

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 January 2020

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) seeking information about the rendition to Libya, and treatment in Libya, of two individuals. The FCO refused to comply with the request on the basis of sections 14(1) (vexatious) and 14(2) (repeated requests) of FOIA.
2. The Commissioner has concluded that the request is vexatious and therefore the FCO is entitled to refuse to comply with it by virtue of section 14(1) of FOIA.
3. The Commissioner does not require the FCO to take any steps.

Request and response

4. The complainant submitted following request to the FCO on 18 July 2019:
 - '1. I would like all information created in year 2004 relating to rendition to Libya, and treatment in Libya, of Mr Belhaj and Ms. Boudchar.*
 - 2. I would like all information EXCEPT INFORMATION COVERED BY S.23 FOIA EXEMPTION created in year 2004 relating to rendition to Libya, and treatment in Libya, of Mr Belhaj and Ms. Boudchar.*

3. I would like all information EXCEPT INFORMATION COVERED BY S.24 FOIA EXEMPTION created in year 2004 relating to rendition to Libya, and treatment in Libya, of Mr Belhaj and Ms. Boudchar.

If any of the requests exceed the costs exemption, please provide a LIST of the information in the above 3 requests. Please explain why the cost exemption applies.'

5. The FCO responded on 19 July 2019 and refused to comply with the request relying on the provisions of FOIA contained at section 14(1) (vexatious) and section 14(2) (repeated requests).¹
6. The complainant contacted the FCO on the same day and asked it to conduct an internal review of this response.
7. The FCO informed him of the outcome of the internal review on 8 August 2019. The review upheld the FCO's reliance on sections 14(1) and 14(2) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 8 August 2019 in order to complain about the FCO's refusal to comply with his request of 18 July 2019. The complainant did not seek to dispute the FCO's application of sections 14(1) and 14(2) to the other requests cited in the refusal notice.

Reasons for decision

Section 14(1) - vexatious

9. In the Commissioner's view section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
 10. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the
-

¹ In addition to refusing this request on the basis of sections 14(1) and 14(2), in the same refusal notice the FCO also cited these provisions of FOIA to refuse to comply with four other requests that the complainant had recently submitted.

request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority. Where relevant, this will involve the need to take into account wider factors such as the background and history of the request.

The FCO's position

11. The FCO explained that it was refusing to comply with the complainant's request on the basis of section 14(1) of FOIA because it considered that answering it, when taking into account the background and history of it, placed an excessive burden on it.
12. In support of this position, the FCO explained that it had received 17 requests from the complainant since May 2018 which had been submitted at regular intervals, albeit the FCO emphasised that the last five of these requests, including the one which is the subject of this notice, were all received within days of each other. The FCO explained that it had conducted, or was in the process of conducting, internal reviews, on 9 of these requests. The FCO also noted that the following an internal review, the complainant often submitted a complaint to the Commissioner. It explained that it took a considerable amount of time to process and respond to the various stages of each request.
13. The FCO explained that all of these requests were on the same subject matter, namely rendition and therefore they had all been processed by its Intelligence Policy Department (IPD). The FCO argued that processing this large number of requests on a subject that is complex and sensitive to national security had caused a disproportionate burden to staff in this area.
14. The FCO explained that during 2018-19 the FCO had received an unusually high number of requests that needed to be handled by IPD. The burden could not be shared with other teams in the FCO as the requests usually related to material which might include highly sensitive information. The FCO explained that in the period May 2018 to July 2019, IPD had received 36 FOI requests. The FCO emphasised, as noted above, that 17 of these came from the complainant.
15. The FCO argued that this pattern of requests was clear evidence of the complainant submitting frequent requests. It also noted that there was overlap between the matters covered by the requests. Indeed, the FCO noted that the request which is the subject of this notice overlaps substantially with the request submitted on 11 May 2018 (FCO reference

0520-18) which was the subject of an appeal to the Commissioner with her decision notice now being appealed by the complainant to the First Tier Tribunal.² The FCO argued that to submit a similar request to the one that is the subject of an appeal was an abuse of the access regime provided for by FOIA.

16. The FCO also argued that the complainant's request incorrectly and unfairly infers that UK officials, with sanction, were personally involved in the mistreatment of Mr Belhaj and Ms Boudchar. The FCO explained that the Attorney General apologised in Parliament on 10 May 2016 to Mr Belhaj and Ms Boudchar on behalf of the Government for two things. The first was that the Government could have done more to prevent Mr Belhaj and Ms Boudchar's suffering when it shared information with its international partners. The second was that the Government had missed opportunities to alleviate Mr Belhaj and Mrs Boudchar's plight when they were detained in Libya. With regard to the inferences made in the complainant's request, the FCO noted that the Commissioner's guidance on section vexatious requests explained that one indicator of a vexatious request would be one making unfounded allegations.³
17. The FCO also noted that complainant's request asked it to exclude information from its searches that was exempt from disclosure on the basis of sections 23(1) and 24(1) of FOIA. However, it explained that its record management and IT systems did not allow it to exclude material on the basis of FOI exemptions. Rather, it was only possible to first identify all material in the scope of the request and then determine whether any exemptions applied.
18. Finally, the FCO argued that the burden imposed on it by answering this request is not proportionate given that that the complainant was seeking information about a situation that has already been the subject of a settlement between the FCO and the individuals concerned.

The Commissioner's position

19. With regard to the purpose and value of the request, the Commissioner accepts that there is a public interest in the issue of rendition and moreover in the case of Mr Belhaj and Ms Boudchar. In the Commissioner's view this public interest does not necessarily fall away

² [FS50773396](#)

³ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

simply because the individuals in question and the UK government have reached a settlement.

20. However, as the table of the complainant's previous requests demonstrates, the FCO has always sought to withhold information on the topic of rendition that he had requested or, alternatively, refused to comply with the request on the basis of section 12 of FOIA (cost limit). Clearly, the Commissioner acknowledges that simply because a public authority is likely to withhold material this does not mean that a request for such material has little purpose or value. Obviously, a requester in such a scenario would have the right, under the legislation, to challenge that refusal to the Commissioner and beyond that to the First Tier Tribunal. The Commissioner also accepts that in submitting this request the complainant has suggested isolating material that in her previous decision notice she found to be exempt. However, the Commissioner notes that the First Tier Tribunal has still to reach a decision in relation to the complainant's appeal of that previous notice. In light of these factors, whilst the Commissioner acknowledges that requests on this subject matter could be ones of genuine purpose and value, she is not persuaded that this is the case for this specific request.
21. With regard to the burden of complying with the request, the Commissioner appreciates that approximately one request per month does not represent a huge volume or pattern of requests from one individual for a public authority the size of the FCO. However, the Commissioner recognises that the burden of dealing with these requests has fallen on one small department within the FCO, namely the IPD, given the subject matter of the information which the complainant has sought. Moreover, the Commissioner accepts that processing these requests has placed a burden on the IPD, a burden in part amplified by the complexity of the requests and the highly sensitive material falling within their scope. The Commissioner also accepts that complying with the request is likely to result in further ones on the same subject being submitted to the FCO by the complainant.
22. Moreover, in the Commissioner's view the complainant's requests do fit the description of the some of the criteria in her guidance which can be used to identify vexatious requests. Notably, the frequent patterns of the requests, in particular the last five requests being submitted within a few days of each other. Furthermore, the Commissioner accepts that to ask for information in this request which is the subject of an ongoing

appeal to the First Tier Tribunal is persuasive evidence of a request displaying unreasonable persistence.⁴

23. In conclusion, the Commissioner accepts that there is a genuine public interest in accessing information on this topic. However, there is limited value in this particular request given the fact that a similar one is already the subject of an appeal to the First Tier Tribunal. Furthermore, the Commissioner does accept that processing this request when seen in the context of the complainant's previous requests to the FCO on this subject would place a burden on the FCO. Ultimately for the reasons discussed above the Commissioner does not believe that this burden can be justified and therefore she has concluded that the FCO can correctly refuse to comply with this request on the basis of section 14(1) of FOIA.

⁴ The request was is the subject of the appeal to the Tribunal was as follows:
*'I would like a list of all records held by FCO relating to Mr Belhaj and Ms. Boudchar.
Where possible, the list should contain:- a) the date of the record b) the type of record - i.e. letter, email, phone record, image c) a summary/gist of what the record is
If the request exceeds costs threshold, please restrict request to year 2004.'*

Right of appeal

24. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. 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.
26. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

AnnexTable of requests submitted by complainant to the FCO

Request number	FCO ref	Request	Date received by FCO	Date of response	Exemption	Internal review and date
<u>1</u>	0520-18	<p>I would like a list of all records held by FCO relating to Mr Belhaj and Ms. Boudchar.</p> <p>Where possible, the list should contain:-</p> <p>a) the date of the record</p> <p>b) the type of record - i.e. letter, email, phone record, image</p> <p>c) a summary/gist of what the record is</p> <p>If the request exceeds costs threshold, please restrict request to year 2004.</p>	11/05/2018	06/07/2018	s23/24 alt s40(2) s42(1)	Yes 3/8/2018
<u>2</u>	0742-18	<p>Provide a list of all data held relating to the al-Saadi family.</p> <p>The list should be set out</p>	06/07/2018	06/08/2018	s12	Yes 4/9/2018

		if possible as follows: 1. Type of data, i.e. email, image, letter. 2. Date. 3. Summary or gist of data.				
<u>3</u>	0834-18	Provide a similar list of all data held relating to Moussa Muhammad Koussa, former Libyan political figure. The list should be set out if possible as follows: 1. Type of data, i.e. email, image, letter. 2. Date. 3. Summary or gist of data.	06/07/2018	06/08/2018	s12	Yes 4/9/2018
4	0293-19	I would like all data held relating to the decision whether or not to hold an inquiry led by a judge.	22/03/2019	20/05/2019	s.21 s.24(1) s.35(1)(a) s.42(1)	Yes 19/6/2019

		I would like all legal advice given in the last 5 years as to whether the UK has committed human rights abuses that took place in the context of an international armed conflict could have amounted to war crimes.				
5	0399-19	<p>1. Provide all information held regarding torture or other forms of ill-treatment of Yunus Rahmatullah, Amanatullah Ali XYZ, HTF ZMS: -</p> <p>a) at the time of their capture and while in British custody</p> <p>b) by US forces</p> <p>2. When is this case scheduled for trial?</p> <p>3. If you have settled any claims provide full details including, damages, costs and consent Orders.</p>	23/04/2019	02/07/2019	s.40(2) s.40(3A)(a) s.32 s.42(1) S.23(5) s.24(2)	Yes 29/7/2019

6	0454-19	I would like to see all the 'general warrants' and/or thematic warrants. These are ones which are not based on reasonable individual suspicion	16/05/2019	14/06/2019	s.23(1) s.40(2) s.40(3A)(a) s.42(1)	Yes 12/7/2019
7	0455-19	I would like a dated list of all the 'general warrants' and/or thematic warrants. These are ones which are not based on reasonable individual suspicion. Please state the start and end date of the warrant's duration	16/05/2019	14/06/2019	s.23(1) s.40(2) s.40(3A)(a) s.42(1)	Yes 12/7/2019
8	0456-19	Request: I would like a list, in date order, newest first, of all data held on the following persons: (1) SAMI AL SAADI (2) KARIMA AIT BAAZIZ (3) KHADIJA SAADI (4) MUSTAFA AL SAADI (5) ANAS AL SAADI	16/05/2019	14/06/2019	s.12	<u>No</u>

