

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 24 November 2020

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

### Decision (including any steps ordered)

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1. The complainant submitted a request to the Foreign, Commonwealth and Development Office (FCDO) seeking information about a visit David Cameron had made to Bahrain in January 2017. The FCDO provided the complainant with a digest of information falling within the scope of his request but redacted parts of it on the basis of sections 27(1)(a) (international relations), 38(1)(b) (health and safety) and 40(2) (personal data) of FOIA. The FCDO also refused to confirm or deny whether it held any further information falling within the scope of the request on the basis of sections 24(2) (national security) and 38(2) of FOIA.
2. The Commissioner has concluded that the information redacted by the FCDO is exempt from disclosure on the basis of sections 27(1)(a) and 38(1)(b) of FOIA. She has also concluded that the FCDO is entitled to rely on section 38(2) to refuse to confirm or deny whether it holds any further information falling within the scope of this request.
3. No steps are required.

## Request and response

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4. The complainant submitted the following request to the FCDO on 16 October 2019:

*'I am writing to you with a request under the Freedom of Information act. My request relates to a visit by former Prime Minister David Cameron to Bahrain on January 10 and 11 2017.*

*Under the act, I would like to request completes copies of any and all information held by the Foreign and Commonwealth Office relating to this visit. I assume that this covers reports, diplomatic telegrams, emails, minutes and records of meetings, briefing material, letters, memorandums of conversations, and any other information held by the Foreign Office which were prepared for or connected with this visit, either before or after the event...*

*...I would also like to ask the Foreign and Commonwealth Office on answering this request to provide a schedule of documents which are relevant to this request. I believe that there should be a brief description of each relevant document including the nature of the document, the date of the document, and whether the document is being released or not. I believe that providing such a schedule would clarify what documents are being released what is being withheld, and would also represent best practice in open government'.*

5. The FCDO responded on 6 November 2019 and explained that the information falling within the scope of the request was exempt from disclosure on the basis of section 21 (reasonably accessible) of FOIA because it had been disclosed in response to a previous FOI request. The FCDO provided the complainant with a link to that response.
6. The complainant contacted the FCDO on 3 December 2019 and asked it to conduct an internal review of this response. He noted that when replying to the previous request the FCDO had withheld information on the basis of sections 27 (international relations) and 40 (personal data) of FOIA. He suggested that such information appeared to fall within the scope of his request but this had not been provided to him. He outlined why he considered there to be a public interest in the disclosure of this information.
7. The FCDO informed the complainant of the outcome of the internal review on 10 February 2020. The FCDO provided him with some further information falling within the scope of his request, part of which had been previously withheld and part of which had only been identified at the internal review stage. However, the FCDO explained that some of

the information in the scope of the request was exempt from disclosure on the basis of sections 27(1)(a), 40(2) and 38(1)(b) (health and safety) of FOIA. It also refused to confirm or deny whether it held any further information falling within the scope of the request on the basis of sections 24(2) (national security) and 38(2) of FOIA.

## Scope of the case

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8. The complainant contacted the Commissioner on 21 February 2020 to complain about the FCDO's decision to withhold information falling within the scope of his request. He argued that there was a public interest in the disclosure of this information. The complainant did not seek to challenge the decision to redact the names of British government officials; albeit that he still wanted to be provided with the names of any non-British government staff.
9. During the course of the Commissioner's investigation, on 2 October 2020, the FCDO provided the complainant with a small amount of additional information falling within the scope of his request.
10. This decision notice considers whether the remaining withheld information is exempt from disclosure on the basis of the exemptions cited by the FCDO. The Commissioner has also considered whether the FCDO is entitled to refuse to confirm or deny whether it holds any further information on the basis of sections 24(2) and 38(2) of FOIA.

## Reasons for decision

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### Section 27(1)(a) – international relations

11. Section 27(1)(a) of FOIA states that:

*'(1) 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'*

### The FCDO's position

12. The FCDO argued that the UK's prosperity and security is dependent on its foreign policy and international relationships and that the successful conduct of international relations requires an ability to influence, persuade, negotiate, build alliances and reach consensus. The FCDO explained that this is largely dependent on mutual trust and confidence with the UK's foreign interlocutors. The FCDO argued that without this

trust and confidence, the UK's ability and influence is severely compromised.

