

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 October 2020

Public Authority: Foreign, Commonwealth & Development Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant submitted a request to the Foreign, Commonwealth and Development Office (FCDO) seeking information about an investigation into money laundering. The FCDO refused to provide the information on the basis of section 23(1) (security bodies) of FOIA. The Commissioner is satisfied that withheld information is exempt from disclosure on the basis of section 23(1) of FOIA.
2. The Commissioner does not require the FCDO to take any steps.

Request and response

3. The complainant submitted the following request to the FCDO on 22 September 2018:

BACKGROUND:

<https://www.telegraph.co.uk/news/2018/09...>

"The former senior police officer in charge of investigating corruption has revealed that he was ordered to halt an inquiry into Russian money laundering."

Jon Benton, who headed up the National Crime Agency's international corruption unit, said a more senior official linked to the Foreign Office told him to drop his inquiry."

REQUEST

Provide all data held relating to the order to Jon Benton to halt the enquiry into Russian money laundering.'

4. The complainant subsequently refined his request on 24 September 2018 to only cover the five year period prior to his request.
5. The FCDO responded on 22 October 2018 and confirmed that it held information falling within the scope of the request but considered it to be exempt from disclosure on the basis of section 24 (national security) of FOIA but needed additional time to consider the balance of the public interest test.
6. The FCDO provided him with a substantive response to his request on 12 November 2018. The response explained that the requested information was considered to be exempt from disclosure on the basis of sections 23 (security bodies) and 24 of FOIA and that in relation to the latter the public interest favoured maintaining the exemption.
7. The complainant contacted the FCDO on 6 December 2018 in order to ask it to conduct an internal review of this refusal.
8. The FCDO informed him of the outcome of the internal review, over a year later, on 17 January 2020. The review upheld the application of both exemptions.

Scope of the case

9. The complainant contacted the Commissioner on 17 January 2020 in order to complain about the FCDO's handling of his request. He disagreed with the FCDO's reliance on the exemptions it had cited to withhold the requested information. He was also dissatisfied with the amount of time it took to complete the internal review.
10. During the course of the Commissioner's investigation the FCDO explained that it was no longer seeking to rely on section 24(1) to withhold the information but instead sought to rely only on section 23(1) of FOIA.

Reasons for decision

Section 23(1) – information supplied by or relating to bodies dealing with security matters

11. The FCDO argued that all of the withheld information was exempt from disclosure on the basis of section 23(1) of FOIA. This states that:

'Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).'

12. To successfully engage the exemption at section 23(1), a public authority needs only to demonstrate that the relevant information was directly or indirectly supplied to it by, or relates to, any of the bodies listed at section 23(3).¹ This means that if the requested information falls within this class it is absolutely exempt from disclosure under FOIA. There is no requirement on the public authority to demonstrate that disclosure of the requested information would result in some sort of harm. This exemption is not subject to a balance of public interests test.

The FCDO's position

13. The FCDO provided the Commissioner with submissions to support its position that the information was either supplied by, or relates to, the security bodies listed in section 23(3) of FOIA. These submissions included a letter from a senior official in the FCDO with the experience and authority to validate the provenance of the withheld information. This official assured the Commissioner that section 23(1) applied to the entirety of the withheld information and outlined why this was the case. The official also confirmed that they had considered whether there were any of parts of the withheld information which were not supplied or related to the security bodies which could be disaggregated from the remainder of the information. The official concluded that such disaggregation was not possible.

¹ A full list of the bodies detailed in section 23(3) is available here: <http://www.legislation.gov.uk/ukpga/2000/36/section/23>

The Commissioner's position

14. The Commissioner's approach to investigating cases involving the application of section 23(1) is set out in a Memorandum of Understanding (MoU).² This explains that a public authority will provide the Commissioner with a reasoned explanation to justify the application of section 23(1). The MoU also explains that in all but exceptional cases, it is envisaged that such a reasoned explanation will be sufficient for the Commissioner to satisfy herself that section 23(1) has been correctly applied.
15. The Commissioner has considered the submissions made by the FCDO in this case in respect of the application of section 23(1). She accepts that in the circumstances of this case, the assurance provided by the official in question with regards to the application of section 23(1) is sufficient for her to conclude that the withheld information is exempt from disclosure on the basis of section 23(1) of FOIA.

Other matters

16. FOIA does not impose a statutory time within which internal reviews must be completed albeit that the section 45 Code of Practice explains that such reviews should be completed within a reasonable timeframe. In the Commissioner's view it is reasonable to expect most reviews to be completed within 20 working days and reviews in exceptional cases to be completed within 40 working days.³
17. In the circumstances of this case the FCDO took over a year to complete the internal review. The FCDO explained that this delay was due, in part, to significant staff changes which meant that it was unable to dedicate adequate resources to the review. It also explained that it had reviewed its processes as a result of this delay and put in place changes to ensure that it is able to conduct internal reviews within the guidelines set out above.
18. The Commissioner would note that if a public authority has not completed an internal review within the timescales set out in her

² <https://ico.org.uk/media/about-the-ico/documents/1042533/mou-national-security-cases-foia-eir.pdf>

³ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/#20>

guidance, a requester can contact her to lodge a complaint rather than wait for the public authority to complete the internal review.

Right of appeal

19. 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

20. 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.
21. 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
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