Freedom of Information Act 2000 (FOIA)

Decision notice

Date:	**25 March 2025**
Public Authority:	**Foreign, Commonwealth & Development Office**
Address:	**King Charles Street** **London** **SW1A 2AH**

Decision (including any steps ordered)

1. The complainant submitted a six part request to the Foreign, Commonwealth & Development Office (FCDO) seeking information about a bombing by the Saudi-led coalition in Yemen. The FCDO refused parts 1 to 5 of the request on the basis of section 12(1) (cost limit) of FOIA. It provided a copy of the document sought by part 6 of the request but redacted this on the basis of sections 23(1) (security bodies) and section 24(1) (national security), applied in the alternative, section 26 (defence), section 27 (international relations) and section 42 (legal professional privilege).

2. The Commissioner's decision is that:

   - The FCDO is entitled to refuse to comply with parts 1 to 5 of the request on the basis of section 12(1).
   - The FCDO did not however provide sufficient advice and assistance to the complainant in relation to how these parts of the request could be refined and therefore breached section 16 of FOIA.
   - In relation to some parts of the document sought by part 6 of the request, the Commissioner has found that the exemption which the FCDO is seeking to apply to such information – be it either section 23(1) or section 24(1) – is not engaged.

- The FCDO breached section 17(5) of FOIA by failing to issue its refusal notice within 20 working days.

3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.

   - Provide the complainant with further advice and assistance in relation to how parts 1 to 5 of her request can be refined so that the cost limit is not breached.

   - Provide the complainant with a version of the document sought by part 6 of her request which is consistent with the redactions made to the version of the document released as part of the judicial review proceedings discussed in this decision notice.

4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. The complainant submitted the following request to the FCDO on 15 June 2023:

> "I write to request information held by FCDO in relation to the Great Hall incident of 8 October 2016, also known as the Great Hall Strike, in which two guided bombs were dropped on a funeral in Sanaa, Yemen.
>
> Please provide copies of the following:
>
> 1 - The letter from Foreign Minister Boris Johnson to Trade Secretary Liam Fox dated 8 November 2016 and referenced in this Guardian article, https://www.theguardian.com/politics/2017/feb/10/boris-johnson-urged-uk-to-continue-saudi-arms-sales-after-funeral-bombing
> 2 - The IHL update received by Boris Johnson referred to in that letter; and any additional IHL [International Humanitarian Law] Updates or ad hoc either before or after 8 November 2016 that mention the Great Hall Incident/Strike
> In light of the publication the High Court judgement on 6 June 2023 regarding the judicial review of UK arms export licensing policy towards Saudi Arabia (case number CO/3579/2020), please provide copies of the following:
> 3 - Emails received by MENAD [Middle East and North Africa Department] on or after 8 October 2016 from the UK's diplomatic team

covering political and military activity in Yemen relating to the Great Hall Incident/Strike - as referenced in paragraph 42
4 - The ECJU-FCDO overarching assessment of Saudi Arabia's record, attitude and capability in relation to compliance with the key principles of IHL after the Great Hall Incident/Strike, and subsequent recommendation submitted to the Foreign Secretary as to the advice he should give to the International Trade Secretary - as referenced in paragraph 43
5 - FCDO-held information about UK requests to Saudi Arabia for changes to targeting after the Great Hall incident and monitoring of Saudi post-Great Hall Incident/Strike - as referenced in paragraph 110
6 - The December 2019 "Decision Paper" referenced in the 6 June 2023 High Court judgement on the judicial review of UK arms export licensing policy towards Saudi Arabia and described in paragraph 53"

6. The FCDO confirmed receipt of this request on 16 June 2023. Having received no substantive response to her request, the complainant contacted the FCDO on 20 July 2023. The FCDO did not respond, so she contacted it again on 18 August 2023 and requested that an internal review was conducted into its handling of the request.

7. The FCDO responded on 23 August 2023 and explained that:

"Please accept my sincere apologies for the delay in your FOI response being issued. We are working on your response for you, and we are currently finalising our response and arranging the necessary clearances. We hope to have it with you very soon. If at that point you would like to request an internal review of our decision or you wish to make a complaint you will be able to do so."

8. The FCDO provided a substantive response on 23 October 2023. The FCDO confirmed that it held information relevant to the request but it estimated that the cost of processing the request would exceed the appropriate cost limit of £600. It therefore refused to comply with the request on the basis of section 12(1) (cost limit) of FOIA. The FCDO suggested that the complainant may wish to submit a more specific request and it may help to focus this request on one of the questions contained within the original request, and for information held on Foreign and Commonwealth Office (FCO)/FCDO systems as opposed to also on legacy Department for International Development (DFID) systems.

9. The complainant contacted the FCDO on 24 October 2023 and asked it to conduct an internal review of this refusal. In doing so she asked the FCDO to clarify the following:

"1 Why I was told on 23 August that a response would be forthcoming soon and then on 23 October was told it would cost too much to process my request.

2 Why, if the cost was the issue, I was not told this before now. I made the FOI request in June 2023 – four months ago. I am unclear why it has taken four months for the Unit to reach the position that my request is too broad.

3 Which/how many of the six pieces of information I have requested can be accommodated in any single request. The ICO guidance states that the public authority 'must give the requester reasonable advice and assistance to refine (change or narrow) their request. This will generally involve explaining why the limit would be exceeded and what information, if any, may be available within the limits.'"

10. The FCDO informed her of the outcome of the internal review on 31 January 2024. The FCDO explained that its email of 23 August 2023 only indicated that it was close to completing the response to her request. It did not suggest as to what stage the FCDO had got to in locating and extracting any relevant material. With regard the application of section 12, the FCDO explained that when the cost limit is exceeded for one part of the request then the whole request is then deemed to exceed the cost limit and a public authority is not required to continue searching and locating information. The FCDO further explained that part 3 of the request was particularly widely framed and would require it searching a whole department's files and correspondence over a 7-year period which would exceed the cost limit for compliance. The FCDO reiterated its advice and assistance that the complainant may wish to submit a request for one of the questions at a time allowing 20 working days before submitting another to prevent them exceeding the cost limit. However, the FCDO explained that it had established that the document sought by part 6 of the request had been prepared for release in a subsequent FOI request and therefore it provided the complainant with a copy of this. The FCDO explained that parts of the document had been redacted on the basis of section 23(1) (security bodies) or section 24(1) (national security) of FOIA, with these exemptions being applied in the alternative.[1]

[1] Citing the sections 23(1) and 24(1) of FOIA 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 in the

Scope of the case

11. The complainant initially contacted the Commissioner on 2 October 2023 to complain about the FCDO's failure to provide her with a substantive response to her request. At this stage the Commissioner contacted the FCDO and instructed it to provide the complainant with a response to her request.

12. The complainant contacted the Commissioner again on 20 December 2023 regarding its failure to complete the internal review. Following the completion of the internal review on 31 January 2024 the complainant confirmed to the Commissioner that she remained dissatisfied with the FCDO's handling of her request.

13. She asked the Commissioner to consider the following grounds of complaint:

    a) She disputed the extent of the FCDO's redactions on the basis of sections 23(1) or 24(1) to the document sought at part 6 of her request.

    b) She was dissatisfied with the FCDO's reliance on section 12(1) of FOIA to refuse parts 1 to 5 of her request.[2]

    c) She was dissatisfied that the FCDO did not engage with her request for guidance, under section 16 of FOIA, as to which parts of the request could be answered within the cost limit.

    d) She was dissatisfied with the FCDO's delays in processing her request.

14. In relation to the first ground of complaint, during the course of the Commissioner's investigation the complainant highlighted to him that a less redacted version of the document sought at part 6 of the request had been released in court in early 2023 as part of the Campaign Against the Arms Trade's judicial review of UK arms export policy. (The complainant provided the Commissioner with this version of the document; this is also available online[3].) The complainant explained that

Commissioner's guidance https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/how-sections-23-and-24-interact/#text4

[2] During the course of his investigation the Commissioner established with the FCDO that it now only sought to refuse parts 1 to 5 of the request on the basis of section 12(1) of FOIA and no longer sought to rely on that provision to refuse part 6 of the request.

[3] https://caat.org.uk/app/uploads/2024/09/Decision-paper.pdf

in her view she would not consider it a sufficient response from the FCDO to simply release to her, via FOIA, the version that was shown in court. Instead, she argued that her complaint on this point remained the same, namely that she wanted the Commissioner to consider whether all the redacted information from the version of the document released to her under FOIA was exempt from disclosure on the basis of section 23(1) or section 24(1).

