

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 8 January 2008

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

Summary

The Foreign and Commonwealth Office (FCO) refused to allow the complainant access to information dating from 1973 to 1975 which related to the legal action by Mr Geoffrey Edwards against the General Electric Company/ Allied Electrical Industries concerning a contract with Saudi Arabia for an air defence system. In refusing the request, FCO relied upon the international relations exemption in section 27 of the Freedom of Information Act 2000 (the Act). The Commissioner decided that in refusing the request, FCO had dealt with it in accordance with part I of the Act.

The Commissioner's Role

1. The Commissioner's role is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

The Request

2. On 1 March 2005 the complainant emailed the Foreign and Commonwealth Office (FCO) to ask for copies of documents from 1973 to 1975 inclusive relating to the legal action taken by Geoffrey Edwards against the General Electric Company/ Allied Electrical Industries over the contract concerning the air defence scheme of Saudi Arabia. Mr Edwards' claim was subsequently withdrawn by agreement in 1975.
3. On 1 June 2005, following a holding reply on 19 May 2005, the FCO told the complainant that it was unable to release any of the information requested and that the section 40 (Personal information) and section 27 (International relations)

exemptions of the Act applied. As regards the section 27 exemption, which is set out in the attached legal annex, FCO said it believed that the public interest in the government being able to hold constructive, confidential and sensitive discussions with overseas governments and their representatives outweighed the public interest in the complainant knowing the content of these particular discussions.

4. On 8 July 2005 the complainant asked FCO to review its decision. With respect to the section 40 exemption, she said that she did not know if Mr Edwards was still alive but that, whether he was or not, she believed that the information referred to him in an official or work capacity rather than a private or personal capacity, and so she did not believe that the section 40 exemption applied. As regards the section 27 exemption, the complainant said that she did not accept that the balance of the public interest favoured withholding the information especially as the events had taken place some 30 years ago.
5. On 7 November 2005 FCO wrote to the complainant with the outcome of its internal review of her request. FCO said it believed that the reasons for applying the section 27 and section 40 exemptions were valid and so it had been unable to provide the information requested but FCO provided some further background information which it hoped would be useful. As regards the section 40 exemption, FCO said that it was uncertain about the role of Mr Edwards, in particular as to whether or not he had been acting in an official capacity, so that it believed that the section 40 exemption did apply. FCO confirmed that it did hold some court papers relating to the case although HM Government had not been party to the proceedings. It added that many of the documents it held contained material which, if disclosed, would damage the UK's relations with the government of Saudi Arabia, not least because they referred to Saudi defence matters and related to competing claims between Mr Edwards and another named individual. As to whether the public interest in maintaining the exemption outweighed the public interest in disclosing it, FCO said that in this case the public interest in releasing information about government policy was outweighed by the public interest in preserving confidentiality.

The Investigation

Chronology of the case

6. On 17 January 2006 the complainant contacted the Commissioner to complain about FCO's decision to withhold the information sought. As regards the section 27 exemption, she said that the military information was of no more than historic interest and should be disclosed. With regard to the section 40 exemption she said that, if there was any doubt as to the capacity in which Mr Edwards had been acting, the benefit of that doubt should be resolved in favour of disclosure. She believed that the public interest in disclosure far outweighed the reasons relied upon by FCO, especially as it was now more than 30 years after the event.

7. On 12 March 2007 the Commissioner began his investigation. On 11 April 2007 FCO told the Commissioner that relations between the United Kingdom and Saudi Arabian governments remained extremely sensitive with respect to any aspect of defence issues: it was therefore continuing to withhold the information.
8. On 8 May 2007 the Commissioner's staff reviewed FCO's papers, comprising four paper files all of which are classified as either secret or confidential. FCO said that the section 27 exemption remained its main ground for refusal. FCO added that its relations with Saudi Arabia were vitally important and had argued strenuously that the information should continue be withheld in its entirety for the foreseeable future.
9. At a further meeting with FCO on 24 May 2007, its officials emphasised to the Commissioner's staff their strongly held conviction that the request concerned matters that raised extreme sensitivities with regard to HM Government's relationship with the Government of Saudi Arabia. The disclosure of any of the information requested relating to the defence of Saudi Arabia, irrespective of its age and its content, could jeopardise the bilateral relationship. What was at issue for FCO was any apparent willingness on the part of HM Government to disclose voluntarily information relating to the defence of Saudi Arabia and the breach of trust that this would imply. On 1 June 2007 FCO made further representations to the Commissioner.

Findings of fact

10. On 15 December 2006 the then Attorney General announced that the Serious Fraud Office was discontinuing an inquiry it had been conducting for some time relating to the Al Yamamah arms deal with Saudi Arabia. He said that the decision had been made in the wider public interest, which had to be balanced against the rule of law. On the same day, the then Prime Minister confirmed that he had advised the then Attorney General that it was not in Britain's national interests for the Serious Fraud Office inquiry to continue. The Commissioner has seen that the information requested relates to arms purchase agreements that were forerunners of the Al Yamamah deals and was of a piece with subsequent contracts.
11. FCO told the Commissioner's staff that it had not consulted the Saudi Arabian government about their attitude to releasing any of the withheld papers. FCO believed that, in the light of the accidental disclosure by the then Department of Trade and Industry in 2006 of files about Al Yamamah to The National Archives for public viewing, the Saudi Arabian Government would have been gravely offended by the implication that the HM Government were even contemplating the release of any information about the defence of Saudi Arabia.

Analysis

Section 27 (International relations)

12. Under section 27(1)(a) of the Act information is exempt if its disclosure would, or would be likely to, prejudice relations between the United Kingdom and any other state, the interests of the United Kingdom abroad or the promotion and protection by the United Kingdom of its interests abroad. For the exemption to apply, prejudice to the interests of the United Kingdom must be demonstrated and, as the exemption is qualified, the information must be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
13. The Commissioner is satisfied that the governments of both the United Kingdom and Saudi Arabia consider the information requested to be confidential and that bilateral relations between the United Kingdom and Saudi Arabia would be prejudiced by its disclosure. He is satisfied, therefore, that the exemption is engaged and, on that basis, is now required to consider the public interest.

Section 27 – balance of the public interest

14. The complainant told the Commissioner that she failed to see how any information about Saudi Arabia's military capabilities in the early 1970s could be of more than historic interest and argued that it surely could not be relevant to any other country's military intelligence more than 30 years later. She also questioned why the possible displeasure of a foreign government should take precedence over the rights of United Kingdom citizens to know what was being done in their name. She said that other information from the early 1970s about Saudi Arabia that was lodged in The National Archives showed evidence of, or hinted at, corruption, and suggested that officials knew about it. It was therefore clearly in the public interest to know about those events; she believed that the documents requested might contain more evidence about this. In the complainant's view, the public interest in releasing the information far outweighed the reasons given for maintaining the exemptions, especially as it was now more than 30 years after the event.
15. FCO told the Commissioner that, as regards the public interest, it had kept in mind the complainant's comments about public concern regarding arms sales to Saudi Arabia. FCO said that it appreciated the need to be as frank as possible in responding to the complaint and added that the papers related to individual payments arising from a specific arms deal. Aside from questions of whether the public interest in releasing information about government policy were outweighed by the public interest in preserving confidentiality where it was necessary to protect external relations, the papers did not contain the information the complainant required regarding government policy. This had led FCO to judge that there was no case for disclosure.
FCO emphasised its very strong belief that if HM Government were to voluntarily disclose any information relating to the national defence of Saudi Arabia, even

this far removed in time from the events, such action would be perceived as a gross breach of trust which would severely prejudice the relationship between HM Government and that of Saudi Arabia and as such would damage the United Kingdom national interest.

The Commissioner's view

16. The Commissioner has noted the complainant's view that the information is some 30 years old, and her view that it has no current military value, but he is not persuaded that the age of the information necessarily renders it worthless as military intelligence.
The complainant was also concerned that the papers withheld might provide evidence of corruption and of awareness of it on the part of United Kingdom officials. The Commissioner has taken account of her view. In reaching his decision, the Commissioner took that view into account, along with the other points made by the complainant in presenting her case that the public interest favoured releasing the information.
17. In determining whether or not the public interest in maintaining the exemption outweighed the public interest in disclosing it, the Commissioner has noted that there are strong concerns on the part of the respective governments to maintain high levels of reciprocal trust and mutual respect in bilateral relations. FCO recognises that the Saudi Arabian Government feel very strongly that disclosure of material of the kind being withheld by FCO would amount to a very serious breach of confidence on the part of HM Government, a trusted ally.
18. The Commissioner has received evidence from FCO, which he accepts, that any breakdown that might have occurred in relations with the government of Saudi Arabia in March 2005, the time when this request was made, would have had an immediate, significant and direct impact on bilateral relations and thus the national interest of the United Kingdom. In the Commissioner's view this evidence has a clear impact on how the public interest in this case might be interpreted. The Commissioner has also taken into account that nothing he has seen in the material being withheld provides compelling reasons for it to be disclosed in the public interest.
The Commissioner has also noted the HM Government statements of December 2006 and subsequently about where the balance of the United Kingdom's national strategic interest lies. He accepts that, although those statements post-date the March 2005 request for information, the case made out by the Prime Minister and the Attorney General in December 2006 concerning the public interest provides additional retrospective supporting evidence for the position as it existed in March 2005, and the risks to the United Kingdom's national interest at that time.
19. The Commissioner has taken the representations he has received from FCO and weighed them against the arguments from the complainant in favour of disclosure. The Commissioner's decision is that the public interest in maintaining the exemption outweighed the public interest in disclosing the information at March 2005.

Section 40

20. As the Commissioner decided that the information was being withheld correctly under the section 27 exemption, he did not proceed to consider application of the section 40 exemption.

The Decision

21. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

22. The Commissioner requires no steps to be taken.

Right of Appeal

23. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 8th day of January 2008

Signed

**Richard Thomas
Information Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal annex

Relevant section of the Act

International Relations

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.”