

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 June 2023

Public Authority: Foreign, Commonwealth & Development Office

Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant submitted a request to the Foreign, Commonwealth & Development Office (FCDO) seeking a copy of Dominic Raab's, the Foreign Secretary's, Ministerial diary for the period 1 June 2021 to 15 September 2021. The FCDO disclosed a redacted version of the information requested, withholding information on the basis of the following sections of FOIA: 23(1) (security bodies), 24(1) (national security), 27(1)(a) (international relations), 35(1)(a) (formulation or development of government policy), 38(1)(b) (health and safety) and 40(2) (personal data).
2. The Commissioner's decision is that the FCDO is entitled to rely on these exemptions to withhold the redacted information.
3. The Commissioner does not require further steps.

Request and response

4. The complainant submitted the following request to the FCDO on 15 October 2021:

'This is a request for information under the Freedom of Information Act. I would like to request the following information:

From 1st June 2021 to 15th September 2021 this request is processed, please provide a copy of Dominic Raab's ministerial diaries.

Please note, I am making this request out of the public interest. It is absolutely essential for the public to know - in full detail - the calls, events and meetings that took place at the time of the Afghanistan crisis.

I would like to receive this information in an electronic format.'

5. The FCDO contacted the complainant on 12 November 2021 and confirmed that it held information falling within the scope of her request but explained that it considered the exemptions contained at sections 27 (international relations), 35 (formulation or development of government policy) and 38 (health and safety) of FOIA to apply and it needed additional time to consider the balance of the public interest. The FCDO issued a similar letter on 10 December 2021.
6. The FCDO provided the complainant with a substantive response to her request on 14 February 2022. The FCDO provided the complainant with a copy of the diaries falling within the scope of the request. However, it explained that information had been redacted on the basis of sections 23(1) (security bodies), 24(1) (national security), 27(1)(a), 35(1)(a), 38(1)(b) and 40(2) (personal data) of FOIA. With regard to the qualified exemptions, the FCDO explained that it had concluded that the public interest favoured withholding the information.
7. The complainant contacted the FCDO on 21 March 2022 and asked it to conduct an internal review of this response.
8. The FCDO informed her of the outcome of the internal review on 22 April 2022. The review upheld the application of the various exemptions cited in the refusal notice.

Scope of the case

9. The complainant contacted the Commissioner on 22 July 2022 in order to challenge the FCDO's decision to withhold information on the basis of the various exemptions cited. The complainant's submissions to the Commissioner are included in the relevant parts of the analysis below.
10. During the course of the Commissioner's investigation, and following a further review of the diary, the FCDO provided the complainant with

some additional information which had previously been withheld on 21 February 2023. At this stage the FCDO also withdrew its reliance on section 35(1)(a) of FOIA.

11. This decision notice therefore considers whether the remaining information is exempt from disclosure on the basis of other exemptions cited by the FCDO.

Reasons for decision

Section 23(1) – security bodies

12. The FCDO redacted some information on the basis of section 23(1) of FOIA 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).’

13. In support of its reliance on this exemption the FCOD explained that the information in question was either directly or indirectly supplied to it by one of the bodies in section 23(3), or relates to one of these bodies. In its submissions to the Commissioner the FCDO provided additional submissions, which referenced the content of the information, to explain why it considered it to be exempt from disclosure on the basis of s23(1).
14. The complainant asked the Commissioner to investigate whether the exemption applied or whether the connection between the requested information and the security body or bodies was too remote to engage the exemption.
15. Having considered the information in question the Commissioner is satisfied there is a sufficient link between the information withheld on the basis of section 23(1) and one or more of the bodies listed in section 23(3). Such information is therefore exempt from disclosure on the basis of section 23(1) of FOIA.

Section 24(1) - National security

16. The FCDO redacted some information on the basis of section 24(1) of FOIA which 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’.

17. 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.
18. Furthermore, in this context the Commissioner interprets 'required for the purpose of' to mean 'reasonably necessary'. Although there has to be a real possibility that the disclosure of requested information would undermine national security, the impact does not need to be direct or immediate.
19. The FCDO explained that it was concerned that release of certain information regarding sensitive high level meetings would adversely impact on the UK's security. The FCDO argued that release of such information into the public domain could provide malicious parties with a detailed account of the policies and procedures enacted by the UK government to safeguard the UK's national security. The FCDO explained that it had also withheld office room numbers as it believed that releasing room numbers could enable hostile actors to build up a picture of the office layout and help identify the areas within the office where more sensitive work is carried out.
20. The complainant suggested that it seemed unlikely that this particular exemption would apply to information contained in a Ministerial diary.

21. The Commissioner has carefully considered information withheld on the basis of section 24(1). He accepts that the FCDO's rationale for withholding room numbers is plausible one and necessary for the purposes of national security.
22. With regard to the other information withheld, the Commissioner considers it to be a more marginal decision as to whether disclosure of the details of high level meetings involving the Foreign Secretary would, if disclosed, pose a risk to national security; it's arguable that some of these meetings are ones that it would be expected him to have. However, the Commissioner accepts that disclosure of such information would nevertheless provide an insight into the pattern and frequency of such meetings and could be used to gain an insight into the UK government's approaches to protecting national security. Aspects of the withheld information also touch upon, albeit indirectly, on more operational matters. On balance the Commissioner is therefore satisfied that withholding the information is necessary for protecting national security.

Public interest test

23. Section 24(1) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has therefore considered whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
24. The FCDO argued that there was a clear public interest in maintaining the UK's national security.
25. The complainant provided the Commissioner with detailed submissions to support her view that the balance of the public interest favoured disclosing the withheld information. The Commissioner has summarised these submissions as follows:
26. There is general public interest in the disclosure of Ministerial diaries as they offer an insight into how a minister allocates their time in office and allows the public to hold them to account. The information contained in these diaries contain more details, and as well as other types of meetings, beyond that proactively published by the government as part of transparency disclosures.
27. The diaries which are the focus of this request concern the Afghanistan crisis and the complainant pointed to the Foreign Affairs Select Committee's report on 'The manner of our withdrawal from Afghanistan was a disaster and a betrayal of our allies that will damage the UK's

interests for years to come'.¹ The complainant also noted that Mr Raab was heavily criticised for his decision to go on holiday as the Taliban made substantial gains. Again she cited the findings of the Committee:

'The fact that the Foreign Office's senior leaders were on holiday when Kabul fell marks a fundamental lack of seriousness, grip or leadership at a time of national emergency. At several key stages in the evacuation there seemed to be no clear line of command within the political leadership of the Government, as decisions were made on the basis of untraceable and unaccountable political interventions.'²

28. The complainant argued that she needed full access to the Foreign Secretary's Ministerial diaries to find out how he was organising his time when the crisis began to unfold and that it was absolutely in the public interest for journalists, politicians and the public to scrutinise his actions (or lack of). She argued that the partial disclosure provided did not allow her to conduct a thorough analysis or for full scrutiny.
29. The Commissioner recognises that there is a genuine public interest in the disclosure of information regarding Ministerial diaries. In the particular circumstances of this request, the Commissioner accepts that this interest is arguably heightened for the reasons cited by the complainant. Disclosure of the information withheld on the basis of section 24(1) would provide an insight into the nature of meetings the Foreign Secretary had in this period, including ones related to matters of national security, and disclosure would help address the fuller scrutiny point identified by the complainant.
30. However, the Commissioner considers that there is a very significant public interest in ensuring that the UK's national security is not undermined. In light of this, and despite the notable public interest in disclosure, the Commissioner has concluded that the public interest favours maintaining section 24(1).

Section 27(1)(a) – international relations

31. The FCDO withheld some information on the basis of section 27(1)(a). This states that:

'(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

¹ <https://committees.parliament.uk/publications/22344/documents/165210/default/>

² <https://committees.parliament.uk/publications/22344/documents/165210/default/>

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

32. In support of its position, the FCDO explained that in his role as Foreign Secretary, Mr Raab would have met with senior representatives from other countries on a daily basis. Some of these meetings would have taken place regularly – depending on the political landscape at that time. The FCDO explained that there will be some Foreign Ministers that the Foreign Secretary did not meet at all during that period. The FCDO argued that the very fact that the Foreign Secretary met with a Foreign Minister could be perceived by the public as either that the UK have a good bilateral relationship with that country or equally that UK's relationship needs to be cemented further and therefore more regular meetings are held for that reason. Equally, the FCDO argued that the fact that there was no contact with the Foreign Minister of a particular country in the given period could impact on the UK's bilateral relationship with that country, if that country's government felt that the UK was not engaging sufficiently with them, compared with other countries.
33. Furthermore, the FCDO argued that in its view release of these diary entries in question would be damaging to the UK's international relations if Foreign Ministers and other ministers were unable to meet with the Foreign Secretary to discuss matters confidentially, without the fact of that meeting becoming public knowledge – particularly with countries who strongly value the UK's discretion and trust. The FCDO argued that release of certain information withheld under section 27 could have a chilling effect on the information that the Foreign Secretary's counterparts might be willing to share with a knock on negative impact on foreign policy development and decision making in the UK.
34. The FCDO noted that the fact that some of the Foreign Secretary's meetings have taken place is made public, either by the Foreign Secretary or the relevant counterpart. However, taking into account the arguments above, the FCDO explained that it had concluded that unless a bilateral meeting has been made public by one or both participants, the information should be withheld under Section 27.
35. The FCDO explained that in determining that some information was exempt on the basis of section 27(1)(a) it had 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'.³

36. In her submissions to the Commissioner the complainant argued that (without the benefit of sight of the FCDO's detailed submissions above) that it was difficult to understand how a schedule of meetings with governments and international partners would be likely to harm international relations.
37. In order for a prejudice based exemption, such as section 27, to be engaged the Commissioner believes 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.
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., disclosure would be likely to result in prejudice or disclosure would result in prejudice. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.
38. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the FCDO clearly relates to the interests which the exemptions contained at section 27(1)(a) is designed to protect.
39. With regard to the second and third criteria, the Commissioner accepts that disclosure of material withheld on the basis of section 27(1)(a) could encroach on confidential space a Foreign Secretary needs to conduct effective relations with senior representatives of other states, especially those which value the UK's trust and discretion. In turn, the Commissioner accepts that disclosure of such information would be likely to harm the UK's relations with such states, taking in account the threshold for prejudice in the context of section 27 as set out above.

Public interest test

³ Campaign against Arms Trade v the Information Commissioner and Ministry of Defence EA/2007/0040 (26 August 2008)

40. Section 27(1) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has therefore considered whether in all the circumstances of the case the public interest in maintaining the exemption cited by the FCDO outweighs the public interest in disclosing the information.
41. The complainant's public interest arguments for disclosure are set out above.
42. For its part, the FCDO recognised the public interest in furthering the public understanding of international relations, and how decisions are made, as well as the principles of transparency and accountability.
43. However, it argued that there was a clear public interest in ensuring that the UK enjoys effective international relations with other states in order to further its foreign policy and domestic policy aims. In the FCDO's view that public interest is therefore best served by the approach it had taken in applying this exemption, ie releasing the diary entries relating to meetings which have been made public, but withholding entries relating to meetings which are not in the public domain.
44. As noted above in his consideration of section 24(1), the Commissioner accepts that there is a clear public interest in the disclosure of information falling within the scope of the request. Disclosure of the material withheld on the basis of section 27(1)(a), as with section 24(1), would result in a fuller disclosure of the Foreign Secretary's diary for this period and more specifically, greater insight into which state's representatives he met with. However, the Commissioner accepts that there is a significant public interest in ensuring that the UK maintains effective relations with other states. Taking into account the fact that disclosure of the material withheld on the basis of section 27(1)(a) risks affecting the UK's relations with a number of states, not just one, the Commissioner has concluded that by a relatively narrow margin the public interest favours maintaining this exemption.

Section 38(1)(b) – health and safety

45. The FCDO withheld some information on the basis of section 38(1)(b) of FOIA which states that:

'Information is exempt information if its disclosure under this Act would, or would be likely to...

...(b) endanger the safety of any individual.'

46. The FCDO explained that it considered this exemption to apply because release of some of the information in scope could potentially reveal

details about a former Foreign Secretary's movements and if released a hostile actor could build up a picture of what he does regularly on a certain day, at a certain time and place. The FCDO argued that this information could be then used by a hostile actor to target the former Foreign Secretary and release of such information would therefore be likely to endanger his safety.

47. With regard to the three limb test set out above at paragraph 37, the Commissioner is satisfied that the prejudice the FCDO envisages occurring is clearly one that is protected by the exemption contained at section 38(1)(b). With regard to the second and third criteria, having examined the withheld information the Commissioner accepts that it would provide a clear insight into Mr Raab's regular movements. The Commissioner recognises that at the point of the request, as the FCDO noted, he was no longer Foreign Secretary. However, he remained a member of the government (and the request seeks information relating to his movements from only a small number of months prior to the request). Taking these factors into account the Commissioner accepts that it is plausible to argue that such information could be used by a hostile actor to target Mr Raab. The Commissioner is therefore satisfied that the exemption is engaged.

Public interest test

48. Section 38(1) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has therefore considered whether in all the circumstances of the case the public interest in maintaining the exemptions cited by the FCDO outweighs the public interest in disclosing the information.
49. The FCDO acknowledged that releasing such information would demonstrate openness and public accountability towards the security and travel arrangements for the Foreign Secretary. However, it explained that it also took into account factors in favour of withholding the information, including the fact that the information in question could provide intelligence allowing a known individual to be targeted. It therefore concluded that this information should not be released.
50. As noted above the Commissioner accepts that there is considerable public interest in disclosure of information which would allow a greater scrutiny of the Foreign Secretary's activities and schedule over the time period in question. However, in the Commissioner's view disclosure of the information withheld on the basis of section 38(1)(b), which focuses on logistical issues, would be unlikely to contribute significantly to this interest. In contrast the Commissioner considers there to be a significant public interest in ensuring that an individual's safety is not harmed. The Commissioner has therefore concluded that the balance of

the public interest favours maintaining the exemption contained at section 38(1)(b).

