

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 12 May 2022

**Public Authority:** Cabinet Office

**Address:** 70 Whitehall  
London  
SW1A 2AS

#### **Decision (including any steps ordered)**

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1. The complainant requested a copy of a particular file the Cabinet Office holds on a deceased British businessman. The Cabinet Office applied sections 23(1) (Information supplied by, or relating to, bodies dealing with security matters) and 24(1) (National security) of FOIA, in the alternative, to refuse the request.
2. The Commissioner's decision is that the Cabinet Office was entitled to apply sections 23(1) and 24(1) in the alternative, to withhold the requested information.
3. The Commissioner requires no steps as a result of this decision.

#### **Background**

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4. Ian Spiro was a British businessman who lived in the United States. In November 1992, his family were found murdered in their home. His body was later discovered at another location. The case was officially declared a murder-suicide, ostensibly sparked by pressure from the family's alleged financial problems. However, conspiracy theories have

circulated, suggesting that there may have been third party, state or terrorist involvement in the deaths<sup>1</sup>.

## Request and response

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5. On 19 March 2019, the complainant wrote to the Cabinet Office and requested information in the following terms:

"I understand that the Cabinet Office has a folder concerning the British businessman, Ian Stuart Spiro.

<https://discovery.nationalarchives.gov.uk/details/r/C16561655>

As I understand it, the folder is currently in possession of the Cabinet Office. I would like to have copies of the documents within this folder to be released to me."

6. The Cabinet Office responded on 16 April 2019. It confirmed that it held the requested information but considered it to be exempt from disclosure on the basis of section 23(1) (Information supplied by, or relating to, bodies dealing with security matters) or section 24(1) (National security) of FOIA. The Cabinet Office explained that it was seeking to rely on these exemptions 'in the alternative'.<sup>2</sup>
7. The complainant requested an internal review on 2 May 2019. The Cabinet Office informed him of the outcome of the internal review on 7 April 2021. The review upheld the application of the exemptions cited.

## Scope of the case

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8. The complainant contacted the Commissioner on 8 April 2021 to complain about the way his request for information had been handled. He disagreed with the Cabinet Office's stated basis for refusing the

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<sup>1</sup> <https://www.independent.co.uk/news/bizarre-case-of-the-cia-man-the-hostage-and-a-desert-suicide-1261208.html>

<sup>2</sup> The Commissioner's guidance to these exemptions explains why he allows sections 23(1) and 24(1) of FOIA to be cited in the alternative. See paragraphs 25 to 27 of this document:

[https://ico.org.uk/media/for-organisations/documents/1196/how\\_sections\\_23\\_and\\_24\\_interact\\_foi.pdf](https://ico.org.uk/media/for-organisations/documents/1196/how_sections_23_and_24_interact_foi.pdf)

request. He was also concerned that it took nearly two years for the Cabinet Office to carry out an internal review of its decision.

9. The analysis below considers whether the Cabinet Office was entitled to rely on sections 23(1) and 24(1) of FOIA, in the alternative, to refuse the request. The Commissioner has commented on the time taken to conduct the internal review in the 'Other matters' section at the end of this decision notice.

## **Reasons for decision**

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

#### **Section 24(1) (National security)**

10. Section 23(1) of FOIA 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>3</sup>.

12. Section 24(1) 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'.

13. 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:

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

- '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,
  - reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.
14. Furthermore, in this context the Commissioner interprets 'required for the purposes 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.
15. As is clear from the wording of section 24(1), the exemptions provided by sections 23(1) and 24(1) are mutually exclusive. This means they cannot be applied to the same request.
16. However, the Commissioner recognises that the fact that section 24(1) can only be applied to information that is not protected by section 23(1) can present a problem if a public authority does not want to reveal whether or not a section 23 security body is involved in an issue. To overcome this problem, and as referred to above, in footnote 2, the Commissioner will allow public authorities to cite both exemptions 'in the alternative' when necessary. This means that although only one of the two exemptions can actually be engaged, the public authority may refer to both exemptions in its refusal notice.
17. As the Commissioner's guidance on this issue explains, a decision notice which upholds the public authority's position will not allude to which exemption has actually been engaged. It will simply say that the Commissioner is satisfied that one of the two exemptions cited is engaged and that, if the exemption is section 24(1), the public interest favours withholding the information.
18. The Commissioner has viewed the withheld information. Based on this, and the submissions provided to him by the Cabinet Office during his investigation, the Commissioner is satisfied that the withheld information either falls within the scope of the exemption provided by

section 23(1) of FOIA or falls within the scope of the exemption provided by section 24(1) of FOIA, and that if the exemption engaged is section 24(1), then the public interest favours maintaining the exemption.

19. The Commissioner's decision is therefore that the Cabinet Office was entitled to rely on sections 23(1) and 24(1) in the alternative, to refuse the request.
20. The Commissioner cannot elaborate on his rationale behind this finding without compromising the content of the withheld information itself or by revealing which of these two exemptions is actually engaged.

### **Other matters**

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21. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

### **Internal review**

22. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of FOIA.
23. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The approach of the Commissioner is that internal reviews should be completed within a maximum of 40 working days. Clearly, the Cabinet Office failed to keep to this timescale.
24. The Cabinet Office apologised for what it described as the "unacceptable" delay the complainant encountered in obtaining an internal review of its decision. It said that an internal review response was prepared in May 2019, but it was never issued. This may have been due to the member of staff concerned moving to another post. The Cabinet Office acknowledged that it had also failed to act on a chaser the complainant had sent in December 2020, enquiring about the internal review response. It was only when the complainant submitted a new request for the same information, in March 2021, that it realised its error and issued the internal review response.
25. The Cabinet Office referred the Commissioner to work that has recently taken place to improve its request handling processes, including a

dedicated case management system that enables it to track cases more efficiently.

26. The Commissioner uses intelligence gathered from individual cases to inform his insight and compliance function. This aligns with the goal in his draft "Openness by design"<sup>4</sup> strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting systemic non-compliance, consistent with the approaches set out in his "Regulatory Action Policy"<sup>5</sup>.

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<sup>4</sup> <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

<sup>5</sup> <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

## Right of appeal

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27. 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)

28. 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.

29. 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**