

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 January 2018

Public Authority: Department for Education
Address: Sanctuary Buildings
Great Smith Street
London
SW1 3BT

Decision (including any steps ordered)

1. The complainant has requested information on the vote cast by the United Kingdom on the installation of the Kingdom of Saudi Arabia to the UN Commission on the Status of Women. The request was refused under section 27 – international relations. During the course of the Commissioner's investigation the Department also applied section 40(2) to withhold the names of junior officials.
2. The Commissioner's decision is that the Department is entitled to rely on section 27 to withhold the majority of the information and section 40(2) to withhold the remaining information.
3. The Commissioner does not require the public authority to take any further action in this matter.

Request and response

4. The request was made to the Government Equalities Office (GEO). The Department for Education (DfE) explained that the GEO is, what it described as, a 'floating department' which reflected its cross government policy remit. One of the GEO's ministers, the Minister for Women and Equalities is also the Secretary of State for Education and as a consequence the DfE accepts responsibility for dealing with requests made to the GEO.
5. On 26 April 2017 the complainant requested information of the following description:

"Under the terms of the Freedom of Information Act, I would like to ask for access to the decision on the vote cast by the United Kingdom in ECOSOC regarding the candidature of the Kingdom of Saudi Arabia to CSW.

Given the salience of the candidature, I assume a decision was taken either at ministerial or at senior official level and instructions were then communicated to the UK Mission in New York. If the decision itself is not recorded in written form (e.g. by endorsement of a submission), I would instead ask for a copy of the instructions sent to the UK Mission."

6. On 25 May 2017 the DfE responded. It confirmed that the GEO held information relevant to the request but withheld the information under the exemption provided by section 27(1)(a), (b), (c) and (d) – international relations.
7. The complainant requested an internal review on 28 May 2017. The DfE sent him the outcome of the internal review on 28 June 2017. It upheld the original position.
8. During the course of the Commissioner's investigation the DfE also applied section 27(2) – confidential information obtained from any other state to some of the information, and section 40(2) to withhold the names of junior civil servants.

Scope of the case

9. The complainant contacted the Commissioner on 28 June 2017 to complain about the way his request for information had been handled. He argued that even if the exemption provided by section 27(1) was engaged the public interest favoured its disclosure.
10. The Commissioner considers the matter to be decided is whether any of the exemptions provided by section 27(1) or (2) are engaged and if so whether the exemption can be maintained in the public interest. If not covered by the application of section 27, the Commissioner will also consider whether the names of civil servants can be withheld under section 40(2).

Reasons for decision

Section 27 – international relations

11. Section 27(1) of FOIA states that information is exempt if its disclosure 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.
12. Section 27(2) states that information is also exempt if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.
 13. There is inevitably some overlap between the exemptions provided by section 27(1). For example it is quite likely that if disclosing a particular piece of information damaged the UK's relations with a foreign government, the UK's interests may suffer as a result and that it would become more difficult to promote the UK's interests within that country. Similarly, to disclose information considered to be confidential by the state which provided it to the UK (and so exempt under section 27(2)) is also likely to damage the UK's relations with that country and prejudice our interests. Therefore it makes sense for the Commissioner to consider the overall impact that disclosure would have and then determine which of those effects, if any, would prejudice the different aspects of international relations listed in the exemption above.
 14. To understand the DfE's arguments for applying the exemption it is necessary to set out the context within which the information was created. The vote referred to in the request was to approve new members onto the United Nations Commission on the Status of Women, which is itself a functional commission of the Economic and Social Council (ECOSOC). In broad terms, its function is to promote gender equality and the empowerment of women throughout the world. It is understood that when new members are appointed there is only one candidate for each available post and therefore usually new members are elected unanimously without any ballot. However in April 2017 the United States of America (USA) called for a vote on the application of new members. The Kingdom of Saudi Arabia was one of the candidates in that election and the press widely reported the approach adopted by the USA as being criticism of the Kingdom of Saudi Arabia's record on the treatment of women. The ballot is secret and those voting only have the option to either vote in favour of the candidate or to abstain.
 15. It is reported that ultimately 47 out of the 54 countries represented on the ECOSOC voted in favour the Kingdom of Saudi Arabia's membership, meaning that seven countries abstained. The British Government has always refused to say whether it voted for the Kingdom of Saudi Arabia, or abstained. It is understood the majority of the other countries

involved have also maintained the confidentiality of the voting process, however the position of the Belgium government was revealed and attracted a large amount of media attention. The press coverage of the appointment of the Kingdom of Saudi Arabia to the Commission on the Status of Women was generally negative. In broad terms the reports, available through basic internet searches, express surprise over the appointment and go on to highlight the Kingdom's record on gender equality.

16. The requested information consists of a brief email exchange between an officer at the United Kingdom Mission to the United Nations in New York and an officer at the GEO. As neither email taken on its own answers the complainant's request the Commissioner has considered the effect of disclosing the full exchange.
17. It is clear that the Kingdom of Saudi Arabia is sensitive to the criticism regarding its record on women's rights. Therefore disclosing any information that relates to the vote called by the USA or the UK's position on that vote, regardless of what that position was, raises the risk of prejudicing the UK's relation with the Kingdom of Saudi Arabia.
18. It must also be recognised that the UK maintains an important trading relationship with the Kingdom of Saudi Arabia and that it is also an important security partner of the UK. Therefore damage to that relationship would also prejudice the UK's interests abroad and the promotion of such interests abroad.
19. As previously discussed the ballot which took place was a secret one. Therefore disclosing the requested information would undermine the integrity of that process and so run the risk of prejudicing the UK's relationship with the United Nations, an international organisation covered by section 27(1)(b).
20. It can be seen that there are at least theoretical grounds for applying all the exemptions provided by section 27(1). However whether those exemptions are in fact engaged depends on the contents of the actual information. Unfortunately the Commissioner is unable to go into any detail as to what that information is in the open version of this notice. She has therefore produced a short confidential annex which will be available exclusively the DfE. The annex will also address the DfE's application of section 27(2).
21. In considering the DfE's application of these exemptions the Commissioner has had regard for the fact that the DfE has applied the exemptions on the basis that the alleged prejudice is only 'likely' to occur as opposed to the higher threshold, i.e. that the harm 'would' occur. Nevertheless the lower threshold still requires the DfE

demonstrate that the probability of the prejudice occurring is significant and weighty, even if the risk falls short of being more probable than not.

22. The Commissioner will also have regard for previous Tribunal decisions regarding what may constitute a prejudice when looking at international relations. In particular the Commissioner has considered the Tribunal's decision in the case Campaign Against the Arms Trade (CATT) v the Information Commissioner and the Ministry of Defence - EA/2006/0040 – 26 August 2006. In respect of prejudicing relations with another state the Tribunal concluded the prejudice would be real and of substance if it made relations more difficult or required a diplomatic response to contain or limit damage. In respect of section 27(1)(c) and (d) the Tribunal found that a public authority does not necessarily have to demonstrate an actual harm in terms of a quantifiable loss. It considered that the interests of the UK abroad, or the promotion of those interests, would be prejudiced if disclosing the requested information was to expose those interests to the risk of an adverse reaction from another state.
23. Having considered the content of the email exchange and having applied the principles above the Commissioner finds that the exemptions provided by sections 27(1) and (2) are engaged.
24. Before going on to look at the public interest test the Commissioner notes that when raising his concerns with her the complainant argued that the DfE had introduced its own, lower, test in respect of the likelihood of the alleged prejudice occurring by using the term 'could', i.e. that the disclosing the information "could harm our relations with ...". However having considered the DfE's submission to the Commissioner she is satisfied that the department understands the correct tests to be applied.

Public interest test

25. Section 27 is subject to the public interest test. This means that even though the exemptions it provides are engaged, the information must still be disclosed unless in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosure.
26. There will always be a general public interest in disclosing information to promote transparency and accountability. The DfE has also acknowledged that there is a value in increasing public knowledge of the UK's relations with other member states of the UN and with the Kingdom of Saudi Arabia.
27. The complainant has argued that disclosing the requested would allow a proper assessment of the UK government's stance on the equality of women. He pointed out that the election of the Kingdom of Saudi Arabia

to the Commission on the Status of Women was very controversial bearing in mind the country's record on the treatment of women. He therefore argued that there is a very weighty public interest in understanding whether the UK was prepared to support the Kingdom of Saudi Arabia membership of the Commission on the Status of Women.

28. The Commissioner recognises that there is merit in the complainant's arguments. The UK government publicly promotes gender equality and the existence of the GEO itself is evidence of this. There is therefore a clear public interest in knowing whether the UK supported the application of the Kingdom of Saudi Arabia and the reasons for the position taken. However these arguments have to be weighed against those in favour of maintaining the confidentiality of the ballot and avoiding the risk of prejudicing the interests protected by section 27.
29. The value in maintaining the exemptions is clearly that in preventing the potential prejudice to the UK's relations with the Kingdom of Saudi Arabia, the UN and other member states. Certainly as far as our relations with the Kingdom of Saudi Arabia is concerned the Commissioner accepts the importance of that country to the UK economy, the defence industry and its role as a security partner of the UK.
30. The Commissioner also notes the Prime Minister's press statement, of 27 September 2017, in response to the Saudi government's lifting of the ban on women driving in which she says that the,

"The UK will continue to work in close partnership with Saudi Arabia as it builds on this progress and delivers its ambitious programme of reform ..."

It should also be recognised that any prejudice to the UK's relationship with the Kingdom of Saudi Arabia would weaken the UK's influence on the country.

31. In respect of the application of section 27(2) the Commissioner has had regard for the previous decision of the Tribunal in the CATT case referred to in paragraph 22. In that case the Tribunal found that there was an inherent disservice to the public interest in flouting international confidences. It is considered important that other states feel the UK can be trusted to respect their confidences. Without such assurance the flow of information to the UK would be hindered and UK would be unable to build new relations or maintain existing ones.
32. The timing of the request also has an important bearing on the severity of the prejudice that would be suffered. The request was made on 26 April 2017, which was only seven days after the election took place. To disclose the UK's voting position at a time when the decision to appoint the Kingdom of Saudi Arabia to the Commission on the Status of Women

was in the media spotlight would have increased the potential for prejudicing relations with the Kingdom and would also have an impact of the prejudice caused by releasing the information exempt under section 27(2) due to how recently the information in question had been confided to the UK government.

33. In light of the above the Commissioner finds that the public interest in maintaining each of the exemptions is greater than the public interest in disclosure.

Section 40(2) – personal information

34. Although section 27 exempts the majority of the information contained in the email exchange the Commissioner has gone on to consider whether the names and contact details of the junior officials involved in those exchanges is exempt under section 40(2).
35. So far as is relevant, section 40(2) states that information is exempt if it is the personal data of someone other than the applicant and its disclosure to the public would breach any of the data protection principles contained the Data Protection Act 1998 (DPA).
36. In particular the department has argued that disclosing the names and contact details of junior officials contained in information captured by the request would breach the first data protection principle. The first principle states that the processing of personal data (which includes its disclosure) shall be fair and lawful and that personal data shall not be processed unless at least one of the conditions set out in Schedule 2 of the DPA can be satisfied.
37. The DfE has argued that to disclose the details of junior officials, i.e those below the grade of deputy director, would be unfair. It has also confirmed to the Commissioner that all those involved were below that grade.
38. 'Fairness' is a difficult concept to define. It involves consideration of:
- The possible consequences of disclosure to the individual.
 - The reasonable expectations of the individual regarding how their personal data will be used.
 - The legitimate interests in the public having access to the information and the balance between these and the rights and freedoms of the particular individual.

Often these factors are interrelated.

39. The DfE has said that the junior officials would have a reasonable expectation that, due to their less public facing role, their personal information will not be disclosed into the public domain. The department therefore concludes that to disclose the information in the face of such expectations would be unfair.
40. The Commissioner considers that the expectations of these officials would, in part, be shaped by the provisions of the Freedom of Information Act. There should be recognition amongst public servants that some information about their working life could be disclosed in response to a request. This will however depend on the particular circumstances.
41. The Commissioner accepts that these officials do not have a public facing, or high profile role and that this would lead them to believe that in the normal course of events their names and contact details would not be placed in the public domain.
42. There are no obvious reasons to believe that disclosing their association with the issues to which the request relates would have any particularly detrimental consequences for them. However disclosing their names and contact details would not assist the public in understanding the position adopted by the UK in this matter. Therefore on balance the Commissioner finds that the disclosure would be unfair and so breach the first principle of the DPA. Section 40(2) is engaged. The DfE is entitled to withhold the names and contact details of the staff involved in the email exchange.

Right of appeal

43. 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

44. 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.
45. 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

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