

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 August 2017

**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 information about the Western Union Clandestine Committee. The FCO disclosed the information it held falling within the scope of the request but redacted certain parts of it on the basis of the exemptions contained at sections 27(1)(a), (c) and (d) (international relations) of FOIA. The Commissioner has concluded that the withheld information is exempt from disclosure on the basis of these exemptions and that the public interest favours maintaining the exemptions.

#### Request and response

---

2. The complainant submitted the following request to the FCO on 8 March 2016:

*'I have been seeking information on the Western Union Clandestine Committee via the National Archives. They have a record of some papers but they have been "Retained by Department under Section 3.4".*

*Please see this link for more details:*

*<http://discovery.nationalarchives.gov.uk/details/r/C13430565>*

*As you will see from the above link, the record's reference is FO 1093/396.*

*The purpose of this email is to formally seek access to the information. If this is allowed, I would like copies in a digital format (i.e. scanned copies of any papers, etc.).'*

3. The FCO responded on 7 April 2016 and confirmed that it held the requested information but it considered this to be exempt from disclosure on the basis of section 27 (international relations) of FOIA and it needed additional time to consider the balance of the public interest test.
4. The FCO provided the complainant with a substantive response on 6 May 2016. The FCO explained the some of the requested information could be disclosed and this would be provided to him by post. However, the FCO explained that the remaining information was exempt from disclosure on the basis of sections 27(1)(a), (c) and (d) of FOIA.
5. The complainant contacted the FCO on 7 June 2016 to express his dissatisfaction with this response and subsequently confirmed, in an email dated 10 June 2016, that he wished the FCO to undertake an internal review.
6. The FCO informed him of the outcome of the internal review on 13 July 2016. The review upheld the application of the exemptions cited in the refusal notice.

### **Scope of the case**

---

7. The complainant complained to the Commissioner on 6 March 2017 in order to complain about the FCO's refusal to provide him with all of the information falling within the scope of his request.<sup>1</sup> The only information which the FCO is seeking to withhold consists of the names of intelligence officials with which the UK has cooperated on intelligence matters.

---

<sup>1</sup> The complainant had in fact contacted the Commissioner in July 2016 and again in December 2016 in relation to this matter. However, due to IT issues, the Commissioner did not receive these communications.

## Reasons for decision

---

### Section 27 – international relations

8. Sections 27(1)(a), (c) and (d) of FOIA state that:

*'Information is exempt information if its disclosure would, or would be likely to, prejudice –*

*(a) relations between the United Kingdom and any other State...*

*(c) the interests of the United Kingdom abroad*

*(d) the promotion or protection by the United Kingdom of its interests abroad'*

9. In order for a prejudice based exemption, such 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 to discharge.

10. Furthermore, the Commissioner has been guided by the comments of the Information Tribunal which suggested 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 have been necessary'*.<sup>2</sup>

### The FCO's position

11. In order to support its reliance on these exemptions, the FCO argued that the fact that the requested information dates from 1949 is irrelevant. This is because disclosure of the withheld information would breach the principle that the UK government does not release the names of officials from its own external intelligence agency, and by extension, those of allied intelligence services. Consequently, the FCO has argued that it would seriously compromise such cooperation and thus prejudice the UK's interests in, and relations with, the countries concerned if the names of intelligence officials from other countries were disclosed. In the case of the papers falling within the scope of the request the countries are: France, the Netherlands, Belgium and the USA.

### The complainant's position

12. In his submissions to the Commissioner the complainant emphasised that the passage of time undermined the FCO's position that disclosure of the withheld information would be prejudicial. He noted that many high-level secrets from World War Two and post war period are now in the public domain. One example of such would be the Bletchley Park code breaking efforts and the subsequent formation, and the general work of, the Government Communications Headquarters (i.e. GCHQ).
13. The complainant also noted that the UK's relations with foreign nations (and particularly those in Europe) are completely different today to what they were in 1950. He argued that it cannot sensibly be argued that the release of documents that are more than 50 years old would lead any nation to suspect that such a release would reflect the United Kingdom's attitude to similar sensitive material at the current time.
14. Furthermore, the complainant noted that in the papers released to him in response to this request at least one name listed as being an attendee at a meeting of the Western Union Clandestine Committee - that of Major General Sinclair – was not redacted. The complainant suggested that it would be safe to assume that Major General Sinclair was an officer of Secret Intelligence Service (SIS). In any event the complainant argued that even if Major Sinclair was not an officer of SIS at the time

---

<sup>2</sup> [Campaign Against the Arms Trade v The Information Commissioner and Ministry of Defence \(EA/2006/0040\)](#), paragraph 81.

that the meeting was held and the minutes were taken, then the work he was carrying out in relation to the Western Union Clandestine Committee was of a secret nature. Consequently, the complainant argued that the very fact that one name, presumably concerning an individual involved in intelligence matters, has been disclosed should mean that none of the other names should remain redacted either.