15. In relation to the information sought by part 6 of the request, during the course of the Commissioner's investigation the FCDO explained that it considered additional exemptions to apply to parts of the request not previously released under FOIA and not previously released via the judicial review process. These exemptions were section 26(1)(b) (defence), section 27(1)(a), (c) and (d) (international relations) and section 42(1) (legal professional privilege) of FOIA.

16. The scope of this decision notice is therefore to consider whether section 12(1) provides a basis to refuse parts 1 to 5 of the request, the application of the exemptions detailed above to the withheld information falling within the scope of part 6 of the request, whether the FCDO has complied with section 16 of FOIA, and the delays in processing the request.

Reasons for decision

Complaint a)
Section 23(1) - security bodies
Section 24(1) - national security

17. The Commissioner considers that the information which the FCDO has redacted from the document falling within the scope of part 6 of the request can be classified into two categories.

18. Firstly, the information in the document which was unredacted when it was provided to the court as part of the judicial review proceedings (which the complainant is already in possession of, albeit not as the result of an FOI disclosure).

19. Secondly, the information which was not released in the court version and which the FCDO has also withheld in response to this FOI request.

20. The Commissioner has initially considered the FCDO's application of section 23(1) or section 24(1) of FOIA to the second category of information.

21. 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)."

22. To successfully engage the exemption at section 23(1), a public authority needs only to demonstrate that the relevant information was directly or indirectly supplied to it by, or relates to, any of the bodies listed at section 23(3).[4]

23. 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".

24. 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.

25. 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.

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[4] A list of the bodies included in section 23(3) of FOIA is available here: https://www.legislation.gov.uk/ukpga/2000/36/section/23

26. 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.

27. 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.

28. 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.

29. Based on the submissions provided to him by the FCDO during the course of his investigation, and his examination of the withheld information, the Commissioner is satisfied that the second category of information falls either 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 section 24(1) is engaged then the public interest favours maintaining the exemption.

30. The Commissioner is conscious that this approach and limited analysis is likely to prove frustrating to the complainant. However, for reasons set above he cannot provide further details to explain this particular part of his decision. He also notes that such an approach in this case is consistent with that of other similar decision notices where sections 23(1) and 24(1) of FOIA have been applied in the alternative.

31. In view of this finding the Commissioner has not considered whether the other exemptions cited by the FCDO at the latter stages of his investigation also provide a basis to withhold this information.

32. With regard to the parts of the document which were redacted under FOIA but released in the version of the document disclosed to the court (ie the first category of information described above), the Commissioner recognises that there is a distinction between disclosure of information under FOIA and disclosure of information in court proceedings.

33. However, having considered the possible application of section 23(1) or section 24(1) to this information, the Commissioner is not persuaded, based on the submissions that he has received, that the exemption - be it either section 23(1) or section 24(1) - which the FCDO is seeking to apply to this information is engaged. Again, for the reasons set out above the Commissioner cannot explain this finding further without revealing which exemption the FCDO has sought to rely on. The Commissioner has elaborated – briefly – on his findings in relation to this point in a confidential annex to this decision notice which has been provided to the FCDO only.

Complaint b)
Section 12 – cost of compliance

34. Section 12(1) of FOIA states that:

> "Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

35. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for central government departments such as the FCDO. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12 allows a public to refuse to comply with a request if complying with it would take longer than 24 hours.

36. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) of the Fees Regulations states that an authority can only take into account the costs it reasonably expects to incur in:

- determining whether it holds the information;
- locating the information, or a document containing it;
- retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

37. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/2007/0004, the Commissioner considers

that any estimate must be 'sensible, realistic and supported by cogent evidence'.[5]

38. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether, despite this being the case, there is a public interest in the disclosure of the information.

The FCDO's position

39. In its responses to the complainant the FCDO highlighted that if one part of a request exceeds the cost limit then it can rely on section 12(1) to refuse the entirety of the request. In terms of the information being sought by this request the FCDO noted that the FCO and DFID merged in September 2020 to become the FCDO. It explained that as this request spanned the period both prior to and post the merger in order to comply with the request in full it would need to search different systems to locate, retrieve and collate information held by DFID, the FCO and the FCDO.

40. Furthermore, the FCDO highlighted to the complainant that point 3 of the request was particularly widely framed and would require it to search a whole department's (ie MENAD's) files and correspondence over a 7-year period which would exceed the cost limit for compliance.

41. In it submissions to the Commissioner the FCDO maintained its position that it was entitled to refuse to comply with parts 1 to 5 of the request on the basis of section 12(1) of FOIA. It explained that initial searches of its electronic filing systems had produced a large number of documents and it estimated that it would take at least 27 hours to go through just this electronic information and do a very quick assessment of whether or not the information returned by these searches was in the scope of the request.

42. The FCDO explained that these electronic searches had involved tailored searches on the 'Vault' system which held DFID records and searches via 'E-Discovery' of records held by MENAD. The search terms used for both areas were "Great Hall Incident" and "Great Hall Strike" with the searches of DFID records returning 153 documents and the searches of the MENAD records returning 650 documents, giving a total of 803 documents. The FCDO estimated that it would take 2 minutes to open, check and assess each of the 803 documents and it calculated that this

[5] Paragraph 12 of EA/2007/0004.

would take a minimum of 27 hours (803 x 2 minutes ÷ 60 = 26.766 hours).

43. In addition, the FCDO explained that beyond the electronic information held on the main electronic systems, it was likely to hold information of a higher classification which would require suitably cleared staff to undertake further work to identify any information in scope.

44. Furthermore, the FCDO explained that as a result of judgment in the judicial review referred to by the complainant in the original request, information in scope of the request will also be held in hard copy by Government Legal Department (GLD) on behalf of FCDO and a significant volume of physical folders and loose papers would need to be checked for information in scope of the request. The FCDO explained that GLD had previously provided an estimate in excess of 4.5 days to carry out work to identify information in hard copy in relation to a similar FOI request.

The complainant's position

45. The complainant argued that given the nature of the information sought by parts 1, 4 and 5 of the request in her view this could be provided within 24 hours. In relation to part 2 of the request she suggested that the IHL update referred to in that letter should be retrievable within the cost limit and IHL updates in the month after that letter should also be retrievable within the cost limit. In relation to part 3 of the request she argued that emails received on 8 October 2016 should be retrievable within the cost limit.

The Commissioner's position

46. In this case it is important to note, as the FCDO did in its response to the complainant, that where a request contains multiple different parts if a public authority estimates that complying with one part of a request would exceed the cost limit, then it can rely on section 12 to refuse to answer all parts of that request.

47. This position is confirmed in the section 45 Code of Practice (the Code):

> "6.6 Public authorities do not have to search for information in scope of a request until the cost limit is reached, even if the applicant requests that they do so. If responding to one part of a request would exceed

the cost limit, public authorities do not have to provide a response to any other parts of the request."[6]

48. Turning to the information sought by this request, the Commissioner recognises that certain parts of this ask for a single, specific piece of information. For example, part 1 simply asks for one letter which is clearly identified. However, the Commissioner accepts that other parts of the request are broader or wider in scope, most notably part 3 of the request. The Commissioner agrees with the FCDO's characterisation of this part of the request as particularly widely framed and accepts why, given this, it would require it to conduct a department wide search of files and correspondence over a 7-year period. The Commissioner also notes that some other parts of the request are not clearly limited to particular pieces of information or by a particular timeframe. For example, a section of part 2 of the request seeks "any additional IHL Updates or ad hoc either before or after 8 November 2016 that mention the Great Hall Incident/Strike".

49. As a result, the Commissioner accepts that it is reasonable for the FCDO to have to conduct the electronic searches described above to locate information falling within the scope of this request, particularly the information sought by part 3 of the request. The Commissioner would add that he considers the terms used to conduct these searches, and the areas searched, to be logical and focused. Furthermore, he accepts that an estimate of 2 minutes per document to review and determine whether the information located falls within the scope of the request is not unreasonable bearing in mind that the request seeks various different pieces about the Great Hall incident and some assessment would need to be made as to whether it fell within the scope of a particular part of the request. The Commissioner therefore accepts the FCDO's estimate that it would take a minimum of 27 hours to locate information relevant to parts 1 to 5 of the request on its main electronic systems.

50. Moreover, the Commissioner also accepts that in addition to this, further work would need to be undertaken of the FCDO's information held at a higher classification. Whilst the Commissioner notes that no estimate has been provided in relation to such work, undertaking this would take the total time further beyond the appropriate cost limit of £600 or 24 hours work. Similarly, whilst the Commissioner notes that the FCDO's submissions regarding the information held by GLD on its behalf are not

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6 https://assets.publishing.service.gov.uk/media/5bacc7eb40f0b62dbe5321ba/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

overly detailed, he accepts that such work would need to be undertaken, again further pushing the cost of complying with this request beyond the appropriate cost limit.

51. For the above reasons, the Commissioner is satisfied that the FCDO can rely on section 12(1) to refuse to comply with parts 1 to 5 of the request of 15 June 2023.

Complaint c)
Section 16 – advice and assistance

52. Section 16 of FOIA explains that:

> "(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.
>
> (2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."

53. Paragraph 6.9 of the Code explains that:

> "Where a request is refused under section 12, public authorities should consider what advice and assistance can be provided to help the applicant reframe or refocus their request with a view to bringing it within the cost limit. This may include suggesting that the subject or timespan of the request is narrowed. Any refined request should be treated as a new request for the purposes of the Act."

54. The Commissioner's guidance suggests that, in terms of advice and assistance when a request meets the cost limit, a public authority:

> "…could inform the applicant what information you can provide within the appropriate limit. Doing so is more useful than just advising the applicant to 'narrow' the request or be more specific in focus. Advising applicants to narrow their requests without indicating what information you can provide within the limit, will often just result in applicants making new requests that still exceed the appropriate limit."[7]

[7] https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-12-requests-where-the-cost-of-compliance-exceeds-the-appropriate-limit/#advice

55. However, the guidance also recognises that there are limits to the advice and assistance public authorities are required to provide, noting that a Tribunal decision had found that although the public authority should initiate a dialogue with the applicant, it is not required to:

> "…provide a requester with a menu, or price list, for the retrieval of the various types of information they hold"[8]

56. With the guidance noting that the Tribunal, in a different case, had also found that:

> "Section 16 requires a public authority, whether before or after the request is made, to suggest obvious alternative formulations of the request which will enable it to supply the core of the information sought within the cost limits. It is not required to exercise its imagination to proffer other possible solutions to the problem."[9]

57. In her submissions to the Commissioner the complainant explained that she was dissatisfied that the FCDO's internal review did not provide her with guidance – as she had sought in her request for an internal review – as to which parts of her request could be answered within the cost limit.

58. Furthermore, the complainant explained in her submissions to the Commissioner (as noted above) that in her view parts 1, 4 and 5 of the request could be processed within 24 hours. She also suggested that in respect of part 2, the IHL update referred to in that letter should be retrievable within the cost limit with this also being the case for IHL updates in the month after that letter. Similarly in respect of part 3 of the request, the complainant argued that any emails received on 8 October 2016 should be retrievable within the cost limit and in order to bring the remainder of this part of the request within the cost limit she suggested that this could be narrowed to within the two weeks following this date.

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[8] John Slater v Information Commissioner EA/2019/0118 9 April 2020 – para 69 https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2656/Slater,%20John%20EA-2019-0118%20Part%20Allowed%20%20.pdf

[9] Bruce Beckles v Information Commissioner EA/2011/0073 & 0074 (7 September 2011). Para 24. https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i565/20110907%20%20Decision%20%20EA20110073%20&%200074.pdf

59. As part of his investigation the Commissioner highlighted to the FCDO that the complainant's internal review request had specifically stated that:

> "Which/how many of the six pieces of information I have requested can be accommodated in any single request. The ICO guidance states that the public authority 'must give the requester reasonable advice and assistance to refine (change or narrow) their request. This will generally involve explaining why the limit would be exceeded and what information, if any, may be available within the limits."

60. And that its response had been:

> "As suggested in our original response you may wish to submit a request for one of your questions at a time allowing 20 working days before submitting another to prevent them exceeding the cost limit."

61. The Commissioner therefore asked the FCDO to clarify whether its position was that only one part of the request at a time could definitely be answered within the cost limit, or whether it would be possible, for example, to combine parts 1 and 4 of the request together and still answer these within the cost limit given that these parts, especially part 1, sought specifically described information.

62. In response the FCDO explained that the advice and assistance provided to the complainant in the internal review suggesting that one part of the request at a time was submitted was one of its standard narrowing suggestions. The FCDO acknowledged that if the complainant was specifically seeking, in the Commissioner's example, the information in parts 1 and 4, it is likely that such a request could be processed within the cost limit (albeit that any information located could be subject to exemptions).

