

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 27 November 2019

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

#### Decision (including any steps ordered)

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1. The complainant submitted a request to the Foreign and Commonwealth Office (FCO) seeking declassification of a document concerning the political situation in Italy in 1947. The FCO sought to withhold the requested information on the basis of section 23(1) (security bodies) or, in the alternative, section 24(1) (national security) of FOIA. The Commissioner has concluded that the withheld information is exempt from disclosure on the basis of section 23(1) or section 24(1) of FOIA.

#### Request and response

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2. The complainant submitted the following request to the FCO on March 2019:  
  
*'I am writing respectfully to request the declassification of a document concerning the political situation in Italy in 1947. The document is found in FO 371/67768 Political situation in Italy. Code 22 File 32 (papers 9331 – 10459). It is listed as Z9484/32/22'.*
3. The FCO responded on 3 April 2019 and confirmed that it held information falling within the scope of the request but it considered this to be exempt from disclosure on the basis of either section 23(1) (security bodies) or section 24(1) (national security) of FOIA. The FCO explained that it was citing these exemptions 'in the alternative' as it was not appropriate in the circumstances of this case to confirm which

of the two exemptions was actually engaged as to do so was likely to undermine national security or reveal the extent of any involvement, or not, of the bodies dealing with security matters.<sup>1</sup>

4. The complainant contacted that the FCO on 12 April 2019 and asked it to conduct an internal review of this refusal.
5. The FCO informed him of the outcome of the internal review on 14 May 2019. The review upheld the earlier refusal.

## Scope of the case

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6. The complainant contacted the Commissioner on 3 June 2019 in order to complain about the FCO's refusal to provide him with information he requested. He argued that in his view, based on his expert knowledge of this subject matter, he could not conceive of any grounds on which the requested information could be prejudicial to the national security of the UK.

## Reasons for decision

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

### **Section 24 – national security**

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

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<sup>1</sup> Citing these two exemptions in the alternative means that although only one exemption is engaged the other one is also cited so as to disguise which exemption is in fact being relied upon. This approach may be necessary in instances where citing one exemption would in itself be harmful. Further information on this issue is contained on page 9 of the following guidance issued by the Commissioner: [https://ico.org.uk/media/fororganisations/documents/1196/how\\_sections\\_23\\_and\\_24\\_interact\\_foi.pdf](https://ico.org.uk/media/fororganisations/documents/1196/how_sections_23_and_24_interact_foi.pdf)

directly or indirectly supplied to it by, or relates to, any of the bodies listed at section 23(3).<sup>2</sup>

9. Section 24(1) states that:

*'Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security'.*

10. FOIA does not define the term 'national security'. However in *Norman Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045 4 April 2007) the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords' observations as follows:

- 'national security' means the security of the United Kingdom and its people;
- the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
- the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
- action against a foreign state may be capable indirectly of affecting the security of the UK; and,
- reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.

11. Furthermore, in this context the Commissioner interprets 'required for the purposes of' to mean 'reasonably necessary'. Although there has to be a real possibility that the disclosure of requested information would

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<sup>2</sup> A list of the bodies included in section 23(3) of FOIA is available here: <http://www.legislation.gov.uk/ukpga/2000/36/section/23>

undermine national security, the impact does not need to be direct or immediate.

12. As is clear from the wording of section 24(1), the exemptions provided by sections 23(1) and 24(1) are mutually exclusive. This means they cannot be applied to the same request.
13. However, the Commissioner recognises that the fact that section 24(1) can only be applied to information that is not protected by section 23(1) can present a problem if a public authority does not want to reveal whether or not a section 23 security body is involved in an issue. To overcome this problem, as referred to above at footnote 1, the Commissioner will allow public authorities to cite both exemptions 'in the alternative' when necessary. This means that although only one of the two exemptions can actually be engaged, the public authority may refer to both exemptions in its refusal notice.
14. As the Commissioner's guidance on this issue explains, a decision notice which upholds the public authority's position will not allude to which exemption has actually been engaged. It will simply say that the Commissioner is satisfied that one of the two exemptions cited is engaged and that, if the exemption is section 24(1), the public interest favours withholding the information.
15. Based on submissions provided to her by the FCO during the course of her investigation, the Commissioner is satisfied that the withheld information either falls within the scope of the exemption provided by section 23(1) of FOIA or falls within the scope of the exemption provided by section 24(1) of FOIA, and that if the exemption engaged is section 24(1) then the public interest favours maintaining the exemption.
16. The Commissioner cannot elaborate on her rationale behind this finding without compromising the content of the withheld information itself or by revealing which of these two exemptions is actually engaged.

## Right of appeal

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17. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

18. 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.
19. 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**