

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 September 2014

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 the information contained in a file relating to Rudolf Hess and, in particular, his time as a prisoner of war. The FCO refused to disclose the requested information on the basis of section 23(1) of FOIA, which provides an exemption for information which is supplied by or relates to a security body. The Commissioner is satisfied that the requested information is exempt from disclosure on the basis of this exemption.

Request and response

2. The complainant contacted the FCO on 10 September 2013 seeking the material it held in relation to the file reference 'FO 1093/11/1 folio 33.' The file contained material to Rudolf Hess and, in particular, his time as a prisoner of war.
3. The FCO responded on 24 September 2013 and confirmed that it held the requested information but considered it to be exempt from disclosure on the basis of section 23(1) of FOIA.
4. The complainant contacted the FCO on 31 October 2013 and asked for an internal review to be undertaken.
5. The FCO responded on 4 December 2013. The review upheld the application of section 23(1).

Scope of the case

6. The complainant contacted the Commissioner on 29 April 2014 to complain about the way his request for information had been handled.
7. He disputed the FCO's decision to withhold the information he had requested on the basis of section 23(1) for two reasons: Firstly, because the documents already provided to him under FOIA about this topic apparently contained a number of references to the Security Service and the Secret Intelligence Service; and secondly, he argued that there was a significant amount of information in the public domain concerning Rudolf Hess and the Security Service and the Secret Intelligence Service.

Reasons for decision

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

8. Section 23(1) of FOIA 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 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). The bodies listed in section 23(3) include the Security Service and the Secret Intelligence Service. This means that if the requested information falls within this class it is absolutely exempt from disclosure under the 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 he is to find in favour of the public authority. In certain circumstances the Commissioner is able to be so satisfied without himself 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, given the nature of the complainant's submissions and the subject matter of the requested information, the Commissioner considered it to be likely that the withheld information would fall within the scope of section 23(1). Therefore he asked the FCO to provide him with a written assurance that was the case. In response, a relevant senior official of the FCO has written to the Commissioner and explained that the withheld information (which they have personally reviewed) all relates to, or was supplied by, one of the bodies specified in section 23(3) of FOIA. This official occupies a senior position at the FCO and meets the Commissioner's criteria outlined in paragraph 10.
12. Accordingly, the Commissioner accepts that, in the circumstances of this case, the assurance he has received from the senior official at the FCO regarding the nature of the withheld information, coupled with subject matter of the requested information, is sufficient for him to conclude that the withheld information is exempt from disclosure on the basis of section 23(1) of FOIA.
13. In reaching this conclusion the Commissioner has considered the complainant's submissions as summarised at paragraph 7 above. However, these do not affect his findings in relation to the application of section 23(1) for the following reasons.
14. As discussed above, if requested information falls within the scope of section 23(1) it is exempt from disclosure. There is no need for the disclosure to prejudice the work of these bodies in anyway in order for the exemption to be engaged. Therefore in applying this principle to this request, although the FCO may have previously disclosed information to the complainant under FOIA which relates to one of the security bodies listed in section 23(3), this does not undermine the validity of applying the exemption provided by section 23(1) to other requests for similar information. Public authorities can choose to rely on an exemption to withhold information if they wish to (as in this case) or they may, as the complainant suggests is apparently the scenario in the case of the previous disclosures, choose to release information albeit that such previously disclosed information could potentially have been withheld on the basis of section 23(1).
15. Similarly, and for the same reasons, although there may be information in the public domain regarding Rudolf Hess and the Security Service and the Secret Intelligence Service, this does not have any impact on the applicability of this exemption to the information the complainant has

requested. Under FOIA there is no requirement to apply this particular exemption consistently and, as already stated, there is no public interest test.

Right of appeal

16. 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

17. 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.
18. 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
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF