

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 April 2023

Public Authority: Department for Transport
Address: Great Minster House
33 Horseferry Road
London SW1P 4DR

Decision (including any steps ordered)

1. The complainant requested information about the Lockerbie bombing. Department for Transport (DfT) withheld the information under sections 23, 24, 27, 31, 38 and 40 of FOIA. These exemptions concern information supplied by or relating to bodies dealing with security matters, national security, international relations, law enforcement, health and safety and personal data respectively.
2. The Commissioner's decision is that DfT is entitled to withhold the requested information under section 24(1) of FOIA and the public interest favours non-disclosure. It is not necessary for DfT to take any corrective steps.

Request and response

3. The complainant made the following information request to DfT on 26 November 2022:

"...I understand from the National Archive that your department is responsible for the following folder that is listed in the National Archive:

<https://discovery.nationalarchives.gov.uk/details/r/C14479016>

Destruction of Pan Am flight 103 over Lockerbie, 21 December 1988: background papers...

Reference: AVIA 120/50

Description: Destruction of Pan Am flight 103 over Lockerbie, 21 December 1988: background papers including cooperation with United States Presidential Commission

Date: 1989 Jan 01 - 1990 Dec 31

Held by: Creating government department or its successor, not available at The National Archives

Former reference in its original department: EE 34/54 PART 7

I would like a copy of this folder to be released to me..."

4. DfT's final position was to withhold the information under sections 23, 24, 27, 31, 38 and 40 of FOIA.

Reasons for decision

5. This reasoning focusses on DfT's application of section 24(1) of FOIA to the requested information. If necessary, the Commissioner will consider the other exemptions DfT has applied to the information.
6. Section 24(1) of FOIA states that information is exempt if it is required for the purpose of national security.
7. The content of the requested file is obvious from its title – it relates to the bombing of the Pan Am 103 flight over Lockerbie. The DfT is concerned that disclosing the file would compromise national security.
8. In their request for an internal review, with regard to section 24 the complainant said that they agreed that information concerning air safety should be safeguarded to prevent future terrorist attacks. However, they said, a lot of information concerning airport security had already come out in the Camp Zeist trial of 2000-01 [associated with the Lockerbie bombing].
9. For context, in its submission to the Commissioner DfT explained that under the Public Records Act 1958, departments have to either transfer government records to The National Archives no later than 20 years after their creation; or if they are not of interest, then destroy them. The file in question has been previously selected for permanent preservation at The National Archives and is therefore shown in its catalogue.
10. However, the file remains closed due to its sensitivity. The file remains stored off-site by the Department for Levelling Up, Housing and

Communities (DLUHC) in Hastings on behalf of DfT. (DLUHC provides a records management service to DfT.)

11. The file is classified as 'Confidential' and there is a retention instrument in place requiring that the file be closed until 2024, at which point it will be reviewed to determine if the sensitivity still remains. Retention instruments give departments permission to retain records if there is an ongoing business need or if the content is too sensitive for them to be transferred as open to The National Archives.
12. Regarding its application of section 24 to the requested file, DfT said it understands that the file has been retained as, even though it is entitled 'background papers', it records detailed aspects of the Lockerbie investigation. As it advised the complainant, it contains sensitive papers on security matters including detailed discussions on aviation security measures and improvements.
13. The decision not to put the information into the public domain was made at the time on the basis it would be likely to aid terrorist organisations. This information has been deemed to be still relevant and was so when the complainant submitted their request in November 2022.
14. DfT says it recognises that in order to engage the exemption under section 24(1) it is not sufficient for the information sought to simply relate to national security. There must be a clear basis for arguing that disclosure would have an adverse effect on national security before the exemption is engaged. This exemption is only engaged when it is reasonably necessary to withhold information to prevent national security being undermined.
15. DfT says it further recognises that over 30 years have elapsed since this information was created. However, DfT confirmed that it still considers that the exemption under section 24(1) continues to apply as disclosing the information in the file would be likely to compromise national security. Once this exemption is engaged, the nature of the potential harm that could be caused is an important factor, even if the chance of that harm occurring is relatively low. DfT says it advised the complainant that the Commissioner's guidance states that safeguarding national security also includes protecting potential targets even if there is no evidence that an attack is imminent.
16. National security means the security of the United Kingdom and its people. The Commissioner is mindful that, as DfT notes, the exemption exists to protect all information that could impact national security, even if there is no evidence that an attack is imminent. Having considered DfT's rationale and the subject matter of the file in question, the Commissioner is satisfied that the information in its entirety engages

section 24(1).

17. This is in line with his decision in IC-166219-L9N8¹ which also concerned files about the Lockerbie bombing.

Public interest test

18. DfT provided the following arguments for disclosing the information:

- Disclosing the file would contribute to the Government's wider transparency agenda, increase trust, and allow the public to scrutinise the Government's response to the terrorist incident.
- This may lead to more informed public debate around UK aviation security.

19. DfT provided the following arguments for withholding the information:

- The file contains sensitive discussions of the attack, including exchanges between the UK and international partners. Releasing this information would be likely to aid someone wishing to cause harm to the UK aviation system.
- The information in the file could be used coupled with other information already in the public domain by those intent on committing a terrorist attack.
- The consequences of a successful attack on an aircraft are so severe that there is a very strong public interest in withholding any information which may aid those wishing to cause harm in order to safeguard national security.
- Releasing the information would also be likely to reduce the sharing of sensitive information between the UK and other states, which would undermine the Government's ability to safeguard national security.

20. On the balance of the public interest, DfT says that given that any successful attack on an aircraft would have devastating consequences for the UK population, Government must ensure that it does everything in its power to reduce the possibility of such an attack. On balance, DfT

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4024260/ic-166219-l9n8.pdf>

deemed that the public interest in withholding the information strongly outweighs the public interest in its release.

21. The Commissioner agrees with DfT. He has found that withholding the requested information is necessary to protect national security. He has not been presented with any public interest arguments for disclosing the information that would justify jeopardising national security; its citizens or infrastructure.
22. Because he has found section 24(1) to be engaged, and the public interest to favour non-disclosure, it has not been necessary for the Commissioner to consider the other exemptions DfT has applied to the requested information.

Right of appeal

23. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.
25. 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

Cressida Woodall
Senior Case Officer`
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF