

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 9 February 2023

**Public Authority:** Attorney General's Office  
**Address:** 102 Petty France  
London  
SW1H 9EA

#### **Decision (including any steps ordered)**

---

1. The complainant requested correspondence between the Serious Fraud Office's Departmental Trade Unions and Sir David Calvert-Smith in connection with his 21 July 2022 report. The Attorney General's Office (AGO) refused the request, citing the exemption for prejudice to the effective conduct of public affairs (section 36(2)).
2. The Commissioner's decision is that the AGO was entitled to rely on section 36(2)(b)(ii) to refuse the request.
3. The Commissioner does not require the AGO to take any steps.

## Request and response

---

4. On 18 August 2022, the complainant made the following request for information to the Attorney General's Office (AGO):

"I'm writing to request a full copy of correspondence between the SFO Departmental Trade Unions and Sir David Calvert-Smith in connection with his 21 July report into the SFO's handling of the Unaoil Case. I am requesting the correspondence because on page 7 of his report Sir David states that a letter from the trade unions "contributed significantly" to his findings about the culture at the SFO."

5. The AGO's final position is that the information is subject to the exemption in section 36(2)(b)(ii) of the FOIA.

## Reasons for decision

---

### Section 36 – Prejudice to the effect conduct of public affairs

6. Section 36 of FOIA states that information is exempt where, in the reasonable opinion of a qualified person, disclosure would, or would be likely to, prejudice the effective conduct of public affairs.
7. The AGO has stated that it considers that the requested correspondence is subject to section 36(2)(b)(ii), which is applicable where disclosure would, or would be likely to inhibit the ability of public authority staff and others to express themselves openly, honestly and completely when giving their views as part of the process of deliberation.
8. The withheld information consists of correspondence between the Serious Fraud Office's (SFO) Departmental Trade Unions (DTUs) and Sir David Calvert-Smith in connection with his 21 July 2022 report (the "report") into the SFO's handling of the Unaoil case<sup>1</sup>.

---

<sup>1</sup> <https://www.gov.uk/government/publications/independent-review-into-the-serious-fraud-offices-handling-of-the-unaoil-case-r-v-akle-anor>

9. The AGO has confirmed that its position is premised on the effects that disclosure in this case would have on future review exercises. It has explained that there is a likelihood that similar reviews will take place in the future and disclosure in this case would prevent officials and others from expressing themselves openly, honestly, and completely as there would be a perception that these views could be disclosed. The AGO has argued that this would, in turn, damage the quality of deliberation in such exercises and lead to poorer advice and decision-making.
10. The exemptions at section 36 can only be engaged on the basis of the reasonable opinion of a qualified person. The Commissioner is satisfied that the Solicitor General is authorised as the qualified person for the AGO under section 36(5) of FOIA and that they gave the opinion that the exemption was engaged.
11. The Commissioner accepts that it was reasonable for the qualified person to consider that there is a need to protect the confidentiality of discussions and deliberations. He is also satisfied that the qualified person's opinion - that inhibition relevant to the subsection cited would be likely to occur through disclosure of the withheld information - is reasonable. He is, therefore, satisfied that the exemption was engaged correctly.
12. In relation to the public interest in disclosure, the complainant has argued that the withheld correspondence that was shared with Sir David Calvert-Smith was not offered with a condition of confidentiality but was shared by the DTUs for the very purpose of putting their information into the public domain – in the medium of the report.
13. The AGO has acknowledged that there is a general, strong public interest in disclosing information that promotes accountability and transparency in order to maintain confidence and trust in official processes.
14. The Commissioner notes the complainant's suggestion that the withheld information may not have been provided with an expectation that it would remain confidential, however, the application of the exemption in this case relates to the broader impact of disclosing information which would inhibit the free and frank exchange of views for the purposes of deliberation.
15. In carrying out this and future reviews, the Commissioner accepts that the AGO is reliant on being able to consider views as part of the process of deliberation without this process being inhibited by the prospect of frank and potentially unrepresentative or inaccurate submissions being placed in the public domain. The Commissioner recognises that this would result in those contributing to decision-making being less willing

to provide frank advice and submissions. An outcome of this would be a decline in the effectiveness of decisions.

16. The Commissioner considers that the intensity of any prejudice which disclosure would cause is linked to the timing of a request. In this case, the AGO has confirmed that The Attorney General, who commissioned the review, continues to update Parliament formally on the SFO's progress made against the recommendations of the review. It confirmed that the most recent update was provided on 29 November 2022 and further updates will follow.
17. The Commissioner considers the public interest in good decision-making by the AGO to be a compelling argument in favour of maintaining the exemption. He acknowledges that the public interest in openness and transparency would be served if the information was disclosed, however, he considers that the publication of the report goes some way to address this. On balance, having considered the factors above, he finds the public interest in protecting the AGO's ability to have free and frank exchanges of views for the purposes of deliberation are the stronger arguments in this case.
18. Consequently, the Commissioner is satisfied that, in this case, the public interest favours maintaining the exemption. It follows that his decision is that the AGO was entitled to rely on section 36(2)(b)(ii) of the FOIA to refuse the request.

## **Right of appeal**

---

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

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

20. 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.
21. 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 .....**

**Christopher Williams**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**