

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

### **Decision notice**

**Date:** 8 March 2022

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

**Address:** King Charles Street

London

SW1A 2AH

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

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1. The complainant submitted a request to the Foreign, Commonwealth & Development Office (FCDO) seeking reports provided to it by the World Health Organisation (WHO). The FCDO refused to release the reports under FOIA. The complainant subsequently asked the FCDO to provide him with a copy of WHO's request that such reports were treated confidentially. The FCDO confirmed that it held such information but it considered this information to also be exempt from disclosure, citing the exemptions contained at the following sections of FOIA: 27(1)(b) to (d), 27(2) (international relations) and 40(2) personal data of FOIA.
2. The Commissioner has concluded that the withheld information in respect of the subsequent request is exempt from disclosure on the basis of section 27(2) of FOIA and that in all the circumstances of the request the public interest favours maintaining the exemption.
3. No steps are required.

## Request and response

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4. The complainant submitted the following request to the FCDO on 25 November 2020:

'I would like any document where WHO requested confidentiality for the documents I've requested in another FOIA request (i.e. REPORT from WHO - Narrative on EVD Regional Preparedness 1st Phase - 10 Dec 2018 (46022871), REPORT from WHO AFRO - Narrative Report on the 2nd Phase £2.7m of the EVD Regional Preparedness Plan (45728221), REPORT - WHO DRC Management Finance Statement for DFID £3m Contribution to SRP3 Jan-Jun 2019 (51307225), REPORT - WHO Quarterly for July-Sept 2019 (incl. DFID Feedback and Acceptance of Report (52237420))'

This is mentioned in the FCDO's response attached which pertains to the documents above "the information you have requested was sent to DFID by the WHO on the explicit understanding that it would remain confidential and would not be passed on to third parties or made publicly available"

I am guessing that if such a confidentiality was important to the WHO, then it must have been specified in writing in a contract or a similarly legally binding document.<sup>1</sup>

5. The FCDO responded on 23 December 2020 and confirmed that it held information falling within the scope of the request. However, it considered this information to be exempt from disclosure on the basis of sections 27(1)(b), (c) and (d) and sections 27(2) and (3) (international relations) of FOIA.
6. The complainant contacted the FCDO on 27 December 2020 and asked it to conduct an internal review of this refusal. He argued that the confidentiality agreement would help justify why the FCDO has refused to disclose other documents; as such it would improve the public's understanding of the FCDO's decision not to disclose the documents which were the subject of his previous request. He suggested that it should be possible to disclose this document while redacting certain

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<sup>1</sup> The FCDO refused to disclose the four documents sought by the complainant's earlier request on the basis of sections 27(1)(a) to (d), 27(2) and 40(2) of FOIA. That request is the subject of a separate complaint to the Commissioner, decision notice reference IC-84370-V2S8.

parts, if they are sensitive. He argued that otherwise all of the FCDO's reasoning will remain entirely opaque.

7. The FCDO informed him of the internal review response on 26 January 2021. The internal review upheld the application of the exemptions cited in the refusal notice and explained that a small amount of information was also exempt from disclosure on the basis of section 40(2) (personal data) of FOIA.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 15 February 2021 in order to complain about the FCDO's decision to withhold the information falling within the scope of his request. His grounds of complaint to support this position are set out below.

## **Reasons for decision**

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### **Section 27(2) – international relations**

9. Section 27(2) of FOIA states that:

'Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.'

10. Section 27(3) of FOIA explains that:

'For the purposes of this section, any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.'

11. Section 27(2) is a class based exemption and is not subject to the prejudice test.

### The FCDO's position

12. The FCDO confirmed that the information which is the scope of the request is WHO's response to the FCDO's consultation with it seeking its views on the release of the four documents relevant to the complainant's earlier request.

13. In applying section 27(2) to the information which is the focus of the request being considered in this decision notice, the FCDO explained

that it had taken note of the Commissioner's guidance that this exemption relates *'not primarily to the subject of the information, nor the harm resulting from its disclosure, but to the circumstances under which it was obtained and the conditions placed on it by its supplier'*<sup>2</sup>.

14. The FCDO explained to the Commissioner that WHO had confirmed that it considered the consultation response in relation to the earlier request to have been provided to the FCDO under an expectation of confidentiality and its clear position was that it should not be publicly disclosed.
15. Given these circumstances, the FCDO explained that it was very firmly of the view that the withheld information is as a matter of fact, confidential information provided by an international organisation and that WHO's stated expectation in sharing it with the FCDO was that it would remain so.

#### The Commissioner's position

16. The Commissioner is satisfied that the withheld information is exempt from disclosure on the basis of section 27(2). The information was clearly obtained by the FCDO from an international organisation, ie WHO. Furthermore, the Commissioner is satisfied that its consultation response in respect of the previous request was provided to the FCDO with the clear expectation that it would be treated confidentially.

#### **Public interest test**

17. However, section 27(2) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of 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.

#### *Public interest in disclosure*

18. The complainant explained that he wished to access the confidentiality agreement between the FCDO and WHO so that he could better understand what information was covered by it so that he could request documents under FOIA that the FCDO could easily provide.

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<sup>2</sup> This quote is taken from a previous iteration of the Commissioner's [guidance](#) on this exemption. Although the wording does not appear in the current [guidance](#), this remains the Commissioner's position.

19. The complainant emphasised that in his view the funding provided to WHO was controversial and had it had come under the scrutiny of the UK Parliament at the end of 2020 when reports of sexual abuse within the Ebola response emerged.<sup>3</sup>

*Public interest in maintaining the exemption*

20. The FCDO argued that there is a very strong public interest in the UK being able to maintain good relations with its international partner organisations. The FCDO explained that WHO is a key international partner for the UK with relations extending to a very broad and deep range of interests (for example, trade, regional stability, climate change, migration). The FCDO argued that a breakdown in trust between the UK and WHO caused by the disclosure of the withheld information would have an adverse effect on the UK's ability to pursue these wide-ranging and significant areas of policy interest. This is because damage to relations with such partners would make it much more difficult for FCDO to carry out the public policy objectives of reducing poverty.
21. In a similar vein, the FCDO argued that there is a very strong public interest in the UK being able to support partner organisations such as WHO in preserving good working relations and essential information flows with their clients and international partners. The FCDO argued that disclosing the withheld information would undermine the UN's commitments and obligations to protect information provided to them, ie the UN, in confidence. It would likely damage its relationships with key partners and impede its ability to promote international development. The FCDO argued that such outcomes were clearly against the public interest.
22. Furthermore, the FCDO argued that there is also a very strong public interest in ensuring that the UK government receives full and frank information from its partners. In many cases the information has to be detailed and completely candid if it is to be of value to the organisations concerned. For this to occur, those involved must be free of any inhibitions that might interfere with their ability to give full and frank comments, including concerns that the information will be exposed prematurely to public scrutiny or comment.
23. The FCDO also argued that the public interest would be harmed by any negative impact on the exchange of information between the UK and its international partners. This could be either through information no longer being provided in future or by a failure of partners to respect the

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<sup>3</sup> <https://publications.parliament.uk/pa/cm5801/cmselect/cmintdev/605/60509.htm>

confidentiality of the information that they receive from the UK government. Such an outcome would, in the FCDO's view, reduce the likelihood of open and effective dialogue in future and would significantly undermine the UK's ability to respond to international development needs.

*Balance of the public interest test*

24. In the Commissioner's opinion there is an inherent public interest in protecting confidentiality. This is because disclosure of confidential information undermines the principle of confidentiality, which depends on a relationship of trust between the confider and the confidant. Furthermore, in the Commissioner's view there is a public interest in respecting international confidences to ensure that states, international organisations or courts are not deterred from providing information.
25. In terms of the weight that should be applied to the public interest arguments both for and against disclosure consideration has to be given to the likelihood and severity of any harm, the age of the information, how far the requested information will help public understanding and whether similar information is already in the public domain.
26. In terms of the particular circumstances of this request, the Commissioner recognises that the UK funding provided to the WHO in relation to the Ebola response has attracted controversy as evidenced by Parliament's interest in this, and indeed by the range of media articles cited by the complainant in his linked complaint.<sup>4</sup> Against this background, the Commissioner therefore accepts that there is a legitimate public interest in the complainant seeking to understand the nature of any agreement the FCDO may have in place with WHO regarding the sharing of information about his previous request which focused on the Ebola response, and the extent to which such information could potentially be accessed under FOIA. More widely, the Commissioner also accepts that there is legitimate interest in the public being able to understand whether other information provided to it by WHO could be potentially accessed under FOIA. However, having had the benefit of examining the withheld information the Commissioner is not persuaded that the sight of it would usefully assist the complainant in accessing similar information under FOIA in response to potential future requests.

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<sup>4</sup> For example: <https://www.thenewhumanitarian.org/news-feature/2019/10/02/Congo-militarised-Ebola-response-community-resistance> and <https://www.thenewhumanitarian.org/investigation/2020/06/18/Ebola-corruption-aid-sector>

27. With regard to the public interest in maintaining the exemption, the Commissioner accepts the FCDO's position that there is a very strong public interest in the UK being able to maintain effective working relations with WHO. This on the basis that damage to such relations risks undermining the UK's ability to respond to international development needs not simply in the context of an Ebola crisis in DRC but also in other contexts around the world. Furthermore, as the withheld information was provided by WHO to the FCDO only relatively recently this, in the Commissioner's opinion, increases the likelihood of an adverse reaction should information be disclosed under FOIA.
28. In the Commissioner's view, the risk of this wider negative outcome adds significant weight to the public interest in favour of maintaining the exemption. In his view this outweighs the public interest in disclosure of the information, particularly when taking into account the Commissioner's position that the content of the withheld information would not particularly assist the complainant in the way in which he hopes.
29. The Commissioner has therefore concluded that the balance of the public interest favours maintaining the exemption contained at section 27(2).
30. In light of this finding the Commissioner has not considered the FCDO's reliance on the other exemptions it cited.

## Right of appeal

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31. 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 123 4504

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)

32. 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.
33. 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 .....**

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
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