

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 August 2018

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested copies of briefings for the Prime Minister pursuant to a meeting with CK Hutchinson Holdings and a copy of the minutes of the meeting itself. The public authority withheld the information held within the scope of the request relying on the exemptions at sections 27(1)(a), 29(1)(a), 35(1)(a), 35(1)(d) and 43(2) FOIA.
2. The Commissioner's decision is that the public authority was entitled to rely on section 29(1)(a).
3. No steps required.

Request and response

4. On 20 December 2017, the complainant wrote to the public authority and requested information in the following terms:
5. "I would like to be provided with the following material concerning the prime minister's meeting with CK Hutchinson Holdings on 15 May 2017. Please can I be provided with any and all:
 - 1) Briefings or other documents drafted to provide guidance ahead of the meeting;
 - 2) Agendas or other documents detailing what the meeting is intended to cover and who will be attending;
 - 3) Minutes or other documents drafted during or after the meeting itemising matters discussed."
6. The public authority responded on 18 January 2018. It explained that the information held within the scope of the request was considered exempt on the basis of section 35(1)(a), section 35(1)(d), section 29 and section 43 FOIA.
7. The complainant requested an internal review of this decision on 29 January 2018.
8. On 3 April 2018 the public authority wrote to the complainant with details of the outcome of the review. The review upheld the original decision.

Scope of the case

9. The complainant contacted the Commissioner on 11 April 2018 to complain about the way his request for information had been handled, specifically the decision to withhold the information held within the scope of his request.
10. During the course of the investigation the public authority clarified that it had relied on sections 29(1)(a) and 43(2) FOIA and additionally sought to rely on the exemption at section 27(1)(a) FOIA.
11. The scope of the Commissioner's investigation therefore was to determine whether the public authority was entitled to rely on the exemptions at sections 27(1)(a), 29(1)(a), 35(1)(a), 35(1)(d) and 43(2) FOIA.

Reasons for decision

Section 29(1)(a)

12. The Commissioner first considered whether the public authority was entitled to rely on this exemption.
13. The relevant part of section 29 states¹:

“(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(a) the economic interests of the United Kingdom or of any part of the United Kingdom, or

(b) the financial interests of any administration in the United Kingdom, as defined by section 28(2).”
14. The withheld information comprises of a briefing including agenda items for the Prime Minister's meeting with CK Hutchinson Holdings on 15 May 2017 and the minutes of the meeting held on 15 May.
15. Each of the exemptions has been applied to the withheld information in full.
16. The public authority's submissions with respect to the application of section 29(1)(a) are summarised below.
17. The Commissioner understands the public authority considers that disclosure of the withheld information would or would be likely to prejudice the economic interest of the UK.
18. CK Hutchinson is a multinational company operating in 50 countries and is the UK's largest overseas investor with £37bn invested, primarily, in telecoms, ports, energy, retail and infrastructure. The company generates global turnover of £40bn (£8bn in the UK) and employs 270,000 (40,000 in the UK).
19. The public authority considers that CK Hutchinson would be concerned if information related to their commercial activities is released, as they themselves interpret this to be sensitive. This would lead to loss of trust

¹ The full text of the exemption is available here:
<http://www.legislation.gov.uk/ukpga/2000/36/section/29>

between the company and the government. CK Hutchinson like all potential investors places high priority on trusting relationships in order for those in the company to be able to share sensitive information and have open discussions.

20. Maintaining trust is a major factor in being able to engage at an early stage at corporate decision making and being able to influence and win new investments. This is particularly important in relation to a company that contributes significantly to the UK economy by generating so much employment and financial turnover. A lack of trust would be detrimental to the government's ability to have direct and open discussions with a leading business provider and investor in future. This in turn is likely to be detrimental to the wider economy of the UK particularly in view of future trade negotiations between the UK and companies as it negotiates its way out of the EU.
21. With respect to the balance of the public interest, there is a public interest in understanding the UK's conduct of economic policy. There is also a general public interest in openness in Government which may increase public trust and engagement.
22. It is however important that the government and companies are able to have discussions relating to issues of importance to companies. It is important that the information provided for such confidential and candid talks remains safeguarded in order not to hinder consideration on how to promote positive economic outcomes.
23. There is also strong public interest in maintaining the sovereignty of the decision making process. Ministers are rightly answerable for the decisions they take, not for the options they consider or any other matters which may have a bearing on the process.
24. On balance therefore, the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

Commissioner's position.

Is the exemption engaged?

25. In considering the application of the exemption, the Commissioner has inspected the withheld information described earlier in this notice.
26. The Commissioner has considered whether disclosure of the withheld information would be likely to prejudice the economic interests of the

UK. In line with a number of Information Tribunal decisions² with regard to the meaning of “would be likely to prejudice”, the Commissioner considers that it means the chance of prejudice being suffered should be more than a hypothetical possibility; there must be a real and significant risk.

27. The Commissioner accepts that disclosure of the withheld information just under 7 months following the meeting could lead to a loss of trust between CK Hutchinson and the government. The briefing provided for the meeting and the minutes of the meeting contain candid summaries of topics covered. The fact that both touch upon matters which are commercially sensitive to CK Hutchinson is also significant. The company would have a reasonable expectation that such candid discussions at the highest levels of government in relation to its interests in the UK would be held in confidence.
28. The Commissioner accepts that losing this trust by disclosing the withheld information prematurely would pose a real and significant risk of prejudice to the UK’s economic interests. CK Hutchinson is clearly a major player in the UK economy with a significant financial turnover and high employment rate. The company must be able to engage freely and frankly with Government on a variety of issues in order to maintain and expand its investments in the UK economy. Otherwise, it is not unreasonable to assume it could conclude that some of its business interests are better served elsewhere and consequently reduce its presence in the UK market.
29. The Commissioner also considers that a loss of trust between the government and CK Hutchinson would send a message to other investors and potential investors that candid discussions in relation to their business interests including commercially sensitive information could be revealed prematurely by the government. This would pose a real and significant risk of prejudice to the UK’s economic interests particularly when the government is seeking to secure investments from foreign companies post Brexit.
30. The public authority was therefore entitled to engage the exemption at section 29(1)(a).

² For example, John Connor Press Associates Limited v The Information Commissioner (EA/2005/0005)

Public interest test

31. The exemption is however subject to the public interest test set out in section 2(2)(b) FOIA. The Commissioner has therefore considered whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.
32. Having carefully considered the public authority's submissions with respect to the balance of the public interest, the Commissioner has concluded that the public interest in maintaining the exemption outweighs that in disclosing the withheld information.
33. The general public interest in transparency and accountability will be served by disclosure, and more specifically, disclosure could potentially reassure the public about the steps the government is taking to ensure that existing investments by foreign companies are secure post Brexit. However, on balance these factors do not outweigh the public interest in maintaining the exemption.
34. The Commissioner has not considered the applicability of the remaining exemptions in light of her conclusion above.

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

Terna Waya
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF