

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 November 2015

Public Authority: Ministry of Defence

Address: Whitehall
London
SW1A 2HB

Decision (including any steps ordered)

1. The complainant submitted a request to the Ministry of Defence (MOD) seeking information about gifts ministers had received from the Qatari government or Qatari civil service. The MOD provided the complainant with some of the information falling within the scope of his request and withheld the remainder because it considered it to be exempt from disclosure on the basis of section 21, section 22 or sections 27(1)(a) and (c) of FOIA.
2. The complainant disputed the MOD's reliance to withhold part of the requested information on the basis of sections 27(1)(a) and (c). The Commissioner has concluded that the detailed description of each gift that the MOD holds, and the value of each gift, is not exempt from disclosure on the basis of either of these exemptions. However, the Commissioner accepts that the information which the MOD holds regarding the final status of each gift, ie how it was disposed of, is exempt from disclosure on the basis of the sections 27(1)(a) and (c) and furthermore that the public interest favours maintaining these exemptions.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with the detailed description of all gifts (ie those both under and over the value of £140) and also provide him with the monetary value of each gift.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court

pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. The complainant submitted the following request to the MOD on 1 November 2014:

'I am requesting under the Freedom of Information Act, information about ministerial gifts.

I would like to know, for all gifts received from the Qatari government, Qatari ministers or members of the Qatari civil service since January 2012:

- 1. The monetary value of each gift*
- 2. The make and model of the gift (for example the make and model of a watch, or the designer of cufflinks)*
- 3. Precisely what was done with it, not just whether it was held or disposed by the department (for example, if it was donated to charity, which charity; if the department held it, where they keep it)*
- 4. Which minister the gift was for.*
- 5. Who the gift was from.'*

6. The MOD responded on 1 December 2014 and confirmed that it held information falling within the scope of the request but explained that it considered some of this information to be exempt from disclosure under section 27 of FOIA and it needed further time to consider the balance of the public interest test.
7. The MOD provided the complainant with a substantive response to his request on 25 February 2015. It explained that:
- Section 21 has been applied to part of the requested information covering the period 1 January 2012 to 31 March 2014 as some

information about gifts above the value of £140 was already published on www.gov.uk¹

- Section 22 applied to some information covering the period 1 April 2014 to date as this would be published in the future, ie on www.gov.uk
 - Sections 27(1)(a) and (c) had been applied to some parts of the requested information.
 - However, some information concerning gifts of a value below £140 was being disclosed.²
8. The complainant contacted the MOD on 6 March 2015 and asked it to conduct an internal review of its decision to withhold some information on the basis of sections 27(1)(a) and (c) of FOIA.
9. The MOD informed him of the outcome of the internal review on 28 April 2015. The review concluded that sections 27(1)(a) and (c) had been correctly applied to withhold some of the requested information, as had sections 21 and 22. However, the MOD explained that due to an error, some gifts under the value of £140 were omitted from the information previously disclosed. The MOD therefore provided the complainant with this additional information.

Scope of the case

10. The complainant contacted the Commissioner on 29 April 2015 in order to complain about the MOD's decision to withhold information falling within the scope of his request on the basis of the exemptions contained at sections 27(1)(a) and (c) of FOIA. The information being withheld
-

¹ Under the Government's Transparency Agenda, the MOD publishes quarterly a list of all gifts received by Ministers which have a value of over £140. The list records who the gift was from; who it was to; the date received; a general description of the gift (eg watch) and an indication of what happened to the gift (eg held by department).

² In relation to the gifts under the value of £140 the complainant was provided with the recipient and the giver of the gift; the date received; a general description of the gift and the status of the gift eg 'Held by department'. Under section 27(1)(a) and (c), the MOD withheld a detailed description of these gifts, their specific value and any further details it may hold about what had happened to the gift.

under these exemptions consists of the information falling in the scope of parts 1 to 3 of the complainant's request. This essentially consists of:

- A more detailed description of each of the gifts received than is published on the MOD's website (ie the gifts over a value of £140). For example, where the public register records a watch being received, the withheld information may include the make/model of the watch.
- A more detailed description of each of the gifts received of a value under £140, (ie the gifts not previously published on the MOD's website but disclosed to the complainant in response to his request).
- The value of all gifts received (ie both those under the £140 limit and those over the limit).
- For all of the gifts, if the information is held, the final status of them, ie were they retained or sold (and if so for how much money) or otherwise disposed of.

Reasons for decision

Section 27 – international relations

11. The relevant sections of section 27(1) state that:

'Information is exempt information if its disclosure would, or would be likely to, prejudice –

(a) relations between the United Kingdom and any other State,...

(c) the interests of the United Kingdom abroad'

12. In order for a prejudice based exemption, such as the two cited by the MOD, to be engaged the Commissioner considers that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant

prejudice which is alleged must be real, actual or of substance;
and

- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority to discharge.
13. Furthermore, the Commissioner has been guided by the comments of the Information Tribunal which suggested that, in the context of section 27(1), prejudice can be real and of substance *'if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary'*.³

The MOD's position

14. The MOD argued that disclosure of the detailed information about the gifts in the scope of the request, ie the exact value of the gifts and the make and model of those gifts, could allow comparison and unintended consequences to be drawn between Qatar and other states about the relative levels of generosity shown by different states. It argued that providing the final recipient of the individual items could also provoke a negative reaction from other states. Furthermore, the MOD argued that identifying the specific recipient of a final gift may cause offence to the Qataris, for example, if any specific gifts had been sold as opposed to being passed to a charity or used for another purpose even though that would be in line with published government disposal guidelines.
15. To support this position the MOD noted that the ICO's guidance on this exemption stated 'Differences in culture, religion, legislation and infrastructure will determine the type and level of prejudice that may occur to the international relations between the UK and another state or states, international organisation or international court.' The MOD explained that business and personal lives are closely intertwined in Arabic culture, and the Qatari people place great importance on getting to know their business contacts and the giving of token gifts is common.

³ [Campaign Against the Arms Trade v The Information Commissioner and Ministry of Defence \(EA/2006/0040\)](#), paragraph 81.

The MOD explained that it was unknown how the Qataris would react to knowing how a gift provided as a goodwill gesture to a minister had been sold rather than being given to charity and indeed any public reporting of those gifts and their disposal could cause offence.

16. Finally, the MOD confirmed that it considered this exemption to be engaged at the lower threshold, ie that disclosure of the information 'would be likely to' result in the prejudice described.

The complainant's position

17. The complainant disputed that the MOD's view that disclosure of the information would be likely to result in the prejudice it envisaged. In order to support this position the complainant made the following points:
18. Firstly, the complainant noted that the MOD argued that disclosure would allow comparisons to be drawn about the relative levels of generosity shown by different states. He explained that based on his analysis of the published register of gifts, since September 2010 the Qataris have given at least 19 watches (if every time 'watches' is written that amounts to just two watches), three pens, a suit and other clothes, two wallets and cufflinks. In contrast, the complainant suggested that the next most frequent country was Bahrain which had given two watches, two items of jewellery and two hampers. Furthermore, he noted that all other donor countries (Germany, Morocco, Oman, India and Saudi Arabia) had given one gift item over this period albeit that none had given a gift for 19 months. Thus the complainant argued that if the comparative generosity of countries' gifts to the MOD could prejudice international relations then the damage has already been done by publishing information about these items.
19. Secondly, he noted that there is precedent for publishing the values of these gifts. The value of a watch given by Qatar on December 14 2011 to Lord Astor of Hever was published: it was £400.
20. Thirdly, the complainant noted that the MoD had stated in its internal review that 'it is unknown how the Qataris would react to knowing how a gift provided as a goodwill gesture to a minister has been sold rather than being given to charity'. The complainant argued that if no gifts have been sold rather than being given to charity, this would not be an issue. However, the complainant suggested that because the MOD chose to cite this as a reason to invoke the section 27 exemptions, it is clear that some gifts from Qatar have been sold rather than being given to charity. He argued that as the MOD's response is in the public domain, any damage to international relations of revealing that some gifts have been sold, has already been done.

The Commissioner's position

21. With regard to the first criterion of the three limb test described above, the Commissioner accepts that potential prejudice to the UK's relations with Qatar and other states clearly relates to the interests which the exemptions contained at sections 27(1)(a) and (c) are designed to protect.
22. With regard to the second criterion, the Commissioner accepts that disclosure of the information has the potential – in theory - to harm the UK's relations with Qatar. Disclosure of the withheld information would reveal details about the nature of gifts received by MOD ministers to an extent not previously made public. As a consequence the Commissioner accepts that it is not inconceivable that such a disclosure may result in causing offence to Qatar taking into account the cultural differences referred to by the MOD. In other words, the Commissioner accepts that there is a causal link between disclosure of the information and the prejudice envisaged by the MOD. Moreover, the Commissioner is satisfied that the resultant prejudice which the MOD believes would be likely to occur can be correctly categorised, in light of the Tribunal's comments above, as real and of substance. In other words, subject to meeting the likelihood test at the third criterion, disclosure could result in making relations more difficult and/or demand a particular damage limitation exercise.
23. With regard to the third criterion the Commissioner is reluctant to fully accept some of the complainant's counter arguments: whilst the published gift register already allows for some comparison of gifts received by ministers to be made, disclosure of the detailed information that is being withheld – and potential disclosure of similar information for other gifts offered by other countries – would certainly allow for a more detailed comparison. Furthermore, whilst the wording of the MOD's internal review response indicates that at least some of these gifts may have been sold, there is a clear distinction between indicating that this may be the case and revealing which gifts (if any) were actually sold, and if so, for what price.
24. Nevertheless the Commissioner has reached the conclusion that in respect of the information concerning the value of each of the gifts and a detailed description of each gift the MOD has not demonstrated that the likelihood of prejudice occurring if such information was disclosed is one that is more than hypothetical.
25. In reaching this conclusion the Commissioner has noted that the language used in the MOD's internal review casts some doubt as to the likelihood of prejudice actually occurring, 'any public reporting of those gifts and their disposal **could** [emphasis added] cause offence'. The

