

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 May 2017

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant asked the public authority to disclose a record of a conversation that took place between former President of the United States of America, George Bush and former Prime Minister, Tony Blair, on 16 April 2004.
2. The Commissioner has concluded that the public authority was entitled to withhold the information requested on the basis of the exemptions contained at sections 27(1)(a), (c) and (d) FOIA.
3. No steps required.

Request and response

4. The complainant submitted a request for information to the public authority on 20 September 2016 in the following terms:

"I am looking for documents of the recorded minutes of a conversation between George Bush and Tony Blair that took place on the 16th April 2004."
5. The public authority provided its response on 19 October 2016. It explained that it considered the requested information exempt from disclosure on the basis of the exemptions contained at sections 27(1)(a), (c) and (d) and 27(2) FOIA (International relations).
6. The complainant requested an internal review of the public authority's decision above on 6 November 2016.

7. The public authority wrote back to the complainant on 24 November 2016 with details of the outcome of the internal review. The review upheld the original decision.

Scope of the case

8. The complainant contacted the Commissioner on 20 December 2016 to complain about the way his request for information had been handled. He disagreed with the public authority's decision to withhold the requested information.
9. For the avoidance of doubt, the scope of the Commissioner's investigation was to determine whether the public authority was entitled to rely on the exemptions contained at sections 27(1)(a), (c) and (d) and 27(2).

Reasons for decision

Section 27(1) (a), (c) and (d) – international relations

10. The Commissioner initially considered the application of these exemptions to the requested information.
11. Information is exempt on the basis of the above exemptions if its disclosure would or would be likely to prejudice, relations between the United Kingdom (UK) and any other State¹, the interests of the UK abroad², or the promotion or protection by the UK of its interests abroad³.
12. The public authority considers that disclosure of the requested information would be likely to have a chilling effect on future exchanges, and potentially cause serious harm to the UK's relations with the United States (US). It submitted that the US is very sensitive about "such disclosures" due to the nature of the subject under discussion and the US culture of confidentiality on foreign and security issues.

¹ Section 27(1)(a)

² Section 27(1)(c)

³ Section 27(1)(d)

13. It further submitted that exchanges between the UK Prime Minister and US President represent particularly privileged channels of communication, the preservation of which is strongly in the public interest. It argued that even where immediate sensitivity may have passed, disclosure of such exchanges could still prejudice relations by inhibiting future exchanges. It submitted that a UK Prime Minister may be less likely to have these exchanges or allow them to be recorded if they considered that it would be disclosed at a later time against their wishes.

Are the exemptions engaged?

14. In order for a prejudice based exemption such as those contained within section 27(1) to be engaged the Commissioner considers 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; and
- 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.

15. Furthermore, the Commissioner has been guided by the Information Tribunal’s observation that in the context of section 27(1), prejudice can be real and of substance “if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise been necessary.”⁴

⁴ Campaign Against the Arms Trade v The Information Commissioner and Ministry of Defence (EA/2006/0040), paragraph 81.

16. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the public authority clearly relates to the interests which the exemptions contained at sections 27(1)(a), (c) and (d) are designed to protect.
17. The Commissioner is satisfied that the prejudice alleged by the public authority is real and of substance, and there is a causal relationship between the disclosure of the requested information and the prejudice which the exemptions are designed to protect. She must however establish whether disclosure would be likely to result in the prejudice alleged (ie the third criterion).
18. Having inspected the requested information, the Commissioner is satisfied that it is a record of a free and frank discussion between former Prime Minister, Tony Blair and former President of the US, George Bush. She accepts that there is a real and significant risk that disclosure could have a chilling effect on future exchanges between the UK and the US and consequently the UK's ability to promote and protect its interests abroad. She also finds that in view of the subject matter of the discussion, disclosure of the requested information could require a damage limitation response by the UK which might not have otherwise been necessary.
19. Consequently, she has concluded that disclosure of the requested information would be likely to prejudice relations between the UK and the US, the interests of the UK abroad, or the promotion or protection by the UK of its interests abroad.

Public interest test

20. The exemptions at section 27(1) are however subject to the public interest test set out in section 2(2)(b) FOIA. The Commissioner must therefore also consider whether in all the circumstances of the case, the public interest in maintaining the exemptions outweigh that in disclosing the requested information.
21. The public authority acknowledged there is a general public interest in favour of disclosure in the interests of openness and transparency. There is a specific public interest in the transparency of discussions between the UK and the US and in particular the relations between the Prime Minister and the US President.
22. It however argued that the public interest was firmly in favour of maintaining the exemptions because of the likelihood of prejudice to relations between the UK and the US from disclosing the requested information "outside of the normal programme of release of historical

records..."⁵ It further submitted there were no weighty public interest factors in favour of disclosure.

23. The complainant submitted that because both Tony Blair and George Bush no longer hold political office, and in his view, given the different foreign policy pursued by the current (ie at the time of his request) US and UK governments, disclosure would not have any significant impact on international relations.
24. He further argued that the publication of the Chilcot report⁶ shows there was little or no ramifications on international relations between the countries involved beyond that of a few retired political figures. Therefore, he did not consider that releasing the requested information would jeopardize international relations in the manner envisaged by the public authority.
25. He also argued that during the period when the existence of the memo (ie the requested information) was revealed, there was substantial public interest in its contents, and numerous journalists were in support of the content being published.

Balance of the public interest

26. In addition to the general public interest in openness and transparency in government, the Commissioner shares the view that there is a public interest in the transparency of discussions between the heads of governments of the UK and the US. This is more so given the circumstances under which the conversation that is the subject of this request took place.
27. However, she considers that there is a strong public interest in not prejudicing relations between the UK and US governments given its significant mutual benefits. The fact that Mr Blair and Mr Bush are no longer heads of government does not undermine the central argument against disclosure. The conversation was under the auspices of their respective offices, not as private citizens. Relations between both countries is unlikely to be constructive if the US feels that conversations between it and the UK at the highest levels of government could be

⁵ It is not entirely clear what the public authority means by this statement given that by virtue of section 63 FOIA, historical records can still be withheld in reliance on section 27 exemptions.

⁶ Following the public inquiry into the UK's government's role in the Iraq War. <http://www.iraquinquiry.org.uk/the-report/>

revealed on the basis of a change in government and perhaps in the direction of foreign policy.

28. The Commissioner cannot see the equivalence between the impact of the publication of the Chilcot report and publishing the record of the conversation between Mr Blair and Mr Bush. Indeed, during the course of the Chilcot inquiry, an agreement was reached by the government and the inquiry that the inquiry's publication of evidentiary material would be based on the principle that it should not reflect the views of Mr Bush.
29. Finally, the fact that there was substantial public interest in the requested information does not equate to a stronger or significant public interest in its disclosure. The Commissioner considers that the Chilcot report has to a significant degree struck a balance between satisfying the public interest in understanding the nature of the conversation between Mr Blair and Mr Bush, and the public interest in not prejudicing relations with the UK's closest ally by disclosing a record of the conversation.
30. She has therefore concluded that on balance, in all the circumstances of the case, the public interest in maintaining the exemptions outweigh the public interest in disclosing the requested information.
31. In view of her finding above, the Commissioner has not considered the applicability of the exemption at section 27(2).

Right of appeal

32. 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

33. 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.
34. 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

Gerrard Tracey
Principal Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF