

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

### **Decision notice**

**Date:** 9 February 2023

**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 a list of what bottles of wine from the Government's Wine Cellar which were provided for functions at 10 Downing Street over the period January 2020 to December 2021. The FCDO withheld the information falling within the scope of the request on the basis of sections 27(1)(a), (b) and (c) (international relations) and section 36 (effective conduct of public affairs) of FOIA.
2. The Commissioner's decision is that the withheld information is exempt from disclosure on the basis of the exemptions contained at sections 27(1)(a), (b) and (c) and that in all the circumstances of the request the public interest favours maintaining the exemptions.

### **Request and response**

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3. The complainant submitted the following request to the FCDO on 23 December 2021:

'Since 1.1.20 to the current date please provide me with a list of what bottles of wine from the Government's Wine Cellar were provided for functions at 10 Downing Street, stating on each occasion the date, a list of the bottles supplied including the numbers of each type of bottle and the state occasion that warranted supply of these bottles.'

4. The FCDO responded on 8 June 2022 and confirmed that it held information falling within the scope of the request but considered this to be exempt from disclosure on the basis of sections 27(1)(a) and (b) (international relations) of FOIA.
5. The complainant contacted the FCDO on 27 June 2022 and asked it to conduct an internal review.
6. The FCDO informed him of the outcome of the internal review on 2 September 2022. This upheld the application of the exemptions cited in the refusal notice.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 20 September 2022 in order to complain about the FCDO's decision to withhold the information falling within the scope of his request.
8. During the course of the Commissioner's investigation the FCDO explained that in addition to the above exemptions, it also considered the withheld information to be exempt from disclosure on the basis of sections 36(2)(b) and (c) (effective conduct of public affairs) of FOIA. It also noted that it considered section 27(1)(c) to apply in addition to the sub-sections of section 27(1) cited in correspondence with the complainant.

### **Reasons for decision**

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

9. Sections 27(1)(a), (b) and (c) of FOIA state that information is exempt if its disclosure would, or would be likely to, prejudice
  - '(a) relations between the United Kingdom and any other State
  - (b) relations between the United Kingdom and any international organisation or international court,
  - (c) the interests of the United Kingdom abroad'

### The FCDO's position

10. The FCDO explained that it is committed to providing a transparent and comprehensive overview of the usage, value, costs and stock levels of the Government Hospitality wine cellar, as well as broadening the understanding of how the cellar is used to support the work of Government Hospitality in delivering business hospitality for all government ministers and departments. The FCDO explained that these objectives are the basis upon which it publishes annual or bi-annual reports on the Government Hospitality Wine Cellar.<sup>1</sup>
11. The FCDO explained that these reports contain a great deal of information about the use of wine from the cellar: types of wines used, bought and sold; quantities of wines consumed and purchased, as well as detail on average costs and overall value of wines consumed, etc. The FCDO argued that in its view the publication of these reports offers a great deal of transparency to the public on the expenditure and use of wines from the cellar and offers a detailed explanation of how, on what and why such expenditure is made.
12. However, the FCDO explained that it did not routinely publish specific operational details of functions managed by Government Hospitality. It further explained it did not record use of the wine cellar stock (as part of Government Hospitality's service) by department, as a general rule, and it did not regard the detail of every function managed (up to 200 per annum) to be relevant to the transparency commitments which were made following the review of the Government Hospitality wine cellar in 2010.
13. The FCDO argued that given the amount of information that is already published in these reports, there is a risk that it can be 'mosaicked' with other information – whether disclosed under FOIA or published by other means – to identify more precisely what hospitality is provided to which guests at which events. In the FCDO's view the cross referencing of events with contemporary news stories and press releases could then enable comparisons to be drawn as to the level or quality of hospitality offered, which might be damaging to the UK's relations with its international partners and undermine the original purpose of the hospitality as envisaged. The FCDO explained that this was a particular

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<sup>1</sup> <https://www.gov.uk/government/publications/government-hospitality-wine-cellar-bi-annual-statement-2018-to-2020/government-hospitality-wine-cellar-bi-annual-report-2018-to-2020>

concern in relation to the request which is the focus of this complaint as it concerns details of actual consumption broken down by event.

14. With regard to the consequences of such comparisons being drawn, the FCDO argued that this may compromise the goal of such international engagement by providing a running commentary of which foreign representatives were met and which were not met; how much was spent on one country, as opposed to the other; and diminish the ability to engage in secure and confidential channels of communication. Furthermore, the FCDO argued that disclosure may invite unwelcome comparisons between the levels or standards of hospitality offered at each event. The FCDO argued that such comparisons are very likely to undermine the purpose of the original hospitality and would be likely to damage the UK's relations with the nations, governments and individuals concerned.
15. The FCDO argued that in respect of events to which foreign State or diplomatic, representatives were invited any perception – whether intentional or not - that one guest or event was treated to a different standard of hospitality than another could affect not just that relationship which the hospitality had been intended to support or build, but could also affect the ability of the UK to promote and protect its interests abroad. It emphasised that this is of course one of the Government's key considerations in developing strong bilateral relationships with other countries. The FCDO argued that these adverse impacts would be generated not just by the information disclosed in response to the request, but by the full 'mosaic' of all information which could be pieced together in relation to the event.
16. Furthermore, the FCDO argued that the publication of details of what alcohol was consumed, or in what volume, at a particular event could have a much wider 'chilling effect' on the willingness of guests to attend such events. In the FCDO's view the refusal of invitations to events where hospitality is provided would, necessarily, inhibit or prejudice the purpose of those functions in the first place, which will always be focussed on one or more elements of government policy. The FCDO argued that the risk of such a 'chilling effect' does not just arise from the actual publication of details relating to specific events: the perceived risk that details of an event may in the future be made public could also inhibit a guest's attendance. The FCDO emphasised that this is particularly acute for small gatherings – several of which feature in the information collated - where it may be possible to draw inferences about an identifiable individual's, or several identifiable individuals', consumption from the data.
17. The FCDO also noted that the potential impact is not linked solely to the volume of alcohol: in certain circumstances the publication of the fact

that alcohol was served at all at a particular event (for example, a small lunch in honour of a VVIP from a Middle Eastern country) may cause offence to the guests, undermining the purpose of the hospitality and causing wider prejudice to the bilateral relationship and the Government's ability to leverage that relationship in UK interests. The FCDO emphasised that it was not usual practice internationally for details of small-scale private or working hospitality between world leaders, particularly consumption statistics, to be published.

#### The complainant's position

18. The complainant argued that he was not persuaded that the exemptions were engaged. In his view to suggest that the level of hospitality offered to one group, if disclosed to another, would endanger international relations seems rather far-fetched. He emphasised that he was not asking for the cost of the bottles merely how many bottles, and of what type, were supplied and for what events.

#### The Commissioner position

19. In order for a prejudice based exemption, such as section 27, to be engaged the Commissioner believes 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 – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
20. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the FCDO relates to the interests which the exemptions contained at sections 27(1)(a), (b) and (c) are designed to protect.

21. With regard to the second criterion, the Commissioner accepts that disclosure of the withheld information would provide a direct insight into the levels of hospitality offered at particular events. In turn the Commissioner accepts it is logical to argue that this could allow inferences to be made about the level or quality of hospitality offered to particular parties, especially when such information is allied to wider information in the public domain. In turn, the Commissioner accepts that it is plausible to argue that such an insight could potentially cause offence to certain parties if they felt the level of hospitality was less than that offered to other parties. The Commissioner therefore accepts that there is causal relationship between the disclosure of the information and prejudice occurring to the interests which the exemptions are designed to protect. In reaching this conclusion, the Commissioner appreciates the complainant's point that he has not asked for the cost of wine served. However, in the Commissioner's view disclosing the names (and quantities) of the wines supplied would still allow insightful comparisons to be drawn. Moreover, such details could allow individuals to establish the costs of supplying such wines if they were bought on the open market.
22. With regard the third criterion, the Commissioner considers there to be a more than hypothetical risk of such prejudice occurring. In reaching this conclusion, the Commissioner accepts that there is a genuine risk that disclosure of the information would be likely to undermine the UK's international relations with other states if comparisons are drawn between levels of hospitality offered. In turn, the Commissioner considers that this would be likely to undermine the UK's ability to protect and promote its interests. In reaching the conclusion that the level of likelihood has been met the Commissioner has been persuaded not simply by the FCDO's argument about comparisons being drawn and the consequences that may follow, but also about the potential risk of offending those that have attended events listed in the withheld information. In particular, the Commissioner notes that disclosure of the level of detail requested would be against normal expected practice with regard to the hospitality offered by governments.
23. Moreover, the Commissioner also considers the FCDO's argument that disclosure risks having a chilling effect on future such engagements to be a plausible one, and this adds further to the risk of prejudice occurring to the UK's relations with international partners and its ability to protect its interests in such a context.
24. Sections 27(1)(a), (b) and (c) are therefore met.

## **Public interest test**

25. Section 27(1) 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 exemptions outweighs the public interest in disclosing the information.

### Public interest arguments in favour of disclosure of the information

26. The complainant argued that the public interest favoured disclosure of the information, especially because of the situation regarding the Covid 19 pandemic and the restrictions that were place at various points during the period covered by the request.
27. For its part, the FCDO acknowledged that there is a legitimate public interest in the disclosure of information relating to the expenditure of public funds.

### Public interest arguments in favour of maintaining the exemptions

28. However, the FCDO argued that in its view there was a greater public interest in maintaining the exemptions because disclosure of the information would be likely to undermine the purpose of the original hospitality and damage the UK's relations with the nations, governments and individuals concerned.
29. The FCDO noted that (as cited above) a range of information regarding the use of the government wine cellar was already proactively disclosed.
30. Furthermore, in the relation to the specific circumstances of this request, the FCDO explained that Government Hospitality only deploys wines and spirits from its cellar to support its activity in the provision of official business hospitality and government ministers and Grade 1 civil servants. The FCDO explained that any events or functions at 10 Downing Street during the period in question fully complied with the laws and regulations concerning business hospitality in place at the time. The FCDO also explained that there were fewer than 10 events for the period January 2020 to December 2021 falling within the scope of the request and none of these fell within the scope of the review carried out by the Second Permanent Secretary to the Cabinet Office regarding compliance with Covid restrictions.

### Balance of the public interest arguments

31. The Commissioner accepts there is a public interest in the disclosure of information which relates to how public funds and resources are used. Disclosure of the requested information would provide a direct insight in



resources of the Government Hospitality wine cellar were used at particular events covered by the period covered by the request.

32. However, the Commissioner agrees with the FCDO that there is a significant public interest in ensuring the UK's diplomatic relations are not undermined and moreover that there is a clear public interest in the UK being able to make the most of use of opportunities available as a result of providing the hospitality which this requests covers. Furthermore, whilst the Commissioner recognises the period covered by the request is one that covered the unprecedented impact of Covid 19, the Commissioner notes that none of the occasions under the scope of this request are ones that have been subject to investigation. Taking the above into account, the Commissioner considers there to be a greater public interest in the ensuring the effectiveness of such hospitality and more broadly in ensuring that the UK's relations are not harmed.
33. In light of this decision the Commissioner has not considered the FCDO's reliance on section 36.



## Right of appeal

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34. 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)

35. 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.
36. 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**  
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**Information Commissioner's Office**  
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