Commissioner accepts that public authorities may not be able to produce hard evidence in order to support the engagement of a prejudice based exemption. However, in this case he considers the language by the MOD to describe its position appears to be rather speculative.

26. Furthermore, despite his reservations set out above, the Commissioner accepts that there is still some logic to the argument advanced by the complainant that the information already published on the gift register allows some comparison to be drawn about the apparent generosity of Qatar compared to other countries. If such a comparison were likely to cause offence, to some extent this has potentially already happened as the complainant has suggested.
27. Consequently, the Commissioner is simply not persuaded that disclosure of the value of the gifts or a detailed description of them would be likely to prejudice the UK's relations with Qatar.
28. In contrast the Commissioner is prepared to accept that the disclosure of information about the final status of the gifts would be likely to prejudice international relations in the manner suggested by the MOD. The Commissioner considers it far more plausible to argue that the giver of a gift is likely to take offence if they were to find out how a specific gift that they had given had been disposed of rather than simply if details of the gift and its value were disclosed. Taking into account the importance that Qatari people place on getting to know business contacts personally and the importance of gift giving as a goodwill gesture, the Commissioner is therefore persuaded that revealing the final status of specific gifts would be likely to damage relations between the UK and Qatar.
29. In summary, the Commissioner has therefore concluded that the information relating to the value of the gifts and a detailed description of them is not exempt from disclosure on the basis of sections 27(1)(a) and (c). However, he has concluded that information relating to the final status of these gifts is exempt from disclosure on the basis of these exemptions.

Public interest test

30. Section 27 is a qualified exemption. Therefore for the information which the Commissioner accepts is exempt from disclosure on the basis of sections 27(1)(a) and (c) he must consider the public interest test and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing that information.

31. The complainant argued that if ministers sell on gifts for money they are gaining a pecuniary advantage and likely to be in breach of the Bevan principles of public life, namely '*Selflessness: Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.*'⁴ The complainant argued that in order to show there is no pecuniary advantage to ministers of these gifts, the MOD should disclose how these gifts were disposed of. He argued that there is an overwhelming public interest in favour of showing that the Bevan Principles are being upheld.
32. The Commissioner recognises that there is a strong public interest in public authorities being transparent about the nature of gifts received by those in public office. Disclosure of the information which details how particular gifts were disposed of would add further to this transparency. However, given the nature of the information actually held by the MOD the extent to which it could directly address the complainant's concern that Ministers may have received some pecuniary advantage from these gifts is limited.
33. With regard to the arguments in favour of maintaining the exemption, the Commissioner accepts that there is also a very strong public interest in ensuring that the UK enjoys effective relations with other states. In the particular circumstances of this case, the number of gifts received by the Ministers or officials of the MOD from Qatar arguably demonstrates the significance of this relationship. Moreover, the Commissioner recognises that the UK's relationship with Qatar focuses on a range of bilateral issues, ie political, commercial, economic and security. In respect of the latter point the Commissioner recognises that the UK and Qatar have publically committed to working closely together in order to resolve conflicts in the region and tackle the threat posed by ISIL. The Commissioner therefore accepts that there is a very significant public interest in ensuring that the UK's relationship with Qatar is not harmed and as a consequence the UK's ability to protect its interest is not undermined.
34. Consequently, whilst the Commissioner recognises that there is public interest in disclosing the information which describes the final status of these gifts, he believes that there is a more compelling public interest in maintaining the exemptions contained at sections 27(1)(a) and (c).

4

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/361338/seven-principles-of-public-life.pdf

Right of appeal

35. 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

36. 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.
37. 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

Gerrard Tracey
Principal Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF