

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 3 September 2015

**Public Authority:** Foreign and Commonwealth Office

**Address:** King Charles Street  
London  
SW1A 2AH

#### **Decision (including any steps ordered)**

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1. The complainant submitted a request to the Foreign and Commonwealth Office (FCO) to see the content of a file described as 'Project Propel: papers' on the authority's online inventory of its Special Collections. The FCO originally sought to withhold the requested information on the basis of section 24 (national security) and section 27 (international relations) of FOIA. It subsequently sought to rely on section 23 (security bodies) of FOIA rather than section 24.
2. The Commissioner's decision is that the requested information is exempt from disclosure on the basis of section 23(1) of FOIA.
3. However, the Commissioner has also concluded that the FCO breached section 17(3) by failing to conduct its public interest considerations with a reasonable timeframe.

#### **Request and response**

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4. The complainant submitted the following request to the FCO on 2 July 2014:

*'I would like to make a request for information under the Freedom of Information Act.'*

*I would like to request the contents of a file that is listed in your online inventory for the archive known as the Special Collections, which can be found here:*

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/263829/Archive\\_inventory.csv/preview](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263829/Archive_inventory.csv/preview)

*I would like the contents of the file that is described as*

*Project Propel: papers<sup>1</sup>*

5. The FCO responded on 30 July 2014 and explained that it considered the requested information to be exempt from disclosure on the basis of section 27, the international relations exemption of FOIA. However, it needed an additional 20 working days to consider the balance of the public interest test.
6. The FCO contacted the complainant again on 28 August 2014 and explained that it required a further 20 working days to consider the balance of the public interest test.
7. The FCO informed the complainant of the outcome of its deliberations on 25 September 2014. It concluded that section 27 did not in fact apply. However, the FCO explained that it considered the requested information to be exempt from disclosure on the basis of section 24, the national security exemption of FOIA, and that the public interest favoured maintaining the exemption.
8. The complainant contacted the FCO on 15 November 2014 and asked it to conduct an internal review of this decision.
9. The FCO informed him of the outcome of the review on 9 March 2015. The review concluded that section 24 had been applied correctly and also found that the requested information was exempt from disclosure on the basis of section 27(1)(a) of FOIA.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 23 March 2015 to complain about the way his request for information had been handled.
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<sup>1</sup> The online inventory describes the papers in question as 'A collection of reports and papers relating to Project Propel which concerned the design and production of communications equipment. The majority of the documentation specifies the design requirements and assessments of various company proposals for the design. The box includes the record photographs of OPO (Old Public Offices) Whitehall showing mainly the mechanical and engineering services in the basement of the building.'

11. The complainant explained that he was unhappy with the FCO's decision to withhold the information he had requested. He indicated that he would be happy to be given access to redacted copies of the information if that was the only way in which the information could be released. He explained that he was also unhappy with the time it had taken to deal with his request.
12. During the course of the Commissioner's investigation the FCO explained that it had determined that the entirety of the withheld information was exempt from disclosure on the basis of section 23(1) of FOIA and that some of the information was also exempt from disclosure on the basis of section 27(1)(a). The FCO confirmed that it was no longer seeking to withhold the information on the basis of section 24 of FOIA.

## Reasons for decision

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

13. 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).'*

14. 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).<sup>2</sup> 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.
15. 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

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

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.

16. In the circumstances of this case, the FCO provided the Commissioner with a letter of assurance from a relevant senior official within the department which confirmed that he had examined the withheld information and was satisfied that all of it 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 15. The FCO also provided the Commissioner with an informative, albeit brief, description of the nature of the withheld information.
17. 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 the description 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.
18. In light of his findings in relation to section 23(1) the Commissioner has not considered whether parts of the information are also exempt from disclosure on the basis of section 27(1)(a) of FOIA.

### **Section 10 and section 17**

19. Section 10(1) of FOIA requires public authorities to respond to a request promptly and in any event within 20 working days of receipt.
20. Section 17(1) of FOIA explains that if a public authority intends to refuse to comply with a request it must provide the requestor with a refusal notice stating that fact within the time for compliance required by section 10(1). Section 17(3) allows a public authority to extend its consideration of the public interest for a reasonable period of time if necessary. The Commissioner considers a reasonable period of time to be an additional 20 working days.
21. In this case the complainant submitted his request on 2 July 2014 but the FCO did not inform him of the outcome of its public interest considerations until 25 September 2014. The Commissioner does not accept that this period of time for considering the public interest was reasonable in all the circumstances.
22. Consequently the Commissioner has found that the FCO has breached section 17(3) of FOIA by failing to inform the complainant of the

outcome of its public interest deliberations within 40 working days of his request.

## **Other matters**

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23. FOIA does not impose a statutory time within which such reviews must be completed albeit that the section 45 Code of Practice explains that internal reviews should be completed within a reasonable timeframe. In the Commissioner's view it is reasonable to expect most reviews to be completed within 20 working days and reviews in complex cases to be completed within 40 working days. In the circumstances of this case the complainant requested an internal review on 15 November 2014. The FCO informed him of the outcome of the internal review on 9 March 2015. It therefore took the FCO 77 working days to complete its internal review.
24. In submissions to the Commissioner the FCO explained that the request involved consideration of complex and sensitive matters which is why the internal review took the time that it did. However, given that the FCO had already taken 61 working days to consider the original request the Commissioner believes that the time taken by the FCO to complete the internal review to be unsatisfactory. In the future he expects the FCO to ensure that internal reviews are completed within the timeframes set out within his guidance.

## Right of appeal

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25. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.
27. 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**