

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 July 2016

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information relating to a Memorandum of Understanding (MoU) between the United Kingdom and the Kingdom of Saudi Arabia.
2. The Ministry of Justice (MoJ) confirmed it held the requested information but refused to provide it citing sections 27(1) and 27(2) of the FOIA (international relations).
3. The Commissioner's decision is that the information is exempt from disclosure on the basis of section 27(1)(a) of the FOIA and that in all the circumstances of the case the public interest favours maintaining the exemption. The Commissioner did not proceed to consider the MoJ's application of section 27(2) to the same information.
4. The Commissioner does not require the MoJ to take any steps as a result of this decision.

Request and response

5. On 22 October 2015, the complainant wrote to the MoJ and made the following request for information under the FOIA:

"In September 2014, former Secretary of State for Justice, Chris Grayling, visited Saudi Arabia and signed a Memorandum of Understanding (MoU) with the Saudi Arabian Minister of Justice. Please provide a copy of this document, including all annexes."

6. Apologising for the delay, the MoJ responded on 25 April 2016. It confirmed that it holds the requested information but refused to provide it citing sections 27(1) and 27(2) (international relations) of the FOIA.
7. Following an internal review the MoJ wrote to the complainant on 5 May 2016 maintaining that position.

Scope of the case

8. The complainant contacted the Commissioner on 10 May 2016 to complain about the way his request for information had been handled. It is common ground between the parties that section 27 is the relevant exemption in this case.
9. The complaint told the Commissioner, however:

"utilising a blanket confidentiality exemption here is not defensible".
10. He also stated that, in considering the public interest, the MoJ gave insufficient weight to the arguments in favour of disclosure.
11. The Commissioner has previously considered a complaint about the MoJ's application of section 27(1) and (2) in relation to an earlier "near-identical request" from another correspondent. The decision in that case was issued on 10 August 2015¹, some ten weeks prior to the request in this case.
12. The Commissioner notes that, in its correspondence with the complainant, the MoJ drew their attention to that decision.
13. During the course of the Commissioner's investigation, the MoJ confirmed its application of section 27(1) and (2) in this case to withhold the requested information.
14. The following analysis covers the MoJ's application of section 27(1) to the withheld information.

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432375/fs_50579089.pdf

Reasons for decision

Section 27 international relations

15. 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."

16. Section 27(2) provides that:

"Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court."

17. In correspondence with the complainant, the MoJ said:

"A UK Government Department is not obliged to provide information requested if its release would prejudice international relations. Specifically, the document which you have requested is one that is confidential between the UK Government and the Government of the Kingdom of Saudi Arabia. This type of document is covered by the provisions of Section 27(2) of the Act, which deal with confidential information obtained from another State. In addition, as the disclosure of confidential material obtained from another State would be likely to prejudice future relations between the UK Government and the Government of the Kingdom of Saudi Arabia, Section 27(1) of the Act is also engaged".

18. The Commissioner has first considered the MoJ's application of section 27(1).

Is the exemption engaged – section 27(1)

19. In its submission to the Commissioner, the MoJ confirmed that it relied on the arguments originally put forward in the earlier case (FS50579089), describing the request in this case as being *"couched in near-identical terms"*.

20. The Commissioner does not consider it necessary to rehearse those arguments here. He is, however, mindful of the complainant's concern regarding the exemption having been applied in a blanket fashion.
21. Having duly considered the arguments put forward by the complainant and the MoJ, and having viewed the withheld information, the Commissioner is satisfied that there would be a real and significant risk of prejudice if the withheld information were to be disclosed.
22. Acknowledging that prejudice to the relationship between the UK and the Kingdom of Saudi Arabia - in the way predicted by the MoJ - would occur, the Commissioner accepts that, in the circumstances of this case, the higher threshold of likelihood is met.
23. He therefore finds the exemption engaged in this case 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

24. 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.
25. When dealing with a complaint that information has been wrongly withheld, the Commissioner will consider the situation at the time of the request or within the statutory time for compliance. The MoJ confirmed that it considered the public interest at the time of the request – October 2015.