Section 40 – personal data

51. The FCDO explained that the Foreign Secretary's ministerial diary also contains details of his personal appointments, party political activities and constituency work. The FCDO argued that such information was exempt from disclosure on the basis of section 40(2) of FOIA.
52. As an alternative position, the FCDO argued that the request sought a copy of the Foreign Secretary's 'ministerial' diary and therefore only appointments in the diary relating to Mr Raab's role as a minister fall in scope of the request (bearing in mind FOIA applies to information rather than documents) and as a result appointments relating to constituency work and personal appointments fall outside the scope of the request.
53. In the Commissioner's view the request sought a copy of the Ministerial diary. This diary includes a range information, both about Mr Raab's ministerial and non-ministerial activities, but given that all such information is included in the diary, and the complainant has requested a copy of this, the Commissioner is satisfied that all such information falls within the scope of the request.
54. The FCDO also sought to withhold the names of junior officials on the basis of this exemption.
55. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
56. In this case the relevant condition is contained in section 40(3A)(a)⁴. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
57. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.

⁴ As amended by Schedule 19 Paragraph 58(3) DPA.

58. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

59. Section 3(2) of the DPA defines personal data as:

“any information relating to an identified or identifiable living individual”.

60. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
61. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
62. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
63. The Commissioner is satisfied that the various information redacted relating to Mr Raab constitutes his personal data. He is clearly identifiable from it and it has biographical significance for him. Similarly, the Commissioner accepts that the names of junior staff clearly also constitute personal data.
64. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
65. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

66. Article 5(1)(a) of the UK GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

67. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.

68. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the UK GDPR

69. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that "processing shall be lawful only if and to the extent that at least one of the" lawful bases for processing listed in the Article applies.

70. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"⁵.

71. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;

⁵ Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA and by Schedule 3, Part 2, paragraph 20 the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

72. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

73. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

74. As noted above, the complainant has set why she considers that full disclosure of the diary is needed and in light of this the Commissioner accepts that there is legitimate interest in disclosure of the parts of Mr Raab's personal data redacted on the basis of section 40(2).

Is disclosure necessary?

75. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

76. The Commissioner accepts that disclosure of the information withheld on the basis of section 40(2) is the only way to provide a full, or at least fuller (taking into account the application of the other exemptions), insight into how Mr Raab organised his time given during the period in question.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

77. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For

example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.

78. In considering this balancing test, the Commissioner has taken into account the following factors:

- the potential harm or distress that disclosure may cause;
- whether the information is already in the public domain;
- whether the information is already known to some individuals;
- whether the individual expressed concern to the disclosure; and
- the reasonable expectations of the individual.

79. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.

80. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.

81. The FCDO argued that Mr Raab's reasonable expectations were that diary entries relating to personal appointments, party political activities and constituency work would not be disclosed.

82. The Commissioner accepts that such expectations are reasonable ones and that whilst Ministers should expect that information relating to their Ministerial engagements will be disclosed they would not expect disclosure of personal appointments to be disclosed. Furthermore, the Commissioner accepts that to do so could risk infringing the privacy of Mr Raab. For such information the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subject's fundamental rights and freedoms.

83. With regard to the details of Mr Raab's party political and constituency work, the Commissioner accepts that such information has generally not been disclosed in response to FOI requests and as such he accepts that Mr Raab would have a legitimate expectation that such information would not be disclosed. Whilst the disclosure of such information is unlikely to have a significant impact on Mr Raab's privacy – in contrast to the information about the personal appointments – the Commissioner accepts that by a narrow margin the balance favours withholding this information.

84. Given the above conclusion that disclosure in relation to Mr Raab's personal data would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether disclosure would be fair or transparent. The Commissioner has therefore decided that the FCDO was entitled to withhold such information under section 40(2), by way of section 40(3A)(a).
85. In relation to the personal data of junior employees, it is common practice for a public authority to argue that the names of junior officials are exempt from disclosure under FOIA on the basis of section 40(2) as disclosure would contravene the principles set out in Article 5 of the GDPR. Furthermore, unless there are very case specific circumstances, the Commissioner accepts that the names of the junior officials are exempt from disclosure on the basis of section 40(2) of FOIA. This is in line with the approach taken in the Commissioner's section 40 guidance.⁶ Therefore, in this case the Commissioner adopts the reasoning set out in these previous decision notices which found that the personal data of junior officials was exempt from disclosure on the basis of section 40(2) of FOIA.⁷

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https://ico.org.uk/media/fororganisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf - see page 12

⁷ 6 IC-114449-B7P7 - <https://ico.org.uk/media/action-weve-taken/decisionnotices/2022/4022310/ic-114449-b7p7.pdf> Paragraphs 49-71 and IC-110922-T9R1 <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022447/ic-110922-t9r1.pdf> paragraphs 39-62.

Right of appeal

86. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

87. 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.
88. 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
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