		(6) ARWA AL SAADI				
9	0476-19	I would like all year 2004 data relating to (broad scope, please) involvement in rendition of Sami al-Saadi/family. Which persons (including civil servants, politicians and others) agreed to the settlement.	22/05/2019	18/07/2019	23(5) 24(2) 27(4) 40(5)(B)(a)(i) 42(2)	Yes 14/8/2019
10	0477-19	I would like a list of all information/records/data etc. relating to Sami al-Saadi (and family) litigation.	22/05/2019	20/06/2019	23(1) 27(1)(d) 32 40(2) 40(3A)(a) 42(1)	Yes 19/7/2019
11	0484-19	Provide a list of all persons who you/ HM Govt. has been involved with as regards rendition to Libya when Colonel Gaddafi was in power. On the list state if the U.S. CIA was involved.	24/05/2019	19/07/2019	23(5) 24(2) 27(4) 40(5)(B)(a)(i) 42(2)	Yes 13/8/2019

12	0551-19	<p>Further separate request:</p> <p>I would like to know which politicians ordered the settlement, so provide all data regarding the settlement to Sami Al Saddi (and family etc.) Also, how much were both sides legal costs, set them out pls.</p> <p>I would like to resubmit the request for Mr Sami Al Saddi only.</p>	17/06/2019	12/07/2019	23(1) 27(1)(a) 32 40(2) 40(3A)(a) 42(1)	Yes 14/8/2019
13	0579-19	<p>I want all data relating to what information you sought from Mr Belhaj and partner</p> <p>a) What information did you get?</p> <p>b) With whom did you share the information?</p> <p>c) I would like all recordings/transcripts of Mr Belhaj or his partner being questioned or</p>	21/06/2019	19/07/2019	14(1) 14(2)	Yes 8/8/2019

		<p>tortured.</p> <p>d) I would like all image data of the questioning or torture</p> <p>e) Name of all persons who ordered or agreed to Belhaj being subject to rendition to Libya and associated paperwork etc for example arrest warrant, consent of UK PM</p> <p>f) Provide rules, guidance etc for how you or your agents should use torture in 2004. I am particularly interested in images or drawings for example where you think the best place to put electrodes before passing a current of electricity through the person being tortured.</p> <p>I would like to amend my request to exclude any data which is exempt due</p>				
--	--	--	--	--	--	--

		to s.23 FOIA				
14	0580-19	I would like information held by FCO relating to Mr Belhaj and Ms. Boudchar being subject to rendition to Libya where Jack Straw was the author or co-author of the information. If the request exceeds the cost threshold, please restrict to year 2004/5. I would like to amend the request to EXCLUDE any information to which s.23 FOIA exemption applies.	21/06/2019	19/07/2019	14(1) 14(2)	Yes 8/8/2019
15	0581-19	I would like a list of all records held by FCO relating to Mr Belhaj and Ms Boudchar EXCEPT information to which s.23 FOIA (information supplied by or relating to bodies dealing with security matters) applies. If the request exceeds cost threshold please restrict request to year 2004. Please amend the	23/06/2019	19/07/2019	14(1) 14(2)	Yes 8/8/2019

		request to information held on 10 May 2018.				
16	0582-19	I would like a list of all records held by FCO relating to Mr Belhaj and Ms Boudchar EXCEPT information to which s.23 FOIA (information supplied by or relating to bodies dealing with security matters) applies which contains the wording "Jack Straw" or his signature.	24/06/2019	19/07/2019	14(1) 14(2)	Yes 8/8/2019
17	0667-19	1. I would like all information created in year 2004 relating to rendition to Libya, and treatment in Libya, of Mr Belhaj and Ms. Boudchar. 2. I would like all information EXCEPT INFORMATION COVERED BY S.23 FOIA EXEMPTION created in year 2004	19/07/2019	19/07/2019	14(1) 14(2)	Yes 8/8/2019

		<p>relating to rendition to Libya, and treatment in Libya, of Mr Belhaj and Ms. Boudchar.</p> <p>3. I would like all information EXCEPT INFORMATION COVERED BY S.24 FOIA EXEMPTION created in year 2004 relating to rendition to Libya, and treatment in Libya, of Mr Belhaj and Ms. Boudchar.</p>				
--	--	--	--	--	--	--