15. The complainant also pointed out that on its website SIS has information including a brief history of the service. The complainant noted that the website included the names of the following intelligence officers: Sir Paul Dukes (activities in Russia from 1918 onward); Frank Foley ('the head of the SIS Berlin station' in 1933); Laurence Grand (in charge of 'Section D' in 1938) and Commander Kenneth Cohen ('appointed Chief Staff Officer, Training' in 1943).<sup>3</sup>
16. In addition the complainant noted that the foreword to 'MI6: The History of the Secret Intelligence Service 1909-1949' by Professor Keith Jeffery, the Chief of SIS at the time of the book's publication (Sir John Sawers) states that '*... full details of our history **after** 1949 are still too sensitive to place in the public domain. **Up** to 1949 Professor Jeffrey has been free to tell a complete story...*' [Emphasis added by the complainant]
17. In light of this the complainant argued that there is no possibility of a 'grey area': up to (and including) 1949 and after 1949 are viewed as distinctly different periods by SIS themselves and as a result information predating 1949, such as the information which is the scope of this request, could be disclosed.

#### The Commissioner's position

18. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the FCO clearly relates to the interests which the exemptions contained at sections 27(1)(a), (c) and (d) are designed to protect. With regard to the second criterion the Commissioner is satisfied that disclosure of the information also has the *potential* to result in prejudice to the UK's relationships with the other countries identified by the FCO. In reaching this conclusion the Commissioner acknowledges the evidence submitted by the complainant casts some doubt on the FCO's position that there is a principle of not disclosing the names of intelligence officials. The complainant's submissions clearly point to the names of some SIS officials from a similar period being sanctioned for official disclosure by SIS themselves. Nevertheless, despite these examples the

---

<sup>3</sup> <https://www.sis.gov.uk/our-history.htm> |

Commissioner notes that The National Archives (TNA) advice on its website in respect of records concerning the intelligence and security services:

*'Because of the sensitive nature of intelligence work, many files have been destroyed and others are retained in order to protect the identities of those involved in gathering intelligence.*

*This is particularly true of files relating to the Special Operations Executive (during the Second World War) and MI5 and MI6.'*<sup>4</sup>

19. In the Commissioner's view this statement lends support to the FCO's position that at least as a general principle the names of those involved in intelligence work would not be placed into the public domain, even names dating from the period covered by this request.
20. Furthermore, the Commissioner's considers it important to recall that the redacted names in this case are not ones of British intelligence officials. Rather, the names relate to the intelligence activities of France, the Netherlands, Belgium and the USA. Therefore, in the Commissioner's opinion, the question in terms of determining whether the exemptions are engaged should focus on what the governments of these countries would expect the FCO to do in relation to information it holds about the historical activities of their intelligence officials. In the Commissioner's opinion despite the examples cited by the complainant, and indeed the comments in the foreword of the history of SIS as cited above, in light of the comments by TNA as a general rule she considers it plausible for the FCO to suggest that these countries would not usually expect this information to be disclosed. In light of this in terms of assessing the potential for prejudice to occur if the withheld information was disclosed, the Commissioner is persuaded that disclosure of the withheld information could potentially harm the UK's relations with the countries in question. With regard to the third criterion, again the Commissioner acknowledges that the submissions of the complainant cast some doubt on the FCO's position. However, she is persuaded that if the withheld information was disclosed there would still be a real and significant risk of a damage limitation response being needed by the FCO in respect of the UK's relations with the countries involved given the general principle that the names of intelligence officials are not disclosed. In other words, in reaching this conclusion she does not believe that the availability of the information cited by the complainant about SIS past activities would sufficiently change the expectations, and thus the likely reactions of, the intelligence agencies of France, the Netherlands, Belgium and the USA if

---

<sup>4</sup> <http://www.nationalarchives.gov.uk/help-with-your-research/research-guides/intelligence-security-service-records/>

the withheld information was disclosed.

21. The exemptions contained at sections 27(1)(a), (c) and (d) are therefore engaged.

### **Public interest test**

22. Section 27 is a qualified exemption and therefore the Commissioner must consider the public interest test and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
23. The FCO acknowledged that disclosure of the withheld information would add to the public's understanding and knowledge of this subject. It also accepted that there is a public interest in a greater understanding of the UK's foreign relations and the information could also assist the public with gaining a better historical understanding of Britain's conduct overseas. However, the FCO noted that the exemption provided by section 27 of FOIA recognised that the effective conduct of international relations depends upon maintaining trust and confidence between governments. The FCO argued that if the United Kingdom does not maintain this trust and confidence, its ability to protect and promote UK interests through international relations will be hampered. In the circumstances of this case the FCO argued that release of the withheld information in this case would be likely to damage the bilateral relationships between the UK and the countries concerned, which would reduce the UK government's ability to protect and promote its interests. Such an outcome was, in the FCO's opinion, firmly against the public interest.
24. The Commissioner recognises that disclosure of the withheld information would provide the public with a greater insight into this subject. Moreover, she agrees with the FCO that there is public interest in allowing the public to better understand the UK's foreign relations and aid the public's understanding of the UK's conduct overseas. However, the Commissioner also agrees with the FCO that there is a very strong interest in ensuring that the UK's relations with foreign governments are not undermined. Furthermore, the Commissioner considers it relevant to take into account that the FCO has disclosed the remainder of the information falling within the scope of this request and the only information which has been withheld consists of the names of intelligence officials. In light of this, the Commissioner is of the view that the public interest favours maintaining the exemptions contained at sections 27(1)(a), (c) and (d) and withholding the redacted information.

## Right of appeal

---

25. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.
27. 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**