63. Having considered the above the Commissioner is not satisfied that the FCDO has provided sufficient advice and assistance to the complainant to allow her to refine her request. In reaching this finding the Commissioner acknowledges that the advice and assistance provided to her in the refusal notice and internal review did, in line with the Code, suggest ways in which she could reframe or refocus the request with a view to bringing it within the cost limit.

64. However, in the circumstances of this case the Commissioner is conscious that in her request for an internal review the complainant specifically sought guidance from the FCDO as to which parts of her request could be answered within the cost limit. The FCDO's internal review did not address this request for assistance directly. As noted above in the Commissioner's guidance, advice and assistance of this

nature is the type of help that he considers public authorities should consider providing to requesters. The Commissioner considers this to particularly be the case when requesters have explicitly asked for assistance of this nature.

65. Whilst the Commissioner is conscious of the limitations of advice and assistance, particularly the Tribunal's comments above in that public authorities are not obliged to provide a 'shopping list', in his view it would have been reasonable for the FCDO to offer more assistance here. That is to say, at the internal stage the Commissioner would have expected the FCDO to engage with the complainant's specific points which are quoted at paragraph 59. This is rather than simply suggesting that one part of the request should be submitted individually, which the Commissioner notes the FCDO acknowledged was simply one of its standard advice and assistance responses. Such a response would have addressed the complainant's particular queries, queries which the Commissioner notes were put to the FCDO in line with the approach set out in his own guidance.

66. Although not central to his decision to find that the FCDO did not comply with section 16, the Commissioner considers an aggravating factor here to be the time it took the FCDO to process this request, namely four months to respond to the request and then 3 months to complete the internal review. Against this backdrop of the delays the Commissioner has sympathy with the complainant's frustrations that having waited this period of time to get to the internal review stage, the review did not address her direct queries as to how the request could be more usefully refined.

67. As result of the above, in order to comply with section 16 of FOIA the Commissioner requires the FCDO to provide the complainant with advice and assistance which allows her to understand which parts of her original request can be answered within the cost limit. In providing this advice and assistance the Commissioner requires the FCDO to take into account the complainant's wording of her request for an internal review quoted at paragraph 59 above and submissions to him on this point, see paragraph 58.

68. For example, the FCDO may be able to offer guidance that certain parts of the request could be combined together and answered within the cost limit, with the remaining parts then combined into a different request submitted at a later date. And/or the FCDO may able to offer a view on whether the proposed refinements by the complainant as suggested in her correspondence (paragraph 58) would ensure the cost limit is not met.

69. The Commissioner would stress that the examples in the previous paragraph are simply that; they are not the only, or indeed the total, amount of advice that he would expect the FCDO to provide to the complainant at this stage. Rather these have been included purely as illustrative examples of the nature of assistance he considers the FCDO could consider providing.

Procedural matters

Complaint d)
Sections 10 and 17

70. Section 10(1) of FOIA requires a public authority to respond to a request within 20 working days of its receipt.

71. If a public authority is seeking to rely on section 12 to refuse a request in line with the requirements of section 17(5) of FOIA it must issue that refusal notice stating that fact within the same time limits. The FCDO failed to issue its refusal notice within 20 working days of the request and therefore breached section 17(5) of FOIA.

Other matters

72. FOIA does not impose a statutory time within which internal reviews must be completed, albeit that the Code explains that such reviews should be completed within a reasonable timeframe.[10] The Commissioner expects that most internal reviews should be completed within 20 working days, and even for more complicated requests, reviews should be completed within a total of 40 working days.[11] In this case, as noted above, the FCDO did not complete the internal review within this timeframe.

73. The Commissioner issued a Practice Recommendation (PR) to the FCDO on 29 February 2024 which set out his concerns about the time taken to respond to requests and internal reviews.[12] The FCDO's response to the

[10] https://www.gov.uk/government/publications/freedom-of-information-code-of-practice
[11] https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#internal
[12] https://ico.org.uk/media2/migrated/4028645/fcdo-practice-recommendation-fpr0987677.pdf

PR has also been published.[13] Although this PR was issued over a year ago, the Commissioner considers it appropriate to highlight this here given that the request which is the subject of this decision was processed prior to the publication of the PR.

[13] https://www.gov.uk/government/publications/information-commissioners-practice-recommendations-for-freedom-of-information-requests-fcdo-response/fcdo-response-to-the-information-commissioners-icos-practice-recommendations-for-freedom-of-information-requests-fois

Right of appeal

74. 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

75. 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.

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

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