



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(INFORMATION RIGHTS)**

**Appeal No: EA/2017/0128**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50660657**

**Dated: 25 May 2017**

**Appellant: Faisal Qureshi**

**Respondent: (1) The Information Commissioner  
(2) The Cabinet Office**

**On the papers**

**Date of meeting: 25 April 2018**

**Before  
HH Judge Shanks  
and  
Rosalind Tatam and John Randall**

**Date of decision: 8 May 2017**

**Date of Promulgation: 13 July 2018**

**Subject matter:**

Freedom of Information Act 2000 (FOIA)

Section 27 (International relations)

## **DECISION OF THE FIRST-TIER TRIBUNAL**

For the reasons set out below the Tribunal dismisses the appeal.

### **REASONS FOR DECISION**

#### **Factual background**

1. On 16 April 2004 there was a meeting in Washington between President Bush and the Prime Minister, Tony Blair, to discuss the situation in Iraq in the aftermath of the 2003 invasion. The discussions were recorded in the form of a letter of that date from Matthew Rycroft, the PM's private secretary, to Geoffrey Adams, a senior official in the Foreign Office.

2. On 22 November 2005 the Daily Mirror published an article headed "**Madness of war memo**". The article stated:

**PRESIDENT Bush planned to bomb Arab TV station al-Jazeera in friendly Qatar, a "Top Secret" No 10 memo reveals. But he was talked out of it at a White House summit by Tony Blair, who said it would provoke a worldwide backlash. A source said: "There's no doubt what Bush wanted, and no doubt Blair didn't want him to do it". Al-Jazeera is accused by the US of fuelling the Iraqi insurgency.**

...

**A source said last night: "The memo is explosive and hugely damaging to Bush ..."**

...

**The No 10 memo now raises fresh doubts over US claims that previous attacks against al-Jazeera staff were military errors ...**

...

**The memo ... turned up in the May last year at the ... constituency office of then Labour MP Tony Clarke.**

**Cabinet Office civil servant David Keogh, 49, is accused under the Official Secrets Act of passing it to Leo O'Connor, 42, who used to work for Mr Clarke.**

**Both are bailed to appear at Bow Street court next week.**

**Mr Clarke, who lost at the election, returned the memo to No 10.**

...

**Neither Mr O'Connor or Mr Keogh were available. No 10 did not comment.**

3. On 24 November 2005 Boris Johnson, then the editor of the Spectator and now the Foreign Secretary, wrote an article headed “Bush and al-Jazeera” criticising the Attorney General’s “ban” on the “document” and calling for it to be published so that the allegations against the US President could be cleared up. He stated: “If someone passes me the document within the next few days I will be very happy to publish it in The Spectator, and risk a jail sentence ... Sunlight is the best disinfectant. If we suppress the truth, we forget what we are fighting for”.
  
4. In 2009 the Iraq War Inquiry under Sir John Chilcot was set up. In the course of discussions between Sir John and the Government about how exchanges between the Prime Minister and the US President should be dealt with by the inquiry, the Cabinet Secretary, Gus O’Donnell, wrote to Sir John on 11 January 2011 saying that such direct exchanges represented:

**particularly privileged channels of communication, the preservation of which is strongly in the public interest. Even where immediate sensitivity may have passed, disclosure of the material could still prejudice relations by inhibiting future exchanges. A UK Prime Minister may be less likely to have these exchanges (or allow them to be recorded) if he is concerned that this information would be disclosed at a later time against his wishes. Inhibiting this type of free and frank exchange would represent real prejudice to the UK’s relations with the US.**
  
5. On 6 July 2016 the Inquiry’s Report was published. At p 351 of Volume 7 of the report there was a short summary of what was discussed at the meeting held on 16 April 2004 covering six paragraphs (885-890); it is clear that this summary was based on parts of the Rycroft letter and there was a footnote on p351 expressly referring to it.

The FOIA request, application to Commissioner and appeal to Tribunal

6. On 20 September 2016, the Appellant, Faisal Qureshi, who has been a journalist and researcher for more than 20 years, made a FOIA request to the Cabinet Office asking for “documents of the recorded minutes of a conversation

between George Bush and Tony Blair that took place on 16<sup>th</sup> April 2004". The Cabinet Office accepted that such information existed (in the form of the Rycroft letter) but refused his request for its disclosure in reliance on section 27 of FOIA (which relates to international relations); they confirmed their position in a review letter dated 24 November 2016.

7. On 20 December 2016 Mr Qureshi complained to the Information Commissioner under section 50 of FOIA about the Cabinet Office's response to his request. Having unfortunately had to issue an "information notice" under section 51 of FOIA to require the Cabinet Office to provide her with a copy of the document in issue the Commissioner upheld the Cabinet Office's position on the basis of section 27(1) of FOIA in a decision notice dated 25 May 2017.
8. Mr Qureshi has appealed against her decision notice and the Cabinet Office has been joined in as a party to the appeal. The parties were content for the appeal to be determined without a hearing and we are satisfied that we can properly determine the issues in that way, as required by rule 32(1)(b) of the relevant rules of procedure. As well as the open material supplied to us by the parties in the hearing bundle, we have been provided with the Rycroft letter itself on a closed basis.

#### The legal framework

9. Section 27 of FOIA provides:

**(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-**

**(a) relations between the United Kingdom and any other State**

**(b) ...**

**(c) the interests of the United Kingdom abroad;**

**(d) the promotion or protection by the United Kingdom of its interests abroad.**

**(2) Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom ...**

**(3) For the purposes of this section, any information obtained from a State ... is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State ... to expect that it will be so held.**

10. Section 27(1) provides a “prejudice” based exemption. The jurisprudence establishes that it is sufficient for it to apply if there is a real and significant risk that disclosure would cause prejudice of the relevant kind which is more than trivial or insignificant. It is sufficient to show that the UK’s exposure and vulnerability to the risk of an adverse reaction from another State would increase if disclosure was made, notwithstanding that the precise reaction is impossible to predict.

11. Section 27(2) provides a “class” based exemption, reflecting the fact that there is an inherent public interest in not breaching another State’s confidences, so there is no need to show specific prejudice although this may be relevant when considering the public interest balance. The definition of “confidential information” in section 27(3) may be wider than the general understanding of that phrase. It would obviously apply to oral remarks made by an official of another State in a meeting provided the circumstances made it reasonable for that State to expect them to be kept confidential.

12. Both the exemptions are qualified, so that they only entitle a public authority to withhold information if the public interest in maintaining the exemption outweighs that in disclosure.

13. The issue for us on this appeal is therefore whether, looking at the material now available to us, either or both the section 27 exemptions applied in November

2016 and whether the public interest in maintaining the exemption(s) outweighed that in disclosure of the requested information.

Applicability of section 27 and public interest in maintaining exemption

14. We have no doubt that any record of the meeting on 16 April 2004 was intended on all sides to be kept confidential and that section 27(2) applied to the parts of the Rycroft letter recording the US contribution to the meeting, which in our view could not sensibly be separated from the rest of the letter. As the Tribunal put it in the **Plowden** case (EA/2011/0225) which is referred to in the papers, it is quite hard to think of something more obviously confidential in the realm of international affairs than a record of a face-to-face discussion between a US President and a UK Prime Minister relating to an on-going conflict in which both their armed forces were involved. Further, we are satisfied that the release of the Rycroft letter in November 2016 would have involved a real risk of an adverse reaction from the United States, who are obviously close and important allies with whom the UK wishes to maintain the closest of relationships, not least in the field of security. We therefore agree with the Commissioner that section 27(1) also applies to the contents of the Rycroft letter.

15. We recognise that the meeting in question took place over 12 years before the relevant date and that the political landscape had changed in both countries in the meantime. We also recognise that an account of the meeting based on the Rycroft letter had by then been published in the Chilcot report. However, the Chilcot report only gave a brief summary of the contents of the letter as part of an account of events put together for the purposes of the report and, in so far as the report gave details of exchanges between the President and the Prime Minister, we are satisfied that it was the product of careful wording bearing in mind the discussions we refer to above between Sir John and the Government. The publication of the entire letter, which is what Mr Qureshi in effect seeks, would be a very different matter and, we are satisfied, would have different consequences from the US point of view. The fact that President Bush and Mr Blair are now out of office is of little significance to the damage that may be

done to relations with the US as a result of releasing a detailed note of a highly confidential conversation between them while they were in office in their respective positions as President and Prime Minister.

16. We are therefore quite satisfied that sections 27(1) and 27(2) applied in this case and that the public interest in maintaining those exemptions was very weighty.

Public interest in disclosure

17. There can be no doubt that there would have been great public interest in disclosure of the letter, which is a record of a very high-level discussion between leaders relating to the Iraq war, a matter of continuing and deep controversy. That public interest is lessened to some extent by the fact that a summary of what happened at the meeting was given in a very substantial report relating to the whole matter which was published before the request, but, again, it is relevant in this context to note that the summary in the report is short and is not the same as what is, in effect, the full UK Government record of what passed at the meeting.

18. Mr Qureshi's own interest in disclosure of the letter is, of course, rather more focussed: he wishes to know what if anything was said during the meeting about al-Jazeera and, in particular, whether the report in the Daily Mirror (or other "conspiracy theories" as he puts it) are true. Again, we accept that there was at the time of the request a continuing strong and legitimate public interest in the disclosure of any information about the attitude of the United States towards al-Jazeera in 2004, in particular given al-Jazeera's special position as an Arab TV station and various events following "9/11" which are referred to in our papers.

19. We are not, however, persuaded that there is generally much public interest in "clarifying" matters that are the subject of conspiracy theories, since conspiracy theories are by their nature easily advanced and need have no basis in reality.

As to the Daily Mirror report, it is clear from its face that the writer had not seen the Rycroft letter and knew that it had been “leaked” and that the Government was contending that the Official Secrets Act had been breached. In those circumstances we do not think that the existence of the Daily Mirror report added anything of substance to the public interest in disclosure of the letter. The fact that the then editor of the Spectator magazine may have taken a different view in 2005 is, we think, of no significance at all.

20. We therefore consider that there was a substantial public interest in disclosure of the letter but not on the basis put forward by Mr Qureshi.

#### Public interest balance

21. Looking at all the circumstances, including the contents of the Rycroft letter itself, we have come to the firm view that the public interest in maintaining the section 27 exemptions outweighed the public interest in disclosure of the letter. Even taking account of the legitimate on-going controversy surrounding the Iraq war and the US attitude to al-Jazeera and the time that had passed since the meeting, we consider that the obvious confidentiality of a record of this nature and the potential damage to relations with the US which would flow from its disclosure outweighed any interest in disclosure.

#### Disposal

22. For all those reasons we are satisfied that the exemptions in section 27(1) and (2) applied to the contents of the letter and that the public interest in maintaining that exemption outweighed the public interest in its disclosure. The Cabinet Office was therefore not obliged to supply the letter in response to Mr Qureshi’s FOIA request and it follows that his appeal must be dismissed.

23. This is a unanimous decision.

HH Judge Shanks

8 May 2018