully engage the exemption at section 23(1), a public authority needs only to demonstrate that the relevant information was directly or indirectly supplied to it by, or relates to, any of the bodies listed at section 23(3).² This means that if the requested information falls within this class it is absolutely exempt from disclosure under FOIA. This exemption is not subject to a balance of public interests test.
10. When investigating complaints about the application of section 23(1), the Commissioner will need to be satisfied that the information was in fact supplied by a security body or relates to such a body, if she is to find in favour of the public authority. In certain circumstances the Commissioner is able to be so satisfied without herself examining the withheld information. Where it appears likely that the information would engage the exemption, the Commissioner may accept a written assurance from the public authority provided by someone who, because of their seniority and responsibilities, has regular access to information relating to the security bodies and who has first-hand knowledge of the relationship between the public authority and those bodies. Furthermore, they must themselves have reviewed the disputed information in the particular case.
11. In the circumstances of this case, the FCO provided the Commissioner with a letter of assurance from a relevant senior official at the FCO which confirmed that he had examined the withheld information and was satisfied that it contains either information received from one of the bodies listed in section 23(3) or is directly related to them. This official occupies a senior position at the FCO and meets the Commissioner's criteria outlined in the preceding paragraph.
12. Accordingly, the Commissioner accepts that, in the circumstances of this case, the assurance she has received from the senior official at the FCO regarding the nature of the information withheld on the basis of section 23(1) is sufficient for her to conclude that this information is exempt from disclosure on the basis of that exemption.

Section 27(2) – international relations

13. The FCO argued that the remaining withheld information was exempt from disclosure on the basis of section 27(2) of FOIA. This section states that:

² A list of the bodies included in section 23(3) of FOIA is available here: <http://www.legislation.gov.uk/ukpga/2000/36/section/23>

'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'

14. Section 27(3) clarifies that:

'For the purposes of this section [ie section 27(2)], any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.'

The FCO's position

15. FCO argued that the information withheld on the basis of this exemption was given in confidence to UK officials by US officials and furthermore the US would still expect the UK to continue to protect its confidentiality. The FCO provided the Commissioner with further submissions, which referenced the content of the withheld information, in order to support this position. Such submissions also set out why, in the FCO's view the information remained sensitive despite the passage of time. Given their content such submissions are not referred to in this decision notice.

The complainant's position

16. The complainant disputed the FCO's basis for relying on section 27(2). He noted that the information in question was nearly 25 to 30 years old and concerns a criminal organisation that is now defunct. Furthermore, the complainant emphasised that Abu Nidal, the leader of the Abu Nidal Organisation (ANO) had died in 2002 and the countries that supported him, including Syria, Libya and Iraq have seen massive changes that has resulted in the governments either being completely replaced or incapable of carrying out any basic governance duties. Consequently, the complainant argued that the confidentiality of this information could only be of historical importance and that this information could be disclosed without undermining UK and US relations.

The Commissioner's position

17. As section 27(3) explains information will be exempt under section 27(2) as long as the terms on which the information was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the state, organisation or court to expect that it will be so held. In the Commissioner's view this requires a consideration of both the content of the information itself and the context within which it is was provided. In the circumstances of this

case, in the Commissioner's view it is important to consider whether the duty of confidence in relation to the information has lapsed over time.

18. Having considered the submissions by both parties, and the withheld information itself, the Commissioner is persuaded that this information is still confidential. It is clear to the Commissioner that the withheld information was provided to the UK in strict confidence and concerns issues of particular sensitivity. The Commissioner acknowledges that given the developments described by the complainant it would perhaps seem reasonable to conclude that this information is of historical value only. However, despite the developments described by the complainant, including the death of Abu Nidal, the Commissioner is satisfied that, based upon the submissions made to her by the FCO, the withheld information remains sensitive. This is in contrast the Commissioner would note to the parts of the requested information that were disclosed to the complainant. The withheld information is therefore exempt from disclosure on the basis of section 27(2).

Public interest test

19. Section 27(2) is a qualified exemption and thus subject to the public interest test. Therefore, in relation to the information which the Commissioner accepts is exempt from disclosure on the basis of section 27(2). She must consider whether the public interest in favour of maintaining the exemption outweighs the public interest in disclosing the information.
20. The FCO acknowledged that disclosure of information would add to the public's understanding of this subject. More broadly, it accepted that there is a public interest in a greater understanding of the UK's foreign relations and the information could also provide the public with a better historical understanding of Britain's conduct overseas.
21. However, the FCO emphasised that this information was given in confidence to UK officials and the US would expect the UK to continue to protect its confidentiality. It argued that disclosure would be prejudicial to the UK's relations with the US and it had therefore concluded that withholding the material served the public interest better than release in this instance.
22. The Commissioner accepts that disclosure of the withheld information would provide the public with a genuine insight into discussions between the UK and US concerning the fight against the ANO and international terrorism for the period in question. Furthermore, in the Commissioner's view there is a clear public interest in the public being able to better understand the UK government's previous actions in relation to the ANO. Consequently, the Commissioner believes that there is a weighty public interest in the disclosure of this information. However, in the

Commissioner's opinion this is outweighed by the public interest in maintaining the exemption. She has reached this conclusion given the importance of both protecting the UK's ability to receive confidential information from key allies and because of the public interest in protecting the content of the withheld information which remains sensitive despite the passage of time. Therefore, in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest disclosing this information.

Right of appeal

23. 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

24. 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.
25. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF