

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 3 May 2016

**Public Authority:** Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4DF

#### Decision (including any steps ordered)

---

1. The complainant requested information relating to meetings held with the Governments of Eritrea, Somalia, Ethiopia or Egypt to discuss migration.
2. The Home Office provided some information within the scope of the request but withheld the remainder citing sections 21 (information accessible to applicant by other means), 27(1) (international relations), 36(2)(b)(i) (prejudice to effective conduct of public affairs) and 40(2) (personal information) of the FOIA.
3. The Commissioner has investigated the Home Office's application of sections 27(1) and 40(2) and has concluded that the Home Office was entitled to apply those exemptions to the requested information.
4. The Commissioner requires no steps to be taken as a result of this decision.

#### Background

---

5. A House of Lords written answer of 15 January 2015 records that:

*"a joint delegation of senior Home Office and Foreign Office officials visited Eritrea on 9-11 December. The delegation held a number of discussions with government ministers, officials and non-*

*government actors on topics including the current drivers of irregular migration, ways to mitigate it, and voluntary and enforced returns".<sup>1</sup>*

## Request and response

---

6. On 22 May 2015, the complainant wrote to the Home Office and requested information in the following terms:

*"1. Since 1 October 2014, what meetings have Home Office officials (at grade SCS1 or above) held in Eritrea, Somalia, Ethiopia or Egypt with the Governments of any of those countries to discuss migration. Please provide the dates of the meetings and the names of all those present.*

*2. Please provide the notes of those meetings".*

7. The Home Office responded on 10 July 2015. It provided a link to a House of Lords written answer where some information within the scope of the request could be found. It cited section 21 of the FOIA in respect of that information. The complainant was also provided with the name of one person from the Home Office who attended the meetings referred to.
8. The Home Office confirmed that it holds additional relevant information. However it refused to provide that information citing sections 27(1) and 40(2) of the FOIA (international relations and personal information respectively).
9. The complainant requested an internal review of that decision on 14 July 2015. He reminded the Home Office that his request had two parts. With respect to the first part of the request, he acknowledged that while some information had been provided, the Home Office had not told him:

*"Whether those were the only such meetings*

*Who else attended the 9-11 December 2014 meetings - or other meetings on dates unknown to me- from Home Office, Foreign Office or who else".*

---

1

<http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/150115w0001.htm>

10. With respect to its application of section 40(2) the complainant told the Home Office:

*"You do not explain how disclosing the missing data above would violate those [personal data] principles. In particular, these meetings were official business with persons attending in an official or representative capacity. I do not see how these principles could be violated for any official or Government backed attendance. If the meetings were with people who would be at risk from the Eritrean authorities if their identities were disclosed, I would accept that the data principles apply to disclosure of identifying details".*

11. The Home Office acknowledged his request for internal review on 17 July 2015 but, despite further correspondence between the two parties, the Home Office did not provide its internal review response.

### **Scope of the case**

---

12. The complainant contacted the Commissioner on 6 November 2015 to complain about the way his request for information had been handled. At that time, not only was he dissatisfied with the time taken by the Home Office to consider his request and subsequent request for internal review, he also disputed the quality of the response dated 10 July 2015.
13. Despite the Commissioner's intervention, the Home Office failed to provide its internal review response. In the circumstances, the Commissioner used his discretion to accept the complaint.
14. During the course of his investigation, the Home Office advised the Commissioner that it considered that section 36(2)(b)(i) FOIA (prejudice to effective conduct of public affairs) may apply to the withheld information in addition to sections 27(1) and 40(2).
15. In the absence of its substantive response regarding its revised position, on 3 March 2016 the Commissioner issued the Home Office with an Information Notice in accordance with his powers under section 51 of the FOIA. By way of that Notice the Commissioner required the Home Office to furnish him with further information about its handling of the request for information in this case.
16. In response to that Information Notice the Home Office confirmed the exemptions it considers apply, namely sections 27, 40 and 36.
17. During the course of the Commissioner's investigation, the Home Office wrote to the complainant clarifying its response with respect to the

information within the scope of his request and the exemptions that it considers apply.

18. It confirmed that the only meetings within scope of his request:

*"...are those referred to in the written answer of 15 January 2015, i.e. those which took place during the visit to Eritrea..."*

19. It also told him:

*"The information which we hold consists of the full list of names of the Home Office and FCO officials who comprised the delegation, the names of the Eritrean representatives who would have attended meetings for the Eritrean side and an informal note of the visit".*

20. The Home Office clarified its response with respect to the names of those present at the meetings, disclosing the names of others who were also part of the joint delegation of Home Office and Foreign Office officials which visited Eritrea in December 2014.

21. The analysis below considers the Home Office's application of exemptions to the remaining withheld information. In considering its application of exemptions, the Commissioner is mindful of the complainant's comments above in relation to people who would be at risk from the Eritrean authorities if their identities were disclosed.

## **Reasons for decision**

---

### **Section 27 international relations**

22. 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."*

23. In this case, the Home Office confirmed it considers section 27(1)(a) applies to the withheld informal note of the visit and the names of the Eritrean representatives.
24. The complainant disputes that section 27 applies. With respect to its reasoning for withholding the requested information – in order to maintain trust and confidence between governments - he told the Home Office:

*"I believe this does not justify the refusal to disclose information beyond that disclosed. First, as to the names and positions of those attending, I do not accept that the Eritrea Government would reasonably expect the British government not to disclose this information publicly. Secondly, I do not accept that they would reasonably expect the British Govt not to disclose more information, for example, about the actions taken or intended to be taken to prevent or obstruct Eritreans leaving Eritrea.... Given the public attention - much of it drawn by the Government - to Eritrean's seeking asylum, it seems unlikely the Eritrean Government would expect the minimal level of disclosure to date..".*

25. In order for a prejudice based exemption, such as that set out in section 27(1), 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;
  - thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. 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; there must be a real and significant risk. With regard to the higher threshold, this places a stronger evidential burden on the public authority.
26. With the above in mind, the Commissioner has considered the withheld information and the Home Office's submissions in support of its reliance on section 27(1).

27. In correspondence with the Commissioner, the Home Office said that it considered that disclosure of the requested information would prejudice relations between the UK and Eritrea. In that respect it confirmed that, while acknowledging the visit of UK officials, it considers that the Eritrean authorities would expect the Home Office to maintain confidentiality in relation to discussions during the visit.
28. The Home Office provided the Commissioner with further arguments identifying the particular harm it considers may arise from disclosure of the withheld information in this case. The Commissioner is restricted in what he is able to say without disclosing the nature of the information. However, from the evidence he has seen, the Commissioner is satisfied that there is a causal relationship between the potential disclosure of the withheld information and the interests which section 27(1)(a) is designed to protect.
29. With respect to the likelihood of prejudice occurring, in its correspondence with the Commissioner the Home Office clarified that it considers that the likelihood of prejudice occurring is high. In other words, it considered that disclosure in this case **would** prejudice international relations.
30. Having duly considered the arguments put forward by the Home Office, and having viewed the withheld information, the Commissioner is satisfied that the likelihood of prejudice occurring is more probable than not if the withheld information were to be disclosed. Accordingly the Commissioner accepts that, in the circumstances of this case, the higher threshold of likelihood is met.
31. He therefore finds the exemption engaged in relation to the information withheld by virtue of section 27(1)(a) and has carried this higher level of likelihood through to the public interest test.

#### The public interest test

32. Section 27(1) is a qualified exemption and is subject to a public interest test. This means that, even where its provisions are engaged, it is necessary to decide whether it serves the public interest better to disclose the requested information or to withhold it because of the interests served by maintaining the relevant exemption. If the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, the information in question must be disclosed.

#### *Public interest arguments in favour of disclosing the requested information*

33. In correspondence with the Commissioner, the complainant identified a number of public interest arguments in favour of disclosure. For

example, he told the Commissioner that the public interest is demonstrated by:

*"the political crisis around the movement of refugees and other migrants from Eritrea and other countries mentioned to the EU including UK".*

34. He also referred the Commissioner to Home Office statistics showing that in the last 12 months the two countries in the world leading to the most asylum claims in the UK are Eritrea and Sudan, with such claims very likely to result in a grant of asylum. In that respect, he said:

*"This shows the significance of any UK Government discussions with the states mentioned about measures which affect their people seeking to migrate abroad (including those who want to escape persecution) and people from these and neighbouring states crossing borders (including to reach a safe country of asylum). The 4 states have common borders and constraints on migration between them, including the threat of harm or need to pay bribes) are crucial for people seeking to reach a safe country of asylum".*

35. The Home Office recognised that there is public interest in this particular subject and that disclosure of the withheld information may help to improve the public's understanding of international co-operation in relation to immigration control and the transparency of these processes to enhance public trust in decisions made.

*Public interest arguments in favour of maintaining the exemption*

36. In favour of maintaining the exemption, the Home Office confirmed its view that the effective conduct of international relations depends upon maintaining trust and confidence between governments. It told the complainant:

*"This trust allows for a free and frank exchange of information and advice on the understanding that it will be treated in confidence. If the United Kingdom does not respect such confidences, its ability to protect and promote UK interests, in this case on migration, will be hampered".*

37. The Home Office told the Commissioner that there is a very strong public interest in avoiding any action which would prejudice relations with Eritrea. It also told him that it considers that the public interest has been met by the information in the Minister's written answer of 15 January 2015 referred to above.

*Balance of the public interest arguments*

38. Although the FOIA does not list the factors that would favour disclosure, the Commissioner has suggested that among the factors that would weigh in favour of disclosure are:
- general public interest in accountability and transparency of public authorities;
  - public interest in the subject the information relates to; and
  - furthering the understanding and participation in the public debate of issues of the day.
39. He has also taken into account the presumption running through the FOIA that openness is, in itself, to be regarded as something which is in the public interest.
40. However, in the circumstances of this case, the public interest in maintaining the exemption is that in avoiding prejudice to international relations, in this case with respect to Eritrea. The relevant considerations in reaching a judgement on the balance of the public interest therefore extend beyond the actual content of the withheld information itself.
41. In the Commissioner's view it is strongly in the public interest that the UK maintains good international relations. He considers that it would not be in the public interest if there were to be a negative impact on the effective conduct of international relations as a result of the release of the information at issue in this case.
42. In that respect he recognises the importance of good relations between the UK and Eritrea in continuing an on-going dialogue between the UK and Eritrean governments on migration related issues and in developing an approach to managing migration from Eritrea.
43. Furthermore, the Commissioner attaches considerable weight to such arguments in view of his acceptance that prejudice would result from disclosure, rather than would be likely to, result from disclosure. The Commissioner has therefore concluded that the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

**Section 40(2) personal information**

44. The Commissioner has next considered the Home Office's application of section 40(2) to the names of the remaining officials from the UK delegation.

45. This section provides an exemption for information that is the personal data of an individual aside from the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption is a two-stage process, covering first whether the information in question is personal data and, secondly, whether the disclosure of that personal data would be in breach of any of the data protection principles.
46. As to whether the information constitutes personal data, section 1(1) of the Data Protection Act 1998 (DPA) defines personal data as follows:

*“personal data’ means data which relate to a living individual who can be identified:*

  - a. from those data, or*
  - b. from those data and any other information which is in the possession of, or is likely to come into the possession of, the data controller”.*
47. The information at issue is the names of the junior officials, below Senior Civil Servant grade, who were part of the delegation. The Commissioner accepts that this information both relates to and identifies those individuals and so is their personal data.
48. The Commissioner has focussed here on the first data protection principle, which requires that personal data be processed fairly and lawfully, and in particular on whether disclosure would be fair to the data subjects. In forming a conclusion on this point, the Commissioner has taken into account the reasonable expectations of the data subjects and the consequences of disclosure upon them. He has also considered whether there is any legitimate public interest in the disclosure of this information.
49. The Commissioner’s view is that in general it will be far less likely to be unfair to an individual to disclose personal data that relates to their professional capacity than it would be to disclose personal data relating to private life.
50. In this case, the Commissioner can see no convincing arguments as to why the data subjects would hold a reasonable expectation that this information would not be disclosed, or how disclosure would be damaging or distressing to them. This information relates to the data subjects in their professional capacities.
51. However, whilst section 40(2) is an absolute exemption, in order for disclosure to be in line with the first data protection principle, it is necessary for there be a legitimate public interest in disclosure of the

personal data. The Commissioner does not believe that disclosure of junior officials' names is necessary in order to satisfy any legitimate public interest. As a result he concludes that disclosure of the names of officials would be in breach of the first data protection principle.

52. Having found that the information recording officials' names is personal data and that disclosure of it would be unfair and in breach of the first data protection principle, the conclusion of the Commissioner is that the exemption provided by section 40(2) of the FOIA is engaged.

### **Other exemptions**

53. As the Commissioner has concluded that sections 27(1) and 40(2) were applied correctly, he has not gone on to consider the Home Office's application of section 36.

### **Other matters**

---

54. The request in this case was made on 22 May 2015 but it was not until 10 July 2015 that the Home Office responded. The delay in this case will be recorded.
55. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA. However, the Commissioner has issued guidance in which he has stated that in his view internal reviews should take no longer than 20 working days to complete in most cases, or 40 in exceptional circumstances.
56. The Commissioner expects the Home Office to ensure that the internal reviews it handles in the future adhere to the timescales he has set out in his guidance.

## Right of appeal

---

57. 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 123 4504

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)

58. 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.
59. 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 .....

**Alexander Ganotis**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**