



IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL (INFORMATION RIGHTS) UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000

Appeal No: EA/2011/0207

BETWEEN:

FOREIGN AND COMMONWEALTH OFFICE

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

CONSENT ORDER APPROVAL

PURSUANT to Rule 37(1) of the Tribunal Procedure (First-tier) (General Regulatory Chamber) Rules 2009, the Tribunal approves the Consent Order in this matter in the form attached hereto, which has been agreed by all parties and dated 23rd March 2012.

Signed:

[Signed on original]

Fiona Henderson

Tribunal Judge

Dated: 27th March 2012

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CONSENT ORDER

PURSUANT to rule 37(1) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, and upon reading the parties' agreed statement in Annex A to this order:

IT IS ORDERED THAT:

1. The appeal be allowed.
2. The Respondent's Decision Notice FS50361820 dated 15th August 2011 be substituted with a Decision Notice which records that all the information requested by the requester and all the Disputed Information (as defined in Annex A) is exempt from disclosure under section 40(2) FOIA.
3. No further steps are required to be taken by the Appellant.

4. There be no order for costs.

Signed



Solicitor for the Appellant

Signed



Solicitor for the Respondent

Dated this 23rd day of March 2012

Annex A

Statement of reasons for consent order

1. This appeal is brought against a decision notice issued under the Freedom of Information Act (FOIA) by the Respondent on 15 August 2011 with reference FS50361820 (the Decision Notice).

2. The Decision Notice concerned a request for the dates of all overnight stays by the Foreign Secretary's wife at 1 Carlton Gardens and Chevening House. In the Decision Notice the Respondent set out that the information requested was exempt under section 40(2) FOIA. The Respondent went on to find, however, that disclosure of the number of overnight stays would not be exempt under section 40(2) FOIA, and the Respondent ordered the Appellant to disclose the number of overnight stays at each property (hereafter, the Disputed Information) (§31 DN).

3. The Appellant appealed against the Decision Notice on 12 September 2011 on the grounds that:
 - a. It did not 'hold' the Disputed Information for the purposes of FOIA; and/or
 - b. Even if held for the purposes of FOIA, the Disputed Information was exempt under section 40(2) of that Act.

4. In the course of the case management of the appeal, the Appellant on 23rd November 2011 provided Further and Better Particulars (the F&BPs) in respect of both grounds of appeal.

5. The Respondent considered the content of those F&BPs. The Respondent did not consider that there was sufficient information in the F&BPs to accept the Appellant's argument that the Disputed Information was not 'held' for the purposes of FOIA.

6. The Respondent did however form the view in light of the more detailed representations from the Appellant in the F&BPs that the Disputed Information was exempt under section 40(2) FOIA.

7. As regards Chevering House, in the F&BPs the Appellant had explained in greater detail how the property is funded and set out the level of expenditure of public money in relation to it. The Respondent revised his view in particular in light of the information about the limited amount of public money spent on the property and on what it is spent. The Respondent was of the view that the 'legitimate interest' in disclosure was diminished such that the disclosure of this information would be likely to cause unwarranted interference to the Foreign Secretary's wife's rights, freedoms and/ or legitimate interests. The Commissioner also accepted that the disclosure would be unfair.

8. As regards 1 Carlton Gardens, the Commissioner revisited this aspect of the request in light of the further information and he accepted that it would be unfair to disclose information about the number of any overnight stays at that property, as disclosure would be likely to cause unwarranted interference in the Foreign Secretary's wife's private life.

9. Accordingly, the Respondent advised the Appellant and the Tribunal that the appeal was no longer opposed as he was content that the Disputed Information was exempt under section 40(2).

10. In view of the Commissioner's changed position, the Tribunal invited the requester to join the proceedings. The requester indicated he opposed the appeal but, as a result of failing to comply with certain directions from the Tribunal, was, by a separate ruling of the Tribunal dated 2nd March 2012, barred from taking any further part in these proceedings.

11. In view of all the circumstances, the two parties jointly submit that it is appropriate for these proceedings to be concluded by way of consent order, and that it is appropriate for the Tribunal to consider their joint application without holding a hearing (as envisaged by rule 37(2)).