

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 March 2016

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

Decision (including any steps ordered)

1. The complainant submitted a request to the Foreign and Commonwealth Office (FCO) for a copy of the file FO 1093/491. The FCO refused to disclose the information relying on section 23(1) of FOIA. The Commissioner has concluded that the FCO is entitled to rely on this exemption to withhold the requested information.

Request and response

2. The complainant submitted the following request to the FCO on 6 January 2015:

'Would you please release all files you hold on Guy Burgess (1911-1963) and the following closed files in TNA:

FO 1093/352

FO 1093/345

FO 1093/491'
3. The FCO provided him with a substantive response to his request on 30 March 2015. Some material contained in files FO 1093/352 and FO 1093/345 was disclosed at this stage. However, the remaining information contained within those files, and all of the information contained in file FO 1093/491, was withheld on the basis of section 23(1) of FOIA, the security bodies exemption.

4. The complainant contacted the FCO on 8 June 2015 in order to ask for an internal review of this decision.
5. The FCO informed him of the outcome of the internal review on 30 October 2015. The review upheld the application of section 23(1) of FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 31 October 2015 in order to complain about the FCO's decision to withhold the file FO 1093/491 on the basis of section 23(1) of FOIA. He explained that over four hundred files on the 'Burgess & Maclean' case had recently been released to The National Archives (TNA) some 60 years after the case and he could not see the justification for withholding this file alone after such a long period.

Reasons for decision

Section 23(1) – information supplied by or relating to bodies dealing with security matters

7. Section 23(1) of FOIA provides an exemption which states that:

'Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).'

8. To successfully engage the exemption at section 23(1), a public authority needs only to demonstrate that the relevant information was *directly or indirectly* supplied to it by, or *relates to*, any of the bodies listed at section 23(3).¹ This means that if the requested information falls within this class it is absolutely exempt from disclosure under the FOIA. There is no requirement on the public authority to demonstrate that disclosure of the requested information would result in some sort of harm. This exemption is not subject to a balance of public interests test.

¹ A full list of the bodies detailed in section 23(3) is available here:

<http://www.legislation.gov.uk/ukpga/2000/36/section/23>

9. When investigating complaints about the application of section 23(1), the Commissioner will need to be satisfied that the information was in fact supplied by a security body or relates to such a body, if he is to find in favour of the public authority. In certain circumstances the Commissioner is able to be so satisfied without himself examining the withheld information. Where it appears likely that the information would engage the exemption, the Commissioner may accept a written assurance from the public authority provided by someone who, because of their seniority and responsibilities, has regular access to information relating to the security bodies and who has first-hand knowledge of the relationship between the public authority and those bodies. Furthermore, they must themselves have reviewed the disputed information in the particular case.
10. In the circumstances of this case, the FCO provided the Commissioner with a letter of assurance from a relevant senior official within the department which confirmed that he had examined the withheld information and was satisfied that all of it relates to, or was supplied by, one of the bodies specified in section 23(3) of FOIA. This official occupies a senior position at the FCO and meets the Commissioner's criteria outlined in paragraph 9.
11. The Commissioner notes that the description of the file FO 1093/491 on TNA's website is as follows:

*'Foreign Office: Permanent Under-Secretary's Department:
Registered and Unregistered Papers. SIGNALS INTELLIGENCE
AND RELATED MATTERS. Security (Cyphers).'*
12. Accordingly, the Commissioner accepts that, in the circumstances of this case, the assurance he has received from the senior official at the FCO regarding the nature of the withheld information, coupled with the description of the requested information contained on TNA's website, is sufficient for him to conclude that the withheld information is exempt from disclosure on the basis of section 23(1) of FOIA.

Right of appeal

13. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

14. 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.
15. 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
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF