

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 October 2020

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

#### Decision (including any steps ordered)

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1. The complainant has requested a report provided to the Cabinet Office by the Intelligence and Security Committee to Parliament (ISC).
2. The Commissioner's decision is that the requested information is exempt from disclosure under section 23(1) (security bodies) of the Act.
3. The Commissioner does not require the Cabinet Office to take any steps.

#### Request and response

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4. On 28 April 2020, the complainant wrote to the Cabinet Office and requested information in the following terms:

*"Please will you send me a copy of the redacted ISC 'Special Report on Russia' which you hold.*

*As you may be aware the ISC, and members of both Houses of Parliament, were most anxious it was in the public domain. For a summary please see <https://commonslibrary.parliament.uk/research-briefings/sn02178/> at 4.5 Russia.*

*From the evidence in SN02178 it is plainly apparent that, now it is fully redacted, it is in the public interest that it is the public domain.*

*Due to the large public interest in this matter, please can this FOIA request be expedited."*

5. On 12 May 2020, the Cabinet Office provided its response. The Cabinet Office confirmed that it held the requested information but was withholding it under sections 22(1) and 23(1). The Cabinet Office confirmed that in relation to section 22(1), it considered the public interest lay in maintaining the exemption.
6. The complainant requested an internal review of the handling of his request on 12 May 2020 and disputed the Cabinet Office's application of section 22.
7. The Cabinet Office provided its internal review on 28 May 2020 and upheld its original decision that sections 22(1) and 23(1) were engaged and that the balance of the public interest was fully considered.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 1 June 2020 to complain about the way his request for information had been handled.
9. On 21 July 2020, the ISC released a redacted version of its "Russia" report. The Commissioner wrote to the complainant and asked him to confirm whether, in light of its publication, he wished to proceed with his complaint. The complainant confirmed that he wished to do so.
10. As the Commissioner has already considered requests for this information, she is satisfied that she can issue a decision notice without requiring further submissions from the Cabinet Office.
11. The Commissioner's approach when considering multiple exemptions in relation to the same withheld information is to consider absolute exemptions in the first instance and then only consider qualified exemptions should the absolute exemption not be engaged.
12. The Commissioner will therefore consider the Cabinet Office's reliance on section 23(1) first. Should she determine that section 23 is not engaged, she will consider whether section 22(1) is engaged.

### **Reasons for decision**

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#### **Section 23: Information supplied by, or relating to, bodies dealing with security matters**

13. Section 23(1) of the Act states:

*“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).”*

14. To successfully engage the exemption at section 23(1), a public authority needs only to demonstrate one of the following:
  - That the information was supplied by any of the named security bodies, either directly or indirectly
  - That the information relates to any of the named security bodies.
15. The relevant security bodies are listed at section 23(3)<sup>1</sup>.
16. If the requested information falls within either of the above classes, it is absolutely exempt from disclosure under the Act. There is no requirement on the public authority to demonstrate that disclosure of the requested information would result in harm. This exemption is not subject to a balance of the public interest test.

### **The complainant's position**

17. The complainant provided the Commissioner with various detailed arguments regarding why section 23(1) is not engaged. These included:
  - Disclosure poses no risk to national security as the report was intended for publication. The Cabinet Office's reliance on section 22(1) undermines its reliance on section 23(1).
  - The purpose of section 23 is echoed in section 24, that is, to protect national security and not to stop the publication of information already cleared by the ISC and destined for publication.
  - As section 24 is subject to a public interest test and the information had been cleared for publication by the ISC, section 23 should not be considered an absolute exemption.
  - A memorandum between the Prime Minister and the ISC sets out that the provisions of the Justice and Security Act 2013 (JSA) will only prevent the ISC publishing or disclosing information if it is information of the kind that it could not include in one of its reports to Parliament.

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2000/36/section/23>

- The use of section 23 to withhold information was for party political reasons and amounted to an abuse of process.

### **The Commissioner's position**

18. The Cabinet Office had confirmed in previous investigations<sup>2</sup> that the requested report was created and provided to the Cabinet Office by the ISC. The Cabinet Office set out that the ISC is one of the security bodies listed at section 23(3), specifically section 23(3)(o).
19. The Cabinet Office also provided a Letter of Assurance from a senior official within the Cabinet Office with the experience and authority to validate the provenance of the withheld information. This official assured the Commissioner that section 23(1) applied to the entirety of the withheld information.
20. The Commissioner's approach to investigating cases involving the application of section 23(1) is set out in a Memorandum of Understanding (MoU)<sup>3</sup>.
21. This explains that a public authority will provide the Commissioner with a reasoned explanation to justify the application of section 23(1). The MoU also explains that in all but exceptional cases, it is envisaged that such a reasoned explanation will be sufficient for the Commissioner to satisfy herself that section 23(1) has been correctly applied.
22. The Commissioner has considered the submissions provided by the Cabinet Office previously regarding requests for the "Russia" report and its application of section 23(1). She accepts that in the circumstances of this case, the requested information has clearly been provided to the Cabinet Office by one of the security bodies named in section 23(3). She also accepts the assurances of the official at the Cabinet Office that the entirety of the requested information was provided by the ISC.
23. The Commissioner notes the complainant's arguments regarding the application of section 23(1).

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<sup>2</sup> <https://ico.org.uk/media/action-weve-taken-/decision-notices/2020/2617888/fs50902636.pdf> & <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617885/fs50899919.pdf>

<sup>3</sup> <https://ico.org.uk/media/about-the-ico/documents/1042533/mou-national-security-cases-foia-eir.pdf>

24. As set out above, a public authority does not need to demonstrate any prejudice or threat to national security to rely on section 23, it simply needs to demonstrate that the information falls into either of the classes set out in paragraph 14.
25. The Commissioner has not formally considered whether the Cabinet Office is entitled to rely on section 22(1), however, she does not consider that the Cabinet Office's use of section 22(1) undermines its reliance on section 23(1). The Cabinet Office has relied on section 23(1) as the requested information was created and provided by the ISC, it is not contradictory to also rely on section 22(1) on the basis that the report will be published by its creating body. Whilst the JSA is not within the Commissioner's remit to issue decisions about, she considers that it makes clear that any report created by the ISC can only be published by the ISC laying it before Parliament.
26. The Cabinet Office has demonstrated that the information was created and provided by the ISC and therefore the exemption at section 23(1) is engaged. The exemption is absolute and is not subject to a public interest test.
27. As the entirety of the requested information is exempt under section 23(1), the Commissioner has not gone on to consider whether section 22(1) is engaged as to do so would be academic. She has, however, commented on the use of section 22(1) by the Cabinet Office in the previous decisions referenced above.

## Right of appeal

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28. 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@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)

29. 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.
30. 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

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