13. In terms of the specifics of this request, the FCDO explained that the UK enjoys a close, friendly and trusting relationship with Bahrain, with extensive ties across defence, security, regional policy and the economy. The FCDO emphasised that this cooperation is underpinned by mutual trust.
14. The FCDO explained that diplomatic exchanges between two countries can take place both in public and in private. The latter allows the candid exchange of information between officials, typically on the understanding that government positions will not be disclosed.
15. In this instance, the FCDO explained that Mr Cameron's visit to Bahrain was on a private basis and was not made on behalf of the UK Government. Due to the nature of the visit, the FCDO argued that the Bahraini Royal Family, with whom he met, would have had an implicit and unequivocal expectation that certain aspects of the visit would remain private. Consequently, the FCDO argued that any release of such information would be likely to be perceived by the Bahraini Royal Family as a breach of trust by the UK. In turn the FCDO argued that this would be detrimental to the bilateral relationship between the UK and Bahrain as the UK would be seen as an unreliable and untrustworthy partner, and one that does not respect confidence. This would limit the UK's ability to engage with the Bahrainis, including on key reform and regional security issues.

#### The Commissioner's position

16. 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. The anticipated prejudice must be more likely than not.

17. 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.'*<sup>1</sup>
18. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the FCDO clearly relates to the interests which the exemption contained at section 27(1)(a) is designed to protect. With regard to the second criterion having considered the content of the withheld information and taking into account the FCDO's submissions, the Commissioner is satisfied that there is a causal link between disclosure of this information and prejudice potentially occurring to the UK's relations with Bahrain. Furthermore, she is satisfied that the resultant prejudice would be real and of substance. Moreover, the Commissioner is satisfied that there is a more than a hypothetical risk of prejudice occurring and therefore the third criterion is met. In reaching this conclusion the Commissioner has placed particular weight on the fact that there was clearly an implicit expectation that the content of some of Mr Cameron's discussions with the Bahraini Royal Family would remain private. Consequently, in the Commissioner's view disclosure of the withheld information therefore presents a real risk of undermining UK-Bahraini relations.
19. Section 27(1)(a) is therefore engaged.

### **Public interest test**

20. However, section 27(1) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of 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 information.

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<sup>1</sup> [Campaign against Arms Trade v the Information Commissioner and Ministry of Defence EA/2007/0040 \(26 August 2008\)](#)

*Public interest in disclosing the withheld information*

21. The complainant advanced a number of reasons why he thought that the public interest favoured disclosure of the withheld information:
22. He explained that it was his understanding that Mr Cameron was flown back to Britain after his visit to Bahrain on a jet belonging to Mr Ayman Asfari, the founder, chief executive and largest shareholder of the Petrofac company. The complainant noted that Mr Asfari and his wife had donated almost £800,000 to the Conservative Party since 2009. The complainant argued that this raised vital questions about how governments should best manage the perceived potential conflicts of interest generated by donations from business figures to political parties. The complaint noted that Petrofac was being investigated by the Serious Fraud Office over suspected bribery, corruption and money laundering. Given this, he argued that it was in the public interest to release information about the firm's interactions with senior political figures and government ministers.
23. He argued that disclosing the requested information would also be in the public interest as it may help shed light on this question and the role of the FCDO in this visit. It may also shed light on the activities of Mr Cameron while he was visiting Bahrain.
24. The complainant also noted that in response to the previous request the FCDO had stated that the visit to Bahrain was a private visit funded by Mr Cameron himself. The complainant suggested that this was not correct as the visit appears to have been funded by Petrofac. He argued that disclosing the withheld information may also help shed light on the funding of this visit.

*Public interest in maintaining the exemption*

25. The FCDO argued that if the UK does not maintain the trust and confidence of Bahrain, its ability to protect and promote UK interests both in Bahrain and the wider region will be hampered. For example by facilitating bilateral trade and commercial activity and providing consular support to British nationals living in and visiting Bahrain. The FCDO argued that such an outcome would be firmly against this public interest.

*Balance of the public interest arguments*

26. In the Commissioner's view there is a clear public interest in understanding how the UK conducts its relations with other states. Whilst the information in this request concerns a private visit undertaken by Mr Cameron, the Commissioner accepts that there is still

a public interest in understanding the extent and role of the FCDO in such a visit. The Commissioner has noted the specific points made by the complainant regarding the alleged funding of this visit. However, in the Commissioner's opinion the extent to which disclosure of the withheld information would prove illuminating in relation to these particular points is limited.

27. In contrast, the Commissioner accepts that there is very strong public interest in ensuring that the UK's relationship with Bahrain is not harmed in order to ensure the UK can protect and promote its interests both within Bahrain and in the wider region, and moreover that disclosure of this would be likely to result in such disruption. Taking all of the above into account, the Commissioner has concluded that the public interest favours maintaining the exemption contained at section 27(1)(a)

### **Section 38 – health and safety**

28. The FCDO also argued that disclosure of some of the withheld information was exempt from disclosure on the basis of section 38(1)(b).

29. Section 38(1)(b) of FOIA states:

*'Information is exempt information if its disclosure under this Act would, or would be likely to...*

*...(b) endanger the safety of any individual.'*

30. In section 38 the word 'endanger' is used rather than the word 'prejudice' which is the term used in other similar exemptions in FOIA. However, in the Commissioner's view the term endanger equates to prejudice.

### The FCDO's position

31. The FCDO explained that the information withheld under the above exemption concerns details of the logistical arrangements for the visit, including travel and accommodation. It argued that gathering and analysing publicly available information in order to produce intelligence to compile profiles, and identify targets, is a recognised strategy employed by those planning criminal activities, including terrorism. It argued that disclosure of the information concerned would therefore pose a risk to the safety of individuals involved in future visits of this nature.

### The Commissioner's position

32. With regard to the three limb test set out above, the Commissioner is satisfied that the FCDO's arguments relate directly to the interests which section 38(1)(b) of FOIA is designed to protect. The first limb of the test is therefore met. Furthermore, the Commissioner is satisfied that there is a causal link between disclosure of this information and prejudice potentially occurring to the safety of individuals involved in similar visits in the future. Furthermore, the Commissioner is satisfied that the resultant prejudice would be real and of substance. Moreover, taking into account the content of the withheld information and the methods and techniques adopted by those with criminal intent, she is satisfied that there is a more than a hypothetical risk of prejudice if this information was disclosed. Therefore, the third criterion is met.

### *Public interest test*

33. The FCDO acknowledged the public interest in openness and transparency. However, it argued that it had a clear obligation not to reveal information that could risk the personal security and well-being of individuals. The Commissioner agrees with this assessment and given the limited extent to which disclosure of the information withheld on the basis of section 38(1)(b) would inform the public interests identified in disclosure set out above, she has concluded that the public interest favours maintaining the exemption.

34. As the Commissioner has concluded that all of the redacted information is exempt from disclosure on the basis of either sections 27(1)(a) or 38(1)(b), she has not considered whether parts of this information are also exempt from disclosure on the basis of section 40(2) of FOIA.

### **Section 38(2) – health and safety**

35. The FCDO also refused to confirm or deny whether it held any further information falling within the scope of the request on the basis of sections 38(2) and 24(2) of FOIA.

36. Section 38(2) allows a public authority to refuse to confirm or deny whether it holds any information if to do so would, or would be likely to, endanger the physical or mental health or safety of an individual defined in section 38(1)(a) and (b).

37. The FCDO explained that it relied on section 38(2) due to the status of principal person involved in the visit, ie Mr Cameron, to avoid revealing whether it held any additional information relating to security arrangements for the visit. In support of this position the FCDO referred to its submissions in support of section 38(1), ie that gathering and



analysing publicly available information in order to produce intelligence to compile profiles, and identify targets, is a recognised strategy employed by those planning criminal activities, including terrorism. The FCDO explained that it was therefore standard practice to neither confirm nor deny (NCND) that a VIP/public figure has travelled with an official security team. The FCDO provided the Commissioner with further submissions to support its application of this exemption in this case which cannot be included in this decision notice as it includes information which is itself sensitive.

38. The Commissioner has considered the circumstances of this request carefully, along with the FCDO's further submissions to her. She is persuaded that confirming whether or not it holds any further information would be likely to harm the safety of individuals. In reaching this conclusion the Commissioner has taken into account the importance of NCND provisions being applied consistently.

*Public interest*

39. Section 38(2) is also subject to the public interest test. The FCDO acknowledged that there was a public interest in knowing more about the extent of any government security measures in place to protect key public figures, including the resource that may be involved in this work. However, the FCDO argued that there is clearly a very strong public interest in the government taking appropriate measures to protect not only the safety of those individuals but also the wider public. In view of these considerations the FCDO argued that the public interest favoured maintaining section 38(2).
40. The Commissioner agrees with this and accepts that there is a stronger public interest in maintaining section 38(2) than in confirming whether or not the FCDO holds any further information falling within the scope of the request.
41. In light of this conclusion the Commissioner has not considered the FCDO's reliance on section 24(2).

## Right of appeal

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42. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

43. 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.
44. 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**