

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 13 September 2021

Public Authority: Cabinet Office
Address: 70 Whitehall
London SW1 2AS

Decision (including any steps ordered)

1. The complainant has requested the information contained in a particular named file which has been retained by the Cabinet Office although it has been identified on the website of The National Archives. The Cabinet Office refused to provide it citing section 24(1) (national security). It upheld this position at internal review.
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 24(1) as its basis for refusing to provide the requested information.
3. No steps are required.

Request and response

4. On 28 January 2019 the complainant requested information of the following description:

"I wish to make a Freedom of Information request for a copy of the following file, currently retained by the Cabinet Office.

CAB 134/4316 Official Committee on Home Defence: Machinery of Government in War Sub-Committee: National Air Transport Agency Working Party: papers 1-2 (1970), meeting 3 and papers 1-2 (1971), paper 1 (1972)

Reconsideration due in 2018."

5. On 25 February 2019 the Cabinet Office responded.
6. It refused to provide the requested information. It cited the following exemptions as its basis for doing so:
 - section 24(1) (safeguarding national security)
7. The complainant requested an internal review on 17 April 2019. The Cabinet Office sent him the outcome of its internal review on 25 June 2019. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 29 July 2019 to complain about the way his request for information had been handled.
9. The Commissioner has considered whether the Cabinet Office is entitled to rely on section 24(1) as its basis for refusing to provide the requested information.
10. The Commissioner wrote to the Cabinet Office to ask for its response on the substantive issues in the case on 14 November 2019. It provided these on 9 December 2019. It did not provide the Commissioner with a copy of the information as would normally be the case. There followed an exchange between the Cabinet Office and the Commissioner seeking to arrange access to the withheld information.
11. In certain rare cases, the Commissioner and the public authority in question need to make special arrangements to enable the Commissioner (or one of her representatives with adequate security clearance) to view the withheld information. Where possible, the Commissioner seeks to view the information electronically and securely in a manner appropriate to the security marking of the information in question. It was not possible to do so in this case.
12. While the Commissioner was making arrangements with the Cabinet Office to view the withheld information, the complainant submitted further evidence to support his argument that much of the information had already been put into the public domain. The Commissioner commends him for the thoroughness and detail of this evidence which he went to considerable effort to present.
13. Unfortunately, as the Commissioner and the Cabinet Office were making logistical arrangements, restrictions were introduced as a consequence

of the Covid-19 pandemic which meant that it was impossible for the Commissioner's representative to view the information in situ. These were in place for much of 2020 and early 2021. The Commissioner's representative was finally able to view the withheld information in June 2021.

Reasons for decision

14. Reference to the document containing the requested information can be found on the website of The National Archives¹

Section 24 – national security

15. Section 24(1) of the FOIA states that:

'Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security'.

16. FOIA does not define the term 'national security'. However in *Norman Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045 4 April 2007) the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords' observations as follows:

- 'national security' means the security of the United Kingdom and its people;
- the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
- the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
- action against a foreign state may be capable indirectly of affecting the security of the UK; and,

¹ [Official Committee on Home Defence: Machinery of Government in War Sub-Committee:... | The National Archives](#)

- reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.
17. Furthermore, in this context the Commissioner interprets 'required for the purpose of' to mean 'reasonably necessary'. Although there has to be a real possibility that the disclosure of requested information would undermine national security, the impact does not need to be direct or immediate.
 18. The Cabinet Office provided no information to the complainant about why it believed it was entitled to rely on section 24. The Commissioner notes that in certain circumstances, a public authority is not obliged to explain why it is relying on an exemption. This is where doing so would involve the disclosure of information which would itself be exempt information (section 17(4) refers)².
 19. The Cabinet Office provided the Commissioner with more detailed submissions to support its reliance on section 24(1) of FOIA. It also supplied background information about the withheld information. However, the Cabinet Office explained that it considers these submissions to be sensitive – a position which the Commissioner accepts – and therefore they cannot be reproduced in the decision notice. The Commissioner acknowledges that this may be extremely frustrating for the complainant.
 20. As noted above, the complainant supplied detailed evidence to show that a significant proportion of closely related information has been put in to the public domain at the National Archive. He argued that this undermined the Cabinet Office's position that it is entitled to rely on section 24 to withhold the requested information in order to safeguard national security. He was concerned that the Commissioner may be given an inaccurate impression of the sensitive nature of the information if she was not made aware of what was already in the public domain. The Commissioner has considered these detailed submissions as part of her consideration of this matter.

² <https://www.legislation.gov.uk/ukpga/2000/36/section/17>

21. The Commissioner viewed the withheld information in June 2021. Subsequently, she double checked with the Cabinet Office a point regarding that information.
22. Taking all the above into account, the Commissioner is satisfied that the information is exempt under section 24. She regrets that she is unable to put on the face of this notice her detailed reasoning. To do so, would, unfortunately, reveal details of the content and substance of the information itself.

Public interest test

23. Section 24 is a qualified exemption. Therefore, in relation to the information which the Commissioner accepts is exempt from disclosure on the basis of section 24(1), she must consider the public interest test and whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing that information.
24. The complainant has queried the sensitivity of the information given what he has obtained already from The National Archives. He argued that there was a clear public interest in the disclosure of the information. He set out the evolution of proposals on the topic covered by the withheld information and the problems that had been identified with them. He also identified what he saw as a contradiction in the disclosure of sensitive information. Implicitly, the requested information was not as sensitive as the Cabinet Office claimed and there was a public interest in the public knowing more about the topic.
25. In its submissions to the Commissioner, the Cabinet Office accepted that large amounts of information had been put into the public domain. However, it said that there was a strong public interest in safeguarding national security. It then set out contextual detail to explain why the requested information remained withheld in order to safeguard national security. It provided additional arguments in support of this position which make specific reference to the content of the withheld information.
26. The Commissioner agrees that there is a public interest in the Cabinet Office being open and transparent about matters related to contingency planning. She also recognises that the complainant's detailed research has identified what he, the complainant, believes are anomalies which

add weight to the public interest in ensuring that this matter is being properly considered and not subject to errors or outdated analysis.

27. However, having viewed the withheld information, the Commissioner considers that there is a considerably stronger public interest in withholding the requested information in order to safeguard the national security of the UK. She is unable to set out in this notice why this is necessary in this case without disclosing the information itself.
28. The Commissioner recognises that this is extremely frustrating for the complainant for several reasons: the complainant went to considerable effort to provide detailed supporting arguments; he has genuine concerns about what he sees as the casual misapplication of FOIA by the Cabinet Office (he explained this assertion with evidence of what he identified as anomalous disclosures); the complainant has had to wait an extremely long time to receive the Commissioner's decision; and this decision notice does not include any substantive detail about the submissions made by the Cabinet Office which persuaded the Commissioner to reach the conclusion that she has reached.
29. Having taken the arguments of both parties into account and having viewed, the requested information, the Commissioner has concluded that the Cabinet Office is entitled to rely on section 24(1) as its basis for withholding it.

Right of appeal

30. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

31. 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.
32. 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

**Gerrard Tracey
Principal Adviser
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