

## Freedom of Information Act 2000 (the Act)

### Decision notice

**Date:** 2 March 2020

**Public Authority:** The Cabinet Office  
**Address:** 70 Whitehall  
London  
SW1A 2AS

#### Decision (including any steps ordered)

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1. The complainant has requested closed file PREM19/3824. The Cabinet Office withheld this information on the basis of section 23(1) (security bodies) and section 41 (information provided in confidence).
2. The Commissioner is satisfied that the entirety of the file is exempt from disclosure under section 23(1) of the Act.
3. The Commissioner does not require the Cabinet Office to take any steps regarding this case.

#### Request and response

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4. The complainant wrote to the Cabinet Office on 28 September 2018 and requested information in the following terms:  
*"Please may I see the contents of the file PREM 19/3824 concerning Brian Nelson, public interest issues and protection of intelligence sources."*
5. The Cabinet Office responded on 29 October 2018 and confirmed that it held the requested information. The Cabinet Office explained that it was withholding the information under section 23(1) and section 41(1) of the Act.
6. The complainant requested an internal review on 29 October 2018.

7. The Cabinet Office provided the outcome of its internal review on 20 November 2018. It upheld its reliance on sections 23(1) and 41(1) to withhold the requested information.

### Scope of the case

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8. The complainant contacted the Commissioner's Office on 21 November 2018 to complain about the handling of his request by the Cabinet Office.
9. The scope of the investigation, agreed by the complainant on 9 April 2019, is to determine whether the Cabinet Office is entitled to rely on section 23(1) and 41(1) to withhold the requested information.

### Reasons for decision

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#### **Section 23(1): Information supplied by or relating to bodies dealing with security matters**

10. Section 23(1) of the Act provides an exemption which 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)."*

11. 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)<sup>1</sup>. This means that if the requested information falls within this class of information, it is absolutely exempt from disclosure under the Act. This exemption is not subject to consideration of the public interest.
12. The Cabinet Office has confirmed that the entirety of the requested information is exempt under section 23(1) of the Act.
13. The Cabinet Office provided the Commissioner with a Letter of Assurance signed by an appropriate person with the relevant experience and seniority to provide assurances about the provenance of the

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2000/36/section/23>

requested information. The Letter of Assurance confirms that the material within the scope of the request is exempt under section 23(1).

14. Based on the Letter of Assurance, the Commissioner is satisfied that the withheld information falls within the scope of the exemption provided by section 23(1) of the Act.
15. The Commissioner cannot refer to the contents of the Letter of Assurance as to do would disclose information which she has determined is exempt. She can, however, set out that as stated in the request the file name is recorded at The National Archives as:

*"IRELAND. Brian Nelson: public interest issues and protection of intelligence sources and methods."*<sup>2</sup>

16. In his request for information, the complainant made the following arguments in favour of disclosure:
  1. *To uphold public confidence that information prepared for the prime minister about the Irish Troubles is made public after reasonable interval;*
  2. *To provide assurance that the British Army behaved responsibly when dealing with terrorists during the Troubles;*
  3. *To ensure that money is correctly spent on keeping Downing Street informed of matters involving Army operations."*

17. The Commissioner does not dispute that there are valid public interest arguments in favour of disclosure identified by the complainant. However, as explained above, section 23(1) is a class based exemption. If information falls within the scope of the exemption, it is exempt from disclosure. There is no need for a public authority to demonstrate that prejudice would occur if the information was disclosed in order for section 23(1) to be engaged. Furthermore, as also noted above, the exemption is an absolute one and therefore not subject to the public interest test. Therefore, in the Commissioner's view, the complainant's arguments do not affect the conclusion that the withheld information is exempt from disclosure on the basis of section 23(1) of the Act.

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<sup>2</sup> <https://discovery.nationalarchives.gov.uk/details/r/C16561737>

18. As the Commissioner has determined that the entirety of the requested information is exempt under 23(1), she has not gone on to consider section 41(1) as to do so would be academic.

### **Other matters**

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19. The Commissioner's investigation incurred delays due to the Cabinet Office's lack of engagement. She does not expect to have to issue two information notices in order to obtain a public authority's submissions.
20. The Commissioner expects the Cabinet Office to engage with her officers when requested to do so during the course of an investigation.

## Right of appeal

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21. 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)

22. 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.
23. 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

**Victoria Parkinson**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**