Public interest arguments in favour of disclosing the requested information

26. In favour of disclosing the requested information, the complainant told the MoJ:

"There is deep public concern about relations between the United Kingdom and Saudi Arabia.

Given very public criticism of elements of government policy towards Saudi Arabia historically, there is significant public interest in demonstrating that British government policy is consistently being upheld in relations with Saudi Arabia.

British relations with non-democratic countries must be seen to be as transparent and open as possible. The public must be able to trust that their government is acting in their best interests, and according to British values, than acting in the way most convenient at the time.

In particular, it is in the public interest to understand how the UK engages with states with poor human rights records, and therefore the release of this document would improve public understanding of the issue considerably”.

27. The complainant considers that such deep public concern outweighs fears that relations with Saudi Arabia could be damaged as a result of disclosure.

28. Recognising the public interest in disclosure in this case, the MoJ told the complainant:

“Disclosure would support the wider Government commitment to transparency and may encourage greater understanding of the general public about the Ministry’s policies, activities and agreements with foreign nations. It would also promote accountability of the decisions taken by the Government”.

29. The MoJ also acknowledged:

“The information in question relates to how UK Government Departments interact with foreign Governments to share knowledge and best practice. The UK’s agreement with the Kingdom of Saudi Arabia has been subject to some public interest and the issue has been debated in the media, to which disclosure of the information could assist in a wider public understanding of the nature of the agreement”.

Public interest arguments in favour of maintaining the exemption

30. In favour of maintaining the exemption the MoJ explained the importance for the UK to maintain good international relations. It also confirmed that the MoU was agreed to be confidential between the two Governments.

31. In support of its withholding of the memorandum, it told the complainant:

“... as the UK Government engaged in the preparation and signing of this document on a confidential basis, I consider it to be reasonable for the Government of the Kingdom of Saudi Arabia to expect that the UK Government would not share its contents with a

third party. If the UK did share this information, I believe that it would harm future relations with the Kingdom of Saudi Arabia, and would discourage them from entering into agreements or sharing information with the Department in future. In my view this risk extends across all areas of Government”.

Balance of the public interest arguments

32. When balancing the opposing public interests in a case, the Commissioner is deciding 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.
33. In the Commissioner’s view, there are a number of powerful public interest arguments in favour of disclosure in this case. In that respect, he accepts that there is a public interest in the transparency of the MoJ with respect to the way in which it works with other states, such as the Kingdom of Saudi Arabia. The Commissioner also recognises the strength of the public interest in matters concerning human rights.
34. However, in the circumstances of this case, the public interest against disclosure is that in avoiding prejudice to international relations, specifically UK/Kingdom of Saudi Arabia relations. 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.
35. 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.
36. From the evidence he has seen, the Commissioner is satisfied that disclosure of the withheld information represents a significant and real risk to the UK’s relations with the Kingdom of Saudi Arabia. In his view, it is clear that disclosure in this case would not only damage the UK’s relationship with the Kingdom of Saudi Arabia on this issue, but has the potential to harm the relationship between the two Governments across a range of issues. The Commissioner is satisfied that such a broad prejudicial outcome is firmly against the public interest and he has therefore concluded that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

37. In light of that conclusion, the Commissioner has not gone on to consider the MoJ's application of section 27(2) to the same information. He accepts, however, that the issue of any breach of confidentiality in this case is very closely related to the damage which would be caused to relations between the UK and the Kingdom of Saudi Arabia.

Other matters

38. The Commissioner is mindful that the request in this case was made on 22 October 2015 but it was not until April 2016 that the MoJ provided its substantive response.
39. The delay in responding to this request will be logged as part of ongoing monitoring of the MoJ's compliance with the FOIA.

Right of appeal

40. 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

41. 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.
42. 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

Jon Manners
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