

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 January 2018

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 information about how the UK voted in a particular UN election. The FCO withheld this information on the basis of sections 27(1)(a) and (d) (international relations) of FOIA. The Commissioner is satisfied that the withheld information is exempt from disclosure on the basis of these exemptions and that in all the circumstances of the case the public interest favours withholding the requested information.

Request and response

2. The complainant submitted the following request to the FCO on 30 April 2017:

`I am sending this request under the Freedom of Information Act to ask for the following information:

Please let me know who the UK voted for in the ballot held in April 2017 for membership of the United Nations Commission on the Status of Women....

... I would like the information to be emailed to me at [address redacted]'.¹

3. The FCO responded to the request on 25 May 2017. It confirmed that the FCO held 'some' information falling within the scope of the request but it considered this to be exempt from disclosure on the basis of sections 27(1)(a) to (d) of FOIA.
4. The complainant contacted the FCO on the same day and asked it to contact an internal review of this response. He explained why he disputed the application of section 27(1) and also questioned why the refusal notice stated that only some of the information was exempt given that no information had in fact been disclosed to him.
5. The FCO informed the complainant of the outcome of the internal review on 28 July 2017. The review concluded that sections 27(1)(a) and (d) applied to all of the information falling within the scope of his request.

Scope of the case

6. The complainant contacted the Commissioner on 9 August 2017 in order to complain about the FCO's decision to withhold the information falling within the scope of his request on the basis of sections 27(1)(a) and (d). His submissions to support this position are referred to in the analysis below.

Reasons for decision

Section 27 – international relations

7. The FCO sought to withhold some of the requested information on the basis of sections 27(1)(a) and (d) of FOIA. These sections 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...

...(d) the promotion or protection by the United Kingdom of its interests abroad.'

¹ On 19 April 2017 the UN announced that its Economic and Social Council had elected, by secret ballot, 13 members to its Commission on the Status of Women for four year terms. One of those elected was Saudi Arabia.

8. In order for a prejudice based exemption, such as 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; 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.
9. 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*'.¹

The FCO's position

10. In its refusal notice the FCO argued that releasing information about the UK's voting record on UN business could harm its relations with other members of the UN. The FCO emphasised that the effective conduct of international relations depends upon maintaining trust and confidence between governments and international organisations. It argued that if the UK does not maintain this trust and confidence, its ability to protect and promote UK interests through international relations will be hampered.
11. In its internal review it added the following points: The FCO argued that the promotion and protection of the UK's interests abroad depends on the UK being able to freely and privately express its views when voting on elections for membership of UN bodies. It explained that it was for this reason that the UK's policy is not to reveal how it voted in UN elections. The FCO argued that voting privately, and not revealing how

the UK voted or why, allows the UK to maintain good relations with other states, regardless of the outcome of the election or how the UK chose to vote. The FCO argued that it also reduced the risk of reprisals being taken against the UK. The FCO also argued that disclosing how and why the UK votes would restrict its ability to freely express its opinion via the ballot box.

12. The FCO provided the Commissioner with further more detailed submissions to support its reliance on sections 27(1)(a) and (d). These submissions made direct reference to the withheld information and therefore the Commissioner has not replicated these submissions in this decision notice.

The complainant's position

13. The complainant did not accept that the damage to international relations and the pursuit of UK interests would be as significant as the FCO claimed. He suggested that the UK frequently has to adopt positions on matters of international diplomacy and foreign affairs which may or may not be to the liking of other states. It is part of the normal process of diplomacy for these differences of opinion and clashes of interest to be managed. The complainant suggested that in the particular case of Saudi Arabia, the UK has already made clear publicly that it has differences with Saudi Arabia over human rights. Moreover, in the complainant's opinion the arguments provided by the FCO were entirely speculative and lacking in evidence and the FCO has not provided any evidence that the release of this particular information would actually cause the harm suggested.

