

30 April 2010

Michael Bimmler Esq.
request-17693-70ab8b9d@whatdotheyknow.com
(by e-mail only)

Dear Mr Bimmler,

REVIEW OF REQUEST UNDER THE FREEDOM OF INFORMATION ACT 2000

Thank you for your email of 30 November 2009 in which you asked for an internal review of our response to your request for information of 5 September 2009. I would like to apologise for the time it has taken to respond.

In your original request of 5 September you stated:

"..access to all records held by the Cabinet Office or the Prime Minister's Office in connection with the negotiations of a Prisoner Transfer Agreement with the Great Socialist People's Libyan Arab Jamahiriya.

If the amount of documents is too large to evaluate under the cost threshold provision of the Freedom of Information Act 2000, I ask you to restrict this query only to documents created in December 2007."

In your review request you stated:

"I believe that the Public Interest Tests with respect to Sections 27 and 35 of the Freedom of Information Act 2000 have not been carried out correctly and should be reviewed. Moreover, the reference to Section 42 (Legal Professional Privilege) is very vague and I ask for a schedule of documents withheld only or also relying on Section 42. I will then decide whether I shall ask for a review of the application of Section 42 as well."

I have carefully reviewed the handling of your request and conducted a full examination of all the information within the scope of your request and have concluded the following.

First, I should be clear that to search all records held by the department in connection with the negotiations of a Prisoner Transfer Agreement (PTA) with the Great Socialist People's Libyan Arab Jamahiriya would have engaged section 12 of the Freedom of Information Act 2000. However, as



you requested that in this event the search be restricted to only documents created in December 2007 your query was refined to just those documents. This should have been explained to you in the original response, and for this I apologise.

Having reviewed the use of exemptions under section 27(1)(a), (b), (c) and 35(1)(a) I am content that all except 27(1)(b) is engaged. However, I have found that some of the information requested engages sections 27(2) which is also a qualified exemption. Accordingly, I have reviewed the public interest test for sections 27(1)(a) and (c) and section 35(1)(a); and I have considered the public interest test for 27(2). In addition, I have concluded that some of the information held is also exempt under section 40(2) and 41(1). These are absolute exemptions, but I have given further details below.

In considering the public interest test for 27(2) I recognise that there was, and still is, a public interest in our relations with Libya and how the UK conducts its diplomatic affairs. To address this interest the Foreign Secretary made a statement to the House of Commons on the 12 October 2009 regarding the release of Megrahi on compassionate grounds. In this statement he addressed in detail the negotiation of the PTA with Libya. Furthermore on 1 September 2009 the Foreign and Commonwealth Office, the Ministry of Justice, the Scotland Office and the Scottish Executive released Ministerial correspondence, some of which related to the negotiations of the PTA. The intent of the statement and these releases was to increase public trust and make the Government more accountable. I recognise that similarly the release of the information you have requested may also contribute to increasing transparency and openness and improving the trust and confidence the public has towards the Government and the way it works and interacts with other States.

However, as set out in our original response to you, there is also a clear and strong public interest in withholding the information within the scope of your request. Principally that Government absolutely must maintain trust and confidence with other governments. I believe that if the information you request was disclosed then this trust and confidence would be prejudiced and the UK's ability to protect and promote its interests through its international relations would be weakened.

In reviewing the application of the public interest tests for 27(1) (a), (c) and 35 (1)(a) I am content that they were correctly cited and that the arguments against disclosure still apply. I also believe, in light of the statement by the Foreign Secretary and the release of Ministerial correspondence on this matter, that the disclosure of these documents to allow for greater depth of understanding of the conduct of the UK's diplomatic affairs is limited. I have therefore concluded that the balance continues to favour withholding the information.

In relation to the release of the Ministerial correspondence I have concluded that three of the documents we hold are exempt from disclosure by virtue of section 21 of the Freedom of Information Act 2000. Section 21 exempts a public authority from supplying information that is accessible to the applicant



by another means. This information is available on the Ministry of Justice's website at the following location:

<http://www.justice.gov.uk/news/announcement010909a.htm>

You also requested a schedule of those documents where information was exempt from disclosure by virtue of section 42 of the Freedom of Information Act 2000. Having reviewed the use of this exemption I have concluded that it was not applied correctly and that no information you have requested is exempt under section 42.

Section 40(2) exempts personal information from disclosure if that information relates to someone other than the applicant, and if disclosure of that information would, amongst other things, contravene one of the data protection principles in schedule 1 of the Data Protection Act 1998. In this case, I believe disclosure would contravene the first data protection principle, which provides that personal data must be processed fairly and lawfully. Section 40(2) is an absolute exemption and the Cabinet Office is not obliged to consider whether the public interest favours disclosing the information.

Section 41(1) exempts information, where disclosure of the information by the public authority holding it would constitute an actionable breach of confidence. I am satisfied that disclosure of the information would constitute an actionable breach of confidence and that the Cabinet Office could not rely on the defence that an overriding public interest justified breaching its duty of confidence. Section 41(1) is an absolute exemption for the purposes of the Act but the Cabinet Office has taken into account the public interest test inherent within the law of confidence in reaching its decision. It is the Cabinet Office's view that the public interest favours maintaining this exemption. The courts have maintained that there is a strong general public interest in protecting confidences and this could only be superseded by an overriding public interest in disclosure of the information withheld, for example if the information revealed iniquity or fraud or disclosure was necessary to protect the public from harm. These are among the conventional public interests that the Courts have accepted as outweighing the public interest in maintaining a confidence. Though other public interests may also outweigh the public interest in maintaining confidences, I do not consider that the general public interest in having information made available is a compelling public interest capable of overriding this.

I am copying this letter to the Information Commissioner as I know you have already been in touch with his office about the handling of your request.

If you are not content with the outcome of this internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Yours sincerely,

PP SUE GRAY



INVESTOR IN PEOPLE

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Initial request ref: FOI268405
Internal review ref: IR270968