

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 20 July 2023

Public Authority: Foreign, Commonwealth & Development Office
Address: King Charles Street
London
SW1A 2AH

Section 51

Under section 51 of the Freedom of Information Act 2000 (FOIA), which is set out below, the Information Commissioner (the Commissioner) has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of FOIA.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

he may serve the authority with a notice (in FOIA referred to as “an information notice”) requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

1. The Commissioner has received an application under section 50, reference IC-237175-K5K3, for a decision whether a request for information made by the complainant to Foreign, Commonwealth & Development Office (FCDO) on 16 November 2022, has been dealt with in accordance with the requirements of Part I of FOIA.

Nature of complaint

2. The complainant submitted the following request to the FCDO on 16 November 2022:

"Under FOI may I have all material you hold relating to the correspondence between Edwina Mountbatten and Nehru, including all agreements relating to it, discussions relating to its sale, storage and release both with other Government departments and the Mountbatten and Nehru families and all requests with response to view such correspondence from other scholars/writers.

In the first instance I can limit all information held for the period 2010 to present day.

A reminder that in your reply to my request for information re the Hanslope visit to Southampton on 15 March 2018 (Ref: FOI2022/17533) mention is made of the Nehru correspondence. [name redacted] email to [name redacted] [Cabinet Office] of 16 March 2018 states that:

'He [name redacted] explained that there is a further collection of correspondence between Edwina Mountbatten and Nehru but this was held elsewhere (Broadlands/The Royal Archives) and any disclosure would be subject to a disclosure agreement with the Indians (FCO would want to be kept aware of this dialogue).'

My request includes any further information held by FCDO relating thereto (including FCDO 'being kept aware of this dialogue')."

3. The FCDO replied on 14 December 2022 and confirmed that it held information falling within the scope of the request but it considered it to be exempt from disclosure on the basis of section 37 (communications with the Royal Household) of FOIA and it needed additional time to consider the balance of the public interest test. The FCDO issued a similar letter on 16 January 2023.
4. The FCDO issued a substantive response to the request on 13 March 2023 and provided the complainant with a digest of information falling within the scope of his request. The FCDO explained that some information had been redacted from the digest and that further information had also been withheld on the basis of sections 40 (personal data) and 41 (information provided in confidence) of FOIA.
5. The complainant contacted the FCDO on 15 March 2023 and asked it to conduct an internal review of this response. He sought to challenge the application of both exemptions and suggested that the FCDO was likely

to hold a considerable amount of information, not all of which would be subject to FOIA exemptions. He also asked for an explanation as to why it took four months to respond to the request.

6. The FCDO acknowledged receipt of the request for an internal review on the same day. However, the Commissioner's understanding is that the review remains outstanding.
7. The complainant contacted the Commissioner on 8 June 2023 in order to complain about the FCDO's handling of his request. His grounds of complaint mirrored the points he set out in his request for an internal review.
8. The Commissioner contacted the FCDO on 15 June 2023 and asked it to provide him with an unredacted copy of the information falling within the scope of the request, submissions to support its reliance on sections 40(2) and 41(1) and to explain why the internal review had not been completed. The Commissioner asked the FCDO to respond within 10 working days, ie by 29 June 2023.
9. The FCDO contacted the Commissioner on 29 June 2023 and explained that it was in the process of consulting with the third party that provided the withheld information and asked for a further 10 working days to respond. The Commissioner agreed to this extension.
10. The FCDO contacted the Commissioner again on 13 July and explained that this consultation was not yet complete and asked for a further extension until 27 July 2023 to respond.
11. The Commissioner advised the FCDO that in light of these delays, he would issue an information notice to it which would formally require it to provide a response to his letter of 15 June 2023. Whilst the time period for compliance with this notice is set at 30 calendar days, and therefore gives the FCDO longer than its requested extended deadline of 27 July 2023, such a notice provides a 'backstop' date by which the FCDO must respond to the Commissioner's letter and ensures that any further potential delays in the FCDO responding are minimised.

Information required

12. In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of FOIA he requires that the FCDO shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information:

13. A full and complete response to his letter of 15 June 2023, namely:

- An unredacted copy of the withheld information, clearly marked to show how the exemptions are being applied.
- Detailed submissions to support the FCDO's reliance on sections 40(2) and 41(1) of FOIA.
- An explanation as to why the internal review was not completed.

Failure to comply

14. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of FOIA, and may be dealt with as a contempt of court.

Right of appeal

15. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can 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

16. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Signed

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF