

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 October 2021

**Public Authority:** Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4DF

#### Decision (including any steps ordered)

---

1. The complainant has requested information about a particular visit made by the Australian High Commissioner to the UK, to the Home Office. The Home Office confirmed that it held some of the requested information but that it was exempt from disclosure under sections 27(1)(a) and 27(2) (International relations), and section 40(2) (Personal information) of the FOIA.
2. The Commissioner's decision is that the Home Office was entitled to rely on section 27(1)(a) to withhold all of the information falling within the scope of the request and that the public interest favoured maintaining the exemption.
3. The Commissioner requires no steps as a result of this decision.

#### Request and response

---

4. On 7 October 2020, the complainant wrote to the Home Office and requested information in the following terms:

*"On Tuesday October 6th 2020 the Australian High Commissioner to the U.K. George Brandis visited the Home Office for meetings. I would like to ask for the following information under the FOI act:*

*1) a list of people the High Commissioner met with that day. Feel free to redact the names of more junior staff members or civil servants present,*

*2) the agenda of the meeting/s he attended that took place that day*

*3) the minutes of the meeting/s he attended*

*I understand that some of the information may need to be redacted for S40 or other exemptions. If that is the case please don't count redactions towards cost limits as per FOI guidance, or use as a basis for a blanket refusal. Likewise, if not all the information requested can be provided please do not use that as the basis for a blanket refusal".*

5. The Home Office responded on 2 November 2020. It said that it held some of the requested information but that it was exempt from disclosure under section 27(1)(a) (International relations) of the FOIA.
6. The complainant requested an internal review on 2 November 2020, saying that he did not believe that the information was sufficiently sensitive to merit being withheld in its entirety. He invited the Home Office to redact those parts of it that it believed were sensitive, and to disclose the remainder.
7. The Home Office provided the internal review on 2 December 2020. It reiterated that the information was exempt in its entirety under section 27(1)(a). Additionally, it said that personal data could not be disclosed as it was exempt under section 40(2) of the FOIA.

## **Scope of the case**

---

8. The complainant contacted the Commissioner on 18 December 2020 to complain about the way his request for information had been handled. He disagreed with the Home Office's decision to refuse the request.
9. During the Commissioner's investigation, the Home Office said that it also considered the withheld information to be exempt under section 27(2) of the FOIA in its entirety. This exemption applies to information obtained in confidence from another state, international organisation or international court.
10. Following the combined cases of the *Home Office v Information Commissioner* (GIA/2098/2010) and *DEFRA v Information Commissioner* (GIA/1694/2010) in the Upper Tribunal, a public authority is able to claim a new exemption or exception either before the Commissioner or the First-tier Tribunal and both must consider any such new claims.

11. The complainant also confirmed to the Commissioner that he did not require the names of any junior members of staff to be disclosed in response to the request. The Commissioner has therefore excluded that information from the scope of the information being considered for disclosure.
12. The analysis below considers whether the Home Office was entitled to rely on the exemptions cited to withhold the requested information.
13. It is important to note that the role of the Commissioner is to consider the application of any exemptions at the point that the request was submitted, or at the time of the public authority's internal review<sup>1</sup>.

### **Reasons for decision**

---

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

*"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".*

15. The Commissioner's guidance on section 27<sup>2</sup> acknowledges that the effective conduct of the UK's international relations depends upon maintaining the trust and confidence of other states and international organisations. This relationship allows for the free and frank exchange of information between the UK and its partners. In turn, this allows the UK to effectively protect and promote its interests abroad.
16. The Commissioner has viewed the withheld information, which consists of a brief agenda, the minutes of a meeting and a list of attendees.

#### *The complainant's position*

17. The complainant argued that the Home Office was wrong to withhold all the requested information. He accepted that some of the information he had requested might be sensitive, but he objected to what he saw as the 'blanket' application of exemptions to withhold all the information

---

<sup>1</sup> This reflects the position taken by the Upper Tribunal in APPGER v ICO and Foreign and Commonwealth Office (UKUT 0377 (ACC), 2 July 2015)

<sup>2</sup> <https://ico.org.uk/for-organisations/foi-guidance/section-27-international-relations/>

described in his request. He opined that the meeting was unlikely to have been particularly sensitive or secret, as the High Commissioner had been observed entering the Home Office through the main entrance. He commented:

*"Providing information on who the High Commissioner met, the meeting/s agenda and of the broad topics discussed at that meeting/s, via minutes (redacted if need be) is basic transparency, as is who government ministers and senior officials meet.*

...

*But to provide a blanket refusal of even the most basic information requested is in my view hiding behind these exemptions - indeed it is an abuse of these exemptions - to shield the government and the departments from even the most basic levels of transparency and accountability."*

#### *The Home Office's position*

18. The Home Office explained that the withheld information relates to confidential discussions on policy development on sensitive matters, held between UK government officials and the Australian High Commissioner (the Australian government's representative in the UK).
19. The Home Office provided the following background information on the UK's close diplomatic relationship with Australia:

*"The UK and Australia enjoy a [sic] historic relationship and modern partnership. It is a unique and enduring bond built on friendship and shared values; one underpinned by strong security, prosperity and people-to-people links; one more relevant than ever as we work together advancing common interests and tackling global issues.*

*The UK and Australia are close partners on the international stage, being members of the Commonwealth, Five Eyes, G20 and the United Nations. Both countries are committed to protecting and promoting the rules-based international order.*

*In short, both countries (through their officials, including their High Commissioners) have developed a mutual trust which allows them to effectively work together on a host of issues."*

20. The Home Office provided the Commissioner with detailed submissions to support its application of section 27(1)(a) of the FOIA to withhold the information. The Commissioner cannot reproduce those submissions in this decision notice as they would reveal the content of the withheld information and additional information which the Home Office considers to be highly sensitive.

21. However, the Commissioner can reproduce the Home Office's general arguments. The Home Office said that the issues under consideration were highly sensitive and the discussions around them were frank. It argued that this frankness was evidence that all parties had the expectation that the discussions were confidential and would not be disclosed, particularly so soon after the meeting had taken place.
22. The Home Office assessed the likelihood of prejudice as being 'would be likely' to prejudice. It said that disclosure of the agenda and meeting minutes would be likely to significantly undermine the UK's relationship with Australia and damage trust between the two countries. The Australian government would no longer be able to reasonably expect that meetings with UK representatives would be kept private if it disclosed such sensitive information about their confidential discussions in response to requests made under the FOIA. The future sharing of information between the two countries would likely be jeopardised if the withheld information was to be disclosed.
23. The Home Office argued that to confirm the names of the attendees would provide a strong indication as to the nature of the discussions that had taken place, and so the considerations outlined above also applied in respect of that information.

*The Commissioner's position*

24. 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 or prejudice which the public authority alleges would, or would be likely to, occur 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 confirmation or denial 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 on 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 of 'would be likely', which the Home Office has specified, 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.
25. 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>3</sup>.

26. As noted above, the Commissioner's role is to consider the application of any exemptions at the point that the request was submitted (or the point that the internal review was completed). The request was submitted on 7 October 2020, just one day after the meeting it enquired about. The internal review was completed on 2 December 2020. Therefore, the Home Office was being asked to disclose information about a meeting less than two months after it had taken place.
27. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the Home Office relates to the interests which the exemption contained at section 27(1)(a) is designed to protect. That is, that the UK's relations with Australia would be likely to be adversely affected by the disclosure of sensitive information, which had been offered under an expectation of confidentiality and which related to issues which remained 'live' at the time of the request.
28. With regard to the second criterion, having considered the content of the withheld information and taking into account the Home Office's submissions to her, 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 Australia, and also other states. In reaching this conclusion, she disagrees with the complainant's assessment that the meeting did not discuss highly sensitive matters. In the Commissioner's view it is clear that the discussions between those present were of a highly sensitive nature and occurred with an expectation that they were confidential.
29. The Commissioner is also satisfied that the causal link applies in respect of the withheld information in its entirety. The meeting as a whole addressed a highly sensitive matter. The minutes summarise what was discussed and there are no points which do not reflect the sensitive and confidential nature of the discussions. The agenda points were specific and, as such, are indicative of the content of the minutes. Likewise, the names of attendees, due to their job titles and information in the public domain, would give a strong indication as to the nature of the discussions.

---

<sup>3</sup> Campaign Against Arms Trade v the Information Commissioner and Ministry of Defence EA/2007/0040 (26 August 2008)

30. In light of this the Commissioner is satisfied that there is a clear causal link between disclosure of all the withheld information and prejudice potentially occurring to the UK's relations with Australia and other states. In reaching this conclusion the Commissioner has had regard to the highly sensitive nature of the discussions and the likely impact that their disclosure would have. Disclosure may cause Australia, and other states, to be more guarded and less cooperative in their dealings with the UK. They may be more cautious about sharing sensitive information with the UK government in future and less likely to respect the confidentiality of information supplied by the UK government. This would certainly make relations between the UK and these other states more difficult.
31. In addition, having considered all of the circumstances of the case the Commissioner is satisfied that disclosure of the information at the time of the request, as well as at the point of the internal review, would have been likely to have resulted in prejudice that was real and of substance. In reaching this conclusion, the Commissioner acknowledges that the matters under consideration were very much live at the time of the internal review, and they remain so.
32. Taking the above onto account, the Commissioner is satisfied that disclosure of the information at the time of the internal review would have been likely to be harmful to the UK's relations with Australia and other states. Consequently, the Commissioner is satisfied that there is more than a hypothetical risk of prejudice occurring and the third criterion is met.
33. It follows that the Commissioner is satisfied that section 27(1)(a) is engaged.

*Public interest test*

34. Section 27(1) is a qualified exemption and is subject to the public interest test set out in section 2(2)(b) of the 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.

*Arguments in favour of disclosing the withheld information*

35. The complainant has commented:

*"...transparency and accountability are in the public interest, as are who ministers and officials meet and greater an understanding [sic] of the views that shape ministers' and officials' thinking on issues and matters that affect the public."*

36. The Home Office acknowledged the general public interest in transparency and openness in government. Such openness can increase public understanding, inform public debate, and maintain public trust. In the context of this request, it recognised that the public has a legitimate interest in having information on relations between the UK and Australia and hence in disclosure of details of meetings between the Home Office and the Australian High Commissioner. Disclosure in this case could be said to have the effect of increasing public awareness of international co-operation and encourage greater public participation and debate.

*Arguments in favour of maintaining the exemption*

37. In its submissions on the public interest, the Home Office referred the Commissioner to her decision in a previous case (issued under reference FS50467452<sup>4</sup>) and to the aforementioned Information Tribunal decision, both of which it considered had relevance to this case.
38. The Home Office emphasised that the effective conduct of international relations depends upon maintaining trust and confidence between governments and other states:

*"There is a strong public interest in preserving good relationships between the United Kingdom and any other State, in this case Australia. These good relationships depend upon discussions between UK Government representatives and representatives of another State taking place on a basis of confidentiality and mutual trust, and an understanding that sensitive information will be protected. Disclosure of information about meetings between the Home Office and Australia would reduce trust and prejudice future relationships. This in effect would reduce co-operation between the two states and affect safeguarding of the UK interests and citizens. This would not be in the public interest."*

39. It argued that there is a clear and compelling justification for protecting information, which the Australian government (through the Australian High Commission) considers to be highly confidential, to ensure full and frank discussions can take place between both parties, without fear of sensitive information being disclosed. This is particularly the case in this instance when the discussions were very recent and focussed on a sensitive area in which policy is being continuously developed. In short, the issue under discussion is still very much a 'live' issue today.

---

<sup>4</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2013/819674/fs\\_50467452.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2013/819674/fs_50467452.pdf)



40. It concluded that the public interest is best served by officials and Ministers being able to discuss confidential matters with foreign governments with all parties assured that their deliberations will be held in confidence and not be prematurely disclosed:

*"The ability of Ministers and officials to communicate candidly is a crucial aspect of the safe space required for effective international bilateral discussion. Without the protection afforded by this safe space, confidential information-sharing and discussion, policy development and in general, effective co-operation between the UK and Australia (or other States for that matter) would be markedly more difficult, both now, and in the future."*

*Balance of the public interest*

41. In the Commissioner's view there is a clear public interest in understanding how the UK conducts its relations with other states. In the specific circumstances of this request she accepts that there is a general, and legitimate, interest in the public understanding the UK's discussions with Australia about sensitive matters relating to public policy. Disclosure of the withheld information would directly meet this interest.
42. However, the Commissioner accepts that there is very strong public interest in ensuring that the UK's relationships with other states is not harmed or made more difficult and less effective. This is to ensure that the UK can protect and promote its interests and it goes to the heart of the purpose of the exemption.
43. In the context of this request, and as set out above, the Commissioner accepts that, due to its highly sensitive content and the confidential circumstances in which it was generated, if the withheld information had been disclosed at the time of the request, or by the internal review stage, it would have been likely to have had an adverse effect on the UK's ongoing relations with Australia, and other states. In view of the likelihood of serious damage to the UK's ability to maintain effective working relationships with Australia, and other states, the Commissioner has concluded that the public interest in maintaining the exemption contained at section 27(1)(a) outweighs the public interest in the disclosure of the information.
44. Given this conclusion, the Commissioner has not considered the Home Office's reliance on sections 27(2) and 40(2) of FOIA.

## Right of appeal

---

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

46. 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.
47. 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 .....**

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