

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

### **Decision notice**

**Date:** 11 July 2023

**Public Authority:** Foreign Commonwealth and Development Office  
**Address:** W.G 75  
King Charles Street  
London SW1A 2AH

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

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1. The complainant requested from the Foreign Commonwealth and Development Office (FCDO) copies of its annual reviews of the United States, from 2000-2005. The FCDO stated that it did not hold an annual review for 2001 and refused to disclose the remaining annual reviews, citing section 27 of FOIA (international relations) as a basis for non-disclosure.
2. The Commissioner's decision is that the FCDO has correctly relied on section 27 of FOIA.
3. The Commissioner has also decided that the FCDO has breached section 10(1) of FOIA as it did not provide a response to the complainant within 20 working days.
4. The Commissioner does not require any steps.

#### **Request and response**

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5. On 20 June 2022 the complainant requested information in the following terms:-  
"I wish to see full copies of the department's annual reviews of the United States produced from 2000 through to 2005."
6. On 22 June 2022 the FCDO asked the complainant to clarify their request. They did so on 29 June 2022.
7. The FCDO responded to the complainant on 30 December 2022, stating that it was applying section 27 of FOIA as a basis for refusing to disclose

the requested information. It also stated that it did not hold the annual review for 2001.

8. In its internal review response to the complainant on 8 March 2023 the FCDO upheld the original decision.

## **Reasons for decision**

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

9. The FCDO withheld the relevant information it holds on the basis of section 27(1)(a). This states that: '(1) 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...

10. The complainant considers that the FCDO has incorrectly applied section 27(1)(a) to their request, as the requested materials are around 20 years old at this point and they consider that they are unlikely to harm relations with the current US administration due to the amount of time that has passed.

11. The FCDO argues that the requested information provides frank analysis of US politics and candid views on events at the time and was intended to guide and influence the UK government's own policy. To release such frank assessments would, in the view of the FCDO, potentially damage the bilateral relationship between the UK and the United States of America, despite the passage of time, and would be likely to inhibit the British Embassy's ability to protect and promote UK interests abroad.

12. In order for a prejudice based exemption, such as section 27, to be engaged the Commissioner considers that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed 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 potential disclosure of the information being withheld and the prejudice which the
- exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance.

- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., disclosure would be likely to result in prejudice or disclosure would result in prejudice. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.
13. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the FCDO clearly relates to the interests which the exemptions contained at section 27(1)(a) is designed to protect.
  14. With regard to the second and third criteria, having perused the requested information the Commissioner accepts that disclosure of this material could encroach upon the UK's relations with other states, which value the UK's trust and discretion. A relationship of trust and confidence between the UK and other states is key to successful political operations. The Commissioner therefore accepts that disclosure of such information would be likely to harm the UK's relations with the USA, taking into account the threshold for prejudice in the context of section 27 as set out above.

#### **Public interest arguments in favour of disclosing the information**

15. The Commissioner places significant weight on openness and transparency, and the FCDO acknowledges that releasing information would increase public knowledge about the UK's relations with the United States of America. The FCDO recognises that there is a real and genuine interest in knowing about and understanding this relationship. To that end, it engages in considerable public communications campaigns around key aspects of the US-UK relationship, and shares further detail in responses to parliamentary questions and in debates in Parliament.

#### **Public interest arguments in favour of maintaining the exemption**

16. However, s.27 (1) (a) recognises that the effective conduct of international relations depends upon maintaining trust and confidence between governments. If the United Kingdom does not maintain this trust and confidence, its ability to protect and promote UK interests through international relations will be hampered, which will not be in the public interest.

17. The Commissioner is satisfied that, in all the circumstances of the case, the public interest is weighted in favour of maintaining the exemption at section 27(1)(a) of FOIA.

**Procedural requirements – section 10(1) of FOIA**

18. The above section of FOIA provides that a public authority must provide a response to a request for information within 20 working days. As the complainant's request was made on 20 June 2022 and the FCDO did not provide a full response until 30 December 2022, the FCDO has failed to comply with section 10(1) of FOIA.

## Right of appeal

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19. 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)

20. 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.
21. 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 .....**

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