

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 July 2014

Public Authority: Foreign and Commonwealth Office
Address: King Charles Street
London SW1A 2AH

Decision (including any steps ordered)

1. The complainant has requested correspondence between Tony Blair and the Foreign and Commonwealth Office ("FCO") between June 2009 and July 2012 in relation to Russia. The FCO refused to provide this citing section 27 (international relations); section 40 (unfair disclosure of personal data); and section 41 (information provided in confidence) as its basis for doing so. After internal review it disclosed some information but withheld the remainder restating reliance on the above exemptions.
2. The Commissioner's decision is that the FCO is entitled to rely on section 41 as a basis for withholding the remainder of the requested information.
3. No steps are required.

Request and response

4. On 6 March 2013, the complainant requested information of the following description:

"All correspondence, or records of oral conversations, between Tony Blair and the Foreign Office (i.e. the central department) between June 2009 and July 2012" in relation to Russia. This request was to include representatives of "Government Advisory Practice/Policy Advisory Group."

5. On 12 June 2013, the FCO responded. It refused to provide the requested information. It cited the following exemptions as its basis for doing so: section 27(1) (international relations); section 40(2) (unfair disclosure of personal data); and section 41(1) (information provided in confidence).
6. There was a further exchange of correspondence between the complainant and the FCO, and the complainant requested an internal review on 9 October 2013. The FCO sent the outcome of its internal review to him on 10 January 2014. It made a disclosure to the complainant but it upheld its use of the three exemptions listed above in relation to other information that it held which fell within the scope of the 6 March 2013 request.

Scope of the case

7. The complainant contacted the Commissioner on 11 February 2014 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the FCO is entitled to rely on any of the exemptions it has cited as a basis for refusing to provide that information within the scope of the request which remains withheld.

Reasons for decision

9. Section 41(1) is an absolute exemption under the FOIA and provides that information is exempt from disclosure if it was obtained by the public authority holding it from any other person (including another public authority) and the disclosure of the information to the public by the public authority would constitute an actionable breach of confidence.
10. Therefore, in order for the exemption to be engaged, the relevant information must meet the following two criteria. Was the information obtained by the public authority from a third party? Would the disclosure of the information constitute an actionable breach of confidence?
11. The FCO has applied the section 41 exemption to the information in question. It is the record of a conversation between an employee of the FCO and Mr Blair. The record was made by the employee of the FCO. The Commissioner is satisfied that this is a record of information which was provided to the FCO by a third party. However, for the exemption to be engaged disclosure of the withheld information must also constitute an actionable breach of confidence. In the Commissioner's view a breach will be actionable if:

- i. The information has the necessary quality of confidence. (Information will have the necessary quality of confidence if it is not otherwise accessible and if it is more than trivial; information which is of importance to the confider should not be considered trivial.)
 - ii. The information was communicated in circumstances importing an obligation of confidence. (An obligation of confidence can be expressed explicitly or implicitly. Whether there is an implied obligation of confidence will depend upon the nature of the information itself, and/or the relationship between the parties.)
 - iii. Unauthorised disclosure would cause a specific detriment to either the party which provided it or any other party.
12. The FCO argued that the information had the necessary quality of confidence. The Commissioner is satisfied that it is not trivial information and was not widely available. He is also satisfied that the information was communicated in circumstances where there was an expectation of confidentiality.
13. The FCO explained why disclosure of the information would be detrimental to parties mentioned in it. The Commissioner does not propose to set out that explanation on the face of this notice because, to do so, would require the disclosure of the information that has been withheld. However, having considered the FCO's arguments with specific reference to the withheld information, the Commissioner is satisfied that disclosure would give rise to detriment.
14. Finally, the Commissioner has considered whether the FCO could rely on a public interest defence so that a breach of confidence would not be actionable. Although the language of public interest considerations in section 41 appears similar to those normally applied to qualified exemptions under the Act, there is a crucial difference. Section 41 is an absolute exemption not subject to a public interest test. That said, if there is a more compelling public interest in disclosure – which a public authority could rely upon in any action against it for breach of confidence, information may be disclosed. By contrast, where qualified exemptions fall to be considered under the Act, the public interest will favour disclosure unless this is outweighed by the public interest in maintaining the exemption cited.
15. The FCO asserted that it could not rely on a public interest defence in this case. After viewing the withheld information, the Commissioner agrees with this. There is nothing particularly controversial in the withheld information which might add weight to the public interest in

disclosure. The Commissioner has therefore concluded that the public interest in protecting confidences is far stronger in this case.

16. The Commissioner therefore considers that section 41 FOIA was correctly applied to all the withheld information in this case.
17. In light of the Commissioner's conclusions regarding section 41, he has not gone on to consider the application of section 40(2) or section 27 (the latter being applied to part of the withheld information).

Right of appeal

18. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

19. 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.
20. 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

Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF