

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 7 May 2024

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

#### Decision (including any steps ordered)

---

1. The complainant has requested from the Attorney General's Office (AGO) information about meetings, correspondence and information shared between the AGO and representatives of the Israeli Embassy. The AGO refused to disclose the information it held, citing section 27(1)(a) (International relations) of FOIA.
2. The Commissioner's decision is that the AGO was entitled to apply section 27(1)(a) to withhold the requested information. He also finds that, on the balance of probabilities, it does not hold further information falling within the scope of the request.
3. The Commissioner requires no steps as a result of this decision.

#### Background

---

4. The request refers to an earlier request for information considered by the Commissioner under reference IC-245325-F5D4<sup>1</sup> (the previous
- 

<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4027377/ic-245325-f5d4.pdf>

request'). The previous request was made to the AGO by another requester on 3 March 2023 and it asked for:

"...information, if held, on any meetings or correspondence which has taken place between representatives of the Office of the Attorney General, including the Attorney General themselves, and the Embassy of Israel in London, including any employee or representative thereof."

5. In that case, the AGO disclosed information, with redactions for section 27(1)(a) and 40 (Personal data) of FOIA. The Commissioner upheld the AGO's application of section 27(1)(a) to withhold the information in his decision notice.

## Request and response

---

6. On 21 August 2023, the complainant wrote to the AGO and requested information in the following terms:

"According to a report in The Guardian dated 20 August 2023, 'Israeli embassy officials in London attempted to get the attorney general's office to intervene in UK court cases relating to the prosecution of protesters, documents seen by the Guardian suggest.'

SOURCE:

<https://www.theguardian.com/uk-news/2023...>

REQUEST FOR INFORMATION

Please provide

1. A PDF copy of all the papers released under FOIA referred to in the above news report, without redactions.
  2. Any other correspondence and information shared between Israeli government representatives or agents and AGO representatives, prior to, including, and subsequent to, the period of time covered by the documents disclosed in (1) above."
7. The AGO wrote to the complainant on 19 September 2023, and again on 17 October 2023, saying that it needed further time to consider the balance of the public interest in applying section 27 of FOIA. It explained that it was awaiting the Commissioner's decision on its application of section 27 to the previous request and that it would respond to this request in light of that decision.
  8. The AGO responded to the request on 13 November 2023. As regards point (1), it said the Commissioner had upheld its application of section

27(1)(a) to redact information, and it referred the complainant to the decision notice cited in paragraph 4. It said that it had considered the complainant's request but it maintained, for the reasons set out in that notice, that the redacted information remained exempt under section 27(1)(a).

9. In view of its response to point (1), the AGO asked whether the complainant wanted to proceed with point (2), implying that compliance might engage the costs provisions of FOIA.
10. On 13 November 2023, the complainant contacted the AGO and said that he disagreed with the application of section 27, arguing that the public interest in disclosure had increased since the previous request had been made. He said he wished to "continue all aspects [sic] this FOIA request".
11. On 22 December 2023, the AGO wrote to the complainant. It maintained that section 27(1)(a) had been correctly applied to withhold the redacted information requested at point (1) of the request. As regards point (2), it said:

"...we have also been searching our records held internally and at external storage providers. In conducting that search we have become aware of information which we consider might be within scope of your request. The material is historic – nearly 15 years old – and so we wanted to confirm with you that that is in fact the type of information you were seeking when you originally made your request. We thought it important to check before committing public resources to considering the material for disclosure."
12. On 22 December 2023, the complainant confirmed that this information should be considered for disclosure.
13. On 22 February 2024, the AGO told the complainant that, having examined the 15 year old information, it was satisfied that it fell outside of the scope of the request. It said the only information it held that fell within scope was the information specified in point (1). It said that it was willing to disclose that information, with redactions for section 27(1)(a) of FOIA, if the complainant wished.

## Scope of the case

---

14. The complainant contacted the Commissioner on 23 February 2024 to complain about the way his request for information had been handled. He disagreed with the AGO's application of section 27(1)(a) of FOIA to

withhold information in respect of point (1). He also disputed the AGO's claim that it did not hold any further information falling within point (2).

15. The analysis below considers the AGO's application of section 27 and whether, on the balance of probabilities, it holds information falling within the scope of point (2) which is different from that falling in scope of point (1).
16. The Commissioner has commented on the time taken to conduct the internal review in 'Other matters'.

## **Reasons for decision**

---

### **Section 27 – International relations**

17. The AGO has confirmed to the Commissioner that the information it holds in respect of point (1) of this request is the same as that for the previous request, made just over five months earlier. It said its arguments for the application of section 27(1)(a) to that information remain largely the same, except that it now considers that prejudice "would" occur as a result of disclosure; previously it had argued that prejudice "would be likely to" occur.
18. For brevity, the Commissioner will not reproduce his analysis of the AGO's previous submissions here, but it can be viewed in the decision notice referred to in paragraph 4.
19. The Commissioner's decision notice for the previous request was not appealed by either party and the Commissioner has not seen any new information which would lead him to conclude that section 27(1)(a) is not engaged. He is satisfied that the AGO's new submissions on prejudice (which due to their nature, he is unable to reproduce here without undermining the AGO's reliance on section 27(1)(a)), support its position that prejudice would occur.
20. Therefore, he is satisfied that the exemption is engaged in this case, and that it is engaged on the basis that prejudice to international relations "would" occur as a result of disclosure.

### **Public interest test**

21. Section 27 is subject to the public interest test, as set out in section 2 of FOIA. This means that although the exemption is engaged, the withheld information must be disclosed unless the public interest in maintaining the exemption is stronger than the public interest in disclosure.

## **Public interest arguments in favour of disclosure**

22. The complainant believes the public interest clearly favours disclosure:

"...the public interest arguments for disclosure of the redacted information now far exceed those for non-disclosure due to the dramatic change in the situation in the occupied Palestinian territories, which has been admitted by the ICJ [International Court of Justice] to be a plausible case of genocide. Clearly, the public interest argument in avoiding prejudice to UK relations with another state that is accused of genocide, is far lighter than the public interest argument in the disclosure of information showing how a possibly genocidal state has sought to prejudice the independence the UK justice system to prejudice the right of UK residents seeking to exercise their fundamental and necessary rights and freedoms to protest against a possibly genocidal state.

It is already in the public domain that since 2021 the UK government has committed itself to the Israeli government and Israeli business representatives that it intended to stop protest actions against UK factories owned by Israeli arms maker Elbit, a company which provides a large part of the military drones used in [sic] to attack and kill tens of thousands of civilians in Gaza.

[https://www.whatdotheyknow.com/request/minutes\\_and\\_briefings\\_of\\_lobbyin/response/2518226/attach/4/Annex%20A%20Briefing.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/minutes_and_briefings_of_lobbyin/response/2518226/attach/4/Annex%20A%20Briefing.pdf?cookie_passthrough=1)".

23. The AGO acknowledged the public interest in citizens being informed about the types of discussions being held between the UK and diplomatic missions based in the UK.

## **Public interest arguments in favour of maintaining the exemption**

24. The AGO argued that disclosing the information would have a significant and negative impact on the UK's relations with Israel, to the extent that it would not be in the public interest to disclose the information. Some of its confidential submissions on this point would undermine its reliance on the exemption cited and so the Commissioner will not reproduce them in this notice. However, its main concern was that the UK's ability to maintain an open and cooperative relationship with Israel must not be undermined. Contrary to the complainant's arguments, it argued that recent world events make the public interest in non-disclosure stronger; to disclose the withheld information would have a chilling effect on the UK's dialogues with Israel, at a time when it is imperative that discussions on a range of subjects can continue to be free and frank.

## Balance of the public interest

25. When considering whether a request was handled in accordance with FOIA, following an Upper Tribunal decision<sup>2</sup>, the Commissioner will assess the public interest based on how matters stood at the time when the public authority was required to respond in accordance with Part I of FOIA. In this case, this is twenty working days after receipt.
26. The AGO was required to respond to the request by 20 September 2023, although it did not do so until 13 November 2023. Nevertheless, the Commissioner's guidance<sup>3</sup> is clear that when carrying out the public interest test, a public authority must take account of the circumstances as they were at the statutory time for compliance, even where the public authority responds **after** that time. Therefore, when assessing the public interest in this case, the Commissioner has taken into account matters as they stood at 20 September 2023.
27. The Commissioner acknowledges the complainant's belief that the public interest favours disclosure in light of the Israel-Gaza war. However, the current conflict commenced following the events of 7 October 2023. The Commissioner has not taken account of the complainant's arguments regarding the bearing of the Israel-Gaza war on the public interest, because the request pre-dates it. He has disregarded the AGO's specific rebuttal of those arguments, for the same reason.
28. The Commissioner considers that there is a presumption running through FOIA that openness is, in itself, to be regarded as something which is in the public interest, as it promotes the transparency and accountability of the UK government. He also recognises the public interest in furthering public understanding of the UK's relationship with Israel.
29. However, section 27(1) is designed to protect the interests of the UK and its relations with other international organisations, courts or states. The Commissioner has considered the AGO's confidential submissions on the impact that disclosure would have on those matters and he considers that they carry significant weight in favour of maintaining the exemption.

---

<sup>2</sup> Montague v Information Commissioner ('IC') and the Department of International Trade ('DiT') [2022] UKUT 104 (AAC)

<https://assets.publishing.service.gov.uk/>

<sup>3</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/the-public-interest-test/#pit6>

30. There is also a wider public interest in ensuring that the UK enjoys effective international relations with other countries in order to further UK foreign policy and domestic policy aims. On that point, the Commissioner recognises that there would likely be a chilling effect on the UK's relations with other countries, if there was a wider perception that discussions could not be had with the UK, in confidence. Clearly, this would not be in the best interests of the UK.
31. The Commissioner has found that disclosing the withheld information in this case would prejudice international relations. He does not consider the public interest arguments for disclosure to be sufficiently strong to outweigh the clear public interest in the UK's relationship with Israel, and other states, remaining open, honest and cooperative.
32. His decision is therefore that the AGO was entitled to apply section 27(1)(a) to refuse to disclose an unredacted copy of the information specified at point (1) of the request.

### **Section 1 – Information held**

33. The AGO initially identified some historic information, held in an off-site storage facility, which it believed might contain information falling within scope of point (2) of the request. However, having examined it, it was satisfied that it did not contain relevant information. Its position was therefore that it did not hold any information falling within the scope of point (2) of the request. The complainant challenged this.
34. Where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner applies the civil standard of 'the balance of probabilities'.
35. This means the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request. In deciding where the balance of probabilities lies, the Commissioner will consider the evidence and arguments of both parties, as well as any other pertinent information.
36. The issue for the Commissioner to consider here is whether the requested information **is** held by the AGO. It is not whether it **should be** held by the AGO. On this point, the Commissioner is mindful of the

comments made by the Information Tribunal in the case of Johnson / MoJ (EA2006/0085)<sup>4</sup>, that FOIA:

"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".

37. The complainant told the Commissioner:

"I challenge the AGO position that the only information within scope of part B was the 15 year old document identified in its responses. There must have been other information shared in the period of the Part A redacted information as this is clearly referred to in the previously disclosed redacted information that is within the scope of Part A request [sic]. The intention of Part B of my request was to request that information that is referred to in the Part A redacted information, but apparently fell outside the scope of that previous request due to the narrower wording of that previous request."

38. The Commissioner put this to the AGO. The AGO responded that when it told the complainant that the only other information that might fall within scope was 15 years old, he had not disagreed with its focus on information of that age, or indicated that it was not what he was seeking.

39. It noted that the basis of his complaint appeared to be that it had not properly identified and disclosed all the information it held in relation to point (1) of the request, and it questioned how he could have reached that position:

"...at no point has the AGO even provided the Requestor with a copy of the redacted information released pursuant to the First FOIA Request. Our letter of 22nd February 2024 offered to do just that but, again, we received no response from the Requestor. It is therefore difficult for us to understand how the Requestor formed the opinion he did – again, reported for the first time to the ICO - that 'there must have been other information shared in the period of the Part A redacted information as this is clearly referred to in the previously disclosed redacted information.'... [We] are confident that all responsive information was provided at the time of the First FOIA

---

4

<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i90/Johnson.pdf>



Request (albeit redacted pursuant to s.27 FOIA where necessary). We therefore contest the assertion from the Requestor that 'there must have been other information shared in the period of the [First FOIA Request]'."

40. The AGO explained that when responding to point (2) of the request, it searched the electronic records and email inboxes of relevant teams and senior officials. Further searches of internal digital files (including internal files titled "Law Officer Briefings", "Bilats and Visits", "Outreach" and "Middle East") were undertaken. The search terms "Israel" and "Israeli Embassy" were used.
41. These searches resulted in the identification of exactly the same set of information as was identified when the previous request was being processed, and which already fell within the scope of point (1) of the request.
42. To identify any hard copy information that may potentially fall in scope, a search of the AGO's manual records held at an external storage facility was undertaken. This was done by referring to the electronic index of materials, where records titled or filed as "Israel" were identified. This identified one set of manual documents – the 15 year old information which, when consulted, proved not to contain information falling within scope of point (2) of the request.
43. The AGO also referred the Commissioner to the detailed submission it had made regarding its handling of the previous request, which included descriptions of the searches it had conducted to locate the information falling in scope: the same set of information requested at point (1) of this request.
44. Commenting on the reason for the lack of information held, the AGO explained that its function is not a diplomatic one and that it is rare for it to engage with diplomatic missions in the UK. It said that the material disclosed in relation to the previous request demonstrated this, as it showed that the AGO had advised Israeli embassy officials to engage with the government departments with policy responsibilities for the issues they raised.

### **The Commissioner's decision**

45. The Commissioner is satisfied that the AGO has conducted reasonable enquiries for information falling within scope of the request and that it used appropriate and relevant terms when searching for information. He notes that these searches only returned information that had been identified in respect of the previous request and that no further relevant information was identified.

46. The Commissioner notes that while the complainant considers the AGO must hold more information within scope of the request, the AGO has explained that it does not routinely meet with embassy or diplomatic officials, and so the amount of information it holds on such matters is limited.
47. The Commissioner is not required to prove beyond doubt that the AGO does or does not hold any relevant information. He is only required to make a decision based on the civil standard of the "balance of probabilities".
48. Having considered the explanations provided by the AGO, the Commissioner finds that, on the balance of probabilities, it does not hold any further recorded information falling within the scope of point (1) or point (2) of the request, which has not already been identified to the complainant. As such, the Commissioner is satisfied that the AGO complied with section 1(1) of FOIA when responding to the request.

### **Other matters**

---

49. Although they do not form part of this notice, the Commissioner wishes to highlight the following matters of concern.

### **Internal review**

50. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of FOIA. Rather, they are matters of good practice which are addressed in the Code of Practice issued under section 45 of FOIA.
51. The Code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
52. In this case, the complainant first expressed dissatisfaction with the AGO's response on 13 November 2023, and he clarified that he expected point (2) to be responded to. Despite this, the AGO asked him a further time, on 22 December 2023, whether it should proceed with point (2), and it did not provide its final response regarding it until 22 February 2024.
53. This meant that the AGO took a total of 70 working days to complete the internal review, which significantly exceeds the Commissioner's recommended 40 working day maximum.

54. The Commissioner has made a record of the AGO's late provision of the internal review, for monitoring purposes

## Right of appeal

---

55. 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)

56. 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.
57. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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