

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

### **Decision notice**

**Date:** 10 February 2023

**Public Authority:** Foreign, Commonwealth and Development Office

**Address:** King Charles Street  
London  
SW1A 2AH

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

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1. The complainant has requested risk assessments relating to Afghanistan. The above public authority ("the public authority") relied on sections 24 (national security), 27 (international relations) and 35 (formulation of government policy) of FOIA to withhold some information and relied on section 23(5) of FOIA (security bodies) to refuse to confirm or deny whether further information was held.
2. The Commissioner's decision is that the public authority has correctly applied sections 24, 27 and 35 of FOIA to the information it has confirmed it holds and that the public interest favours maintaining each exemption. The Commissioner is also satisfied that the public authority was entitled to refuse to confirm or deny whether further information was held.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 22 September 2021, the complainant wrote to the public authority and requested copies of the principal risk reports relating to Afghanistan from June to August 2021. The following day he clarified that he was interested in those reports relating to security, extremism or terrorism.

5. The public authority responded on 23 November 2021. It confirmed that it held some information but relied on sections 24, 27 and 35 of FOIA to withhold that information. It relied on section 23(5) of FOIA to refuse to confirm or deny whether further information was held.
6. The public authority broadly upheld this position following an internal review.

### **Reasons for decision**

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7. Due to delays in obtaining the withheld information, the Commissioner was obliged to serve an information notice on the public authority, requiring it to provide the information it had confirmed that it was withholding.
8. Having reviewed the information the public authority has confirmed that it holds, the Commissioner notes that section 35 has been applied throughout. In some cases section 24 has also been applied. In some cases section 27 has also been applied and in some cases all three exemptions have been applied to the same information. For reasons that will become clear, the Commissioner has addressed all three exemptions.

### **Section 24 – national security**

9. A public authority can rely on section 24 to withhold information if it is required to do so in order to safeguard national security.
10. The phrase “national security” is not defined in FOIA, but is commonly considered to include the security of the UK and its people as well as reciprocal co-operation between the UK and other states to combat terrorism. A fuller definition is available in the Commissioner’s guidance.<sup>1</sup>
11. The public authority has not set out, in its responses to the complainant, why the information was required to be withheld for the purposes of safeguarding national security – although the Commissioner notes that it is not required to do so if such an explanation would, in itself, disclose exempt information.

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<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/section-24-safeguarding-national-security/>

12. Having viewed the information being withheld, the Commissioner is satisfied that it falls within the territory of national security and that section 24 is engaged. Unfortunately he is unable to expand on this argument without revealing the contents of the information that has been withheld.

### **Public interest test**

13. The Commissioner recognises that there is always a public interest in openness and transparency. However in this case that public interest is considerably outweighed by the importance of safeguarding national security.

### **Section 27 – international relations**

14. Section 27 allows a public authority to withhold information whose disclosure would harm the UK's relations with other nations or its ability to protect its interests on the world stage.
15. In its refusal notice the public authority made a generic reference to maintaining trust and confidence with other governments – which the Commissioner accepts is an applicable interest.
16. In its submission to the Commissioner the public authority explained why disclosure of this information would be likely to harm the UK's relations with other nations (and which nations specifically) as well as the UK's ability to protect its interests. Having seen the information being withheld, the Commissioner is satisfied that disclosing such information would harm the UK's relations with other nations and its ability to protect its interests overseas. Unfortunately, once again, the Commissioner is unable to expand on these arguments without revealing the content of information being withheld.

### **Public interest test**

17. The Commissioner has considered the balance of the public interest carefully once again in relation to this exemption.
18. Once again, whilst there is a public interest in openness and transparency, this is easily outweighed by the public interest in preventing the significant harm that would likely arise in the event that this information were to be placed in the public domain.

### **Section 35 – formulation or development of government policy**

19. Section 35 allows a public authority to withhold information which relates to the formulation or the development of government policy.

20. It is self-evident from the request that the information within scope would inform the Government's response to what was, at that time, a rapidly-developing situation. Clearly, before the Government decides to act (or not to act), it will wish to weigh up the situation on the ground and the risks of acting (or not acting). That is sufficient to engage this exemption.

### **Public interest test**

21. The Commissioner recognises that the public interest in maintaining this exemption is more finely balanced than for the previous exemptions. Some of the information to which this exemption applies is relatively generic and is the sort of information that would be expected to be included in a document of this kind.
22. However, the public authority explained in its responses that the public interest should favour withholding the information in order to maintain a safe space in which to evaluate developing risks in a candid manner. It also indicated to the Commissioner how some of the information continued to be relevant to its current work.
23. Finally the public authority noted that there was a considerable amount of information already in the public domain about its policy towards Afghanistan in the relevant period and that disclosing the withheld information would not add significantly to that debate.
24. The Commissioner has considered the detailed submissions provided by the public authority. Whilst some of the information the public authority has relied only on section 35 to withhold is relatively generic, that information is in turn informed by information that the Commissioner has already found the public authority can rely on either section 24 or section 27 (or both) of FOIA to withhold. To put it another way, once the information that is covered by one of the other exemptions is removed (as the Commissioner has already found it must be), the remaining information is stripped of its proper context and meaning.
25. The Commissioner also recognises that the value of such risk assessments is to be found in their candid assessments of risk. If the document were prepared with a view for publication, it would be a very different document and likely of less use.
26. On balance the Commissioner is therefore persuaded that the public interest favours maintaining this exemption too.

### **Section 23– security bodies**

27. A public authority may rely on section 23(5) to refuse to confirm or deny whether it holds information if the mere act of confirming or denying would reveal information relating to one or more of the security bodies listed in section 23(3) of FOIA.
28. The Commissioner recognises that the subject matter of the request is one that the public might expect to be of interest to one or more security bodies. Therefore if the public authority were to confirm or deny that further information was held, it would be revealing whether or not a security body had had some form of input. The Commissioner also recognises that the public authority must apply this exemption consistently (ie. regardless of whether such information is, or is not, held) in order for it to remain effective.
29. The Commissioner is therefore satisfied that the public authority is entitled to rely on section 23(5) of FOIA in the manner that it has done. His analysis should not be taken as indicating that the public authority does or does not hold further information beyond that already identified.

## Right of appeal

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

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

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