The Commissioner's position

14. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the FCO clearly relates to the interests which the exemptions contained at sections 27(1)(a) and (d) are designed to protect.
15. With regard to the second criterion the Commissioner is satisfied that disclosure of the information also has the potential to result in prejudice to the UK's relationship with the other states and, as a consequence, undermine the ability of the UK to protect and promote its interests abroad. The Commissioner has reached this view because she believes that the FCO's submissions in the internal review provide a clear and rational argument to explain why prejudice could potentially occur if the information was disclosed. Furthermore, the Commissioner is satisfied that the resultant prejudice is one that is real and of substance.
16. With regard to third criterion, the Commissioner is satisfied that if this information was disclosed there is a real and significant risk of prejudice occurring. In reaching this conclusion she accepts that, as the

complainant has argued, diplomacy involves the disagreements between nations, disagreements which must be amicably managed. Furthermore, the Commissioner accepts that the UK has made public comments about Saudi Arabia's human rights record.

17. However, the Commissioner considers it important to remember that disclosure of how the UK had voted would clearly be at odds with its usual position of not revealing how it voted in UN elections. The Commissioner also notes that the ballot in question was a secret one. As a result the Commissioner is persuaded that if the UK revealed how it voted in this election this would represent a breach of the diplomatic norms and be likely to undermine the trust and confidence that other states have in the UK and be likely to impact on the UK's ability to maintain strong relations with other states. As a consequence the Commissioner accepts that the UK's ability to protect and promote its interests abroad are likely to be prejudiced.
18. Furthermore, in the Commissioner's opinion the detailed submissions provided to the Commissioner by the FCO provide compelling evidence to support its position that disclosure risks increasing the chances of reprisals being taken against the UK in future votes as well as prejudicing the UK's relations with other members of the UN. The Commissioner acknowledges that it may be frustrating to the complainant that these submissions cannot be discussed in the decision notice. However, she can assure him that on the basis of these submissions the FCO's case is clearly not one that is speculative.
19. The Commissioner is therefore satisfied that the exemptions contained at sections 27(1)(a) and (d) are engaged.

Public interest test

20. However, section 27 is a qualified exemption. Therefore, the Commissioner must consider the public interest test contained at section 2 of FOIA and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.
21. The complainant argued that there was a clear public interest in the requested information being disclosed. He suggested that whether or not the UK voted for Saudi Arabia in the ballot for the UN Commission on the Status of Women is an important issue of public policy as it would reflect a government stance on a matter of principle. Furthermore, the complainant argued that disclosure of the information is necessary for proper accountability and scrutiny of government policy and actions. He also argued that this is a matter which should be subject to well-informed public discussion so that the public has an opportunity to understand and influence UK government policy on this topic.

22. The FCO acknowledged that there was a clear public interest in the government being transparent and accountable and it also accepted that disclosure of the withheld information would increase public knowledge of the UK's relations with other states and voting at the UN. However, the FCO argued that there was a very strong public interest in ensuring that the FCO is able to conduct the UK's international relations effectively. It also argued that it would be firmly against the public interest for the UK's relations with other states to be harmed or the UK's ability to protect and promote its interests abroad to be harmed.
23. The Commissioner agrees that there is a clear interest in the public being able to understand how the UK conducts its international relations, including how it votes at the UN. In the specific circumstances of this request, the Commissioner recognises that the election of Saudi Arabia to the UN Commission on the Status of Women was met with surprise and criticism from some observers. In light of these circumstances the Commissioner believes that the arguments advanced by the complainant attract considerable weight.
24. However, the Commissioner agrees with the FCO that there is a significant public interest in the UK being able to maintain effective relations with other states. In this case, the Commissioner believes that this public interest attracts further, and notable weight, given that disclosing the withheld information risks harming not simply the UK's relations with other states in relation to this specific vote but also more broadly risks undermining the UK's ability to promote and protect its interests via future elections at the UN. As a result, the Commissioner has concluded that the public interest favours maintaining the exemptions contained at sections 27(1)(a) and (d) and thus withholding the information.

Right of appeal

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
Website: 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

Jonathan Slee
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