

FOIA: Public interest test s.2; International relations s.27(1)(a),(c) and (d) and s.27(2) confidential information.

Gilby v IC & Foreign & Commonwealth Office

EA/2007/0070; EA/2007/71; EA/2007/0079

22nd October 2008

Cases cited:

CAAT v IC EA/2007/0040

Hogan & Oxford City Council EA/2005/0026/30

Facts

Mr Gilby made various requests for documents in relation to arms and service deals with Saudi Arabia (KSA). The requests were refused by FCO on the basis that their disclosure would or would be likely to prejudice the UK's relations with KSA and the public interest balance favoured maintain the exemption. Mr Gilby complained to the IC who upheld the FCO's decision.

Findings

The prejudice can be real and of substance if it makes relations more difficult or calls for particular diplomatic response to contain or limit damage which would not otherwise have been necessary. There is no need to consider that prejudice necessarily requires the demonstration of actual harm to the relevant interest in terms of quantifiable loss or damage. For example prejudice would arise to interest would arise if the consequence of disclosure would expose those interest to the risk of an adverse reaction from the Saudi Arabia or to make them vulnerable to such a reaction, notwithstanding that the precise reaction would not be predictable either as a matter of probability or certainty. S.27 is only concerned with relation and interests of the UK not with those of companies or enterprises. The Tribunal found that although drip feed disclosures may not individually prejudice international relations the mass disclosure which would result from the requests in this case would be likely to prejudice international relations The Tribunal also found that that the information in question was information obtained in circumstances which made it reasonable for the KSA to expect that it would be held in confidence.

In applying the public interest test the Tribunal found that maintaining good relations with KSA is in the UK national interest. The UK's international relationship with KSA is important for a wide range of interests including matters of commercial and consular interest. Public interests in favour of disclosure included the general interest in transparency and accountability particularly where it possibly involves UK officials directly or indirectly in the payment of commissions or agency fees in connection with arms sales particularly following the King's edict of 20th October 1968 making such payments unlawful in the KSA.

Conclusion

The Tribunal found that the balance of public interest fell differently for various parts of the information requested and issued a substituted decision notice in a confidential annex disclosing some information.