

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

**ON APPEAL FROM A DECISION OF THE INFORMATION COMMISSIONER**

**BETWEEN:**

**MARC OWEN JONES**

**Appellant**

**-and-**

**(1) THE INFORMATION COMMISSIONER  
(2) THE FOREIGN AND COMMONWEALTH OFFICE**

**Respondents**

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**THE RESPONSE OF THE FOREIGN AND COMMONWEALTH OFFICE ("FCO")**

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**INTRODUCTION**

1. This is an appeal under section 57 of the Freedom of Information Act 2000 ("FOIA") by Reprieve against a decision of the Information Commissioner ("the Commissioner") contained in a Decision Notice dated 18 September 2014 (reference FS50538474 - "the Decision Notice").
2. The FCO submits that this appeal should be dismissed.

**FACTUAL BACKGROUND AND THE REQUEST FOR INFORMATION**

3. On 10 June 2013 the Appellant submitted the following request to the FCO [3.1]:  
*I am writing respectfully to request the release of a retained section of a report entitled 'Bahrain: Internal Political Situation 1977' - File No. NBB014/1. The National Archives record for this retained extract is FCO 8 2827 Folio 4.*  
*I believe the piece concerns a conversation between DE Tatham and the head of Bahrain's Special Branch. It was dated 1st December 1977'.*
4. On 17 June 2013 the Appellant clarified his request by confirming that the file he wished to access was FCO 8/2872 and not FCO 8/2827 [3.4].

5. On 8 July 2013 The FCO contacted the Appellant and explained that it considered the requested information to be exempt from disclosure on the basis of section 27 of FOIA but it needed an additional 20 working days to consider the balance of the public interest test [3.15-16].
6. On 2 August 2013 the FCO contacted the Appellant again and explained that it had concluded that the requested information was exempt from disclosure on the basis of section 27(1)(a) and that the public interest favoured maintaining the exemption [3.17-18].
7. On 4 August 2013, the Appellant contacted the FCO in order to ask for an internal review of this decision [3.6]. On 8 May 2014 the FCO informed the Appellant that it had completed an internal review and maintained its decision [3.19-20].
8. The Appellant complained to the ICO. Under cover of a letter dated 20 June 2014, the, the FCO provided the Appellant with a redacted version of the information he had requested [3.21-24]. The FCO explained that the redacted information was considered to be exempt from disclosure on the basis of section 27(1)(a) with some of the information also considered to be exempt from disclosure on the basis of section 40(2) (personal information).
9. In the Decision Notice, the ICO found that the redacted information was exempt by reason of section 27(1)(a) of FOIA and the public interest favoured maintaining the exemption [1.1-8]. In the Decision Notice, the ICO accepted that prejudice to relations to Bahrain would not simply be likely to, but would result from disclosure and this was a matter to which considerable weight should be given (§24). By contrast, disclosure would not address the Appellant's particular and specific concerns (i.e. 'British complicity in egregious acts against Bahraini subjects') (§25).
10. In a notice of appeal filed on 15 October 2014, the Appellant appealed, attaching 'outline' grounds of appeal [1.9-24]. On 13 November 2014 the ICO provided a response [1.25-37]. On 28 November 2014 the Appellant provided a Reply [1.38-47].

### **(3) FCO'S SUBMISSIONS**

11. There is no need to repeat the relevant law as it is well-summarised in paragraphs 13-22 of the ICO's Response [1.28-31]. Instead, the FCO will address the Appellant's three grounds of appeal:
- (1) The Decision Notice was procedurally unfair;
  - (2) Section 27(1)(a) is not engaged; and
  - (3) The public interest weighs in favour of disclosure.

### **Ground 1 – Procedural Unfairness**

12. The FCO agrees with the ICO's submissions on this point. The purpose of this ground of appeal is not understood. The FTT will consider the application of the exemption and the public interest balance afresh and give its own reasons. Even if there were any unfairness in the process leading to the Decision Notice (which is not accepted), that unfairness would be cured by this appeal.

### **Grounds 2 – Whether section 27(1)(a) is engaged**

13. The Appellant submits that the case-law summarised in the ICO's response – i.e. the decisions of the FTT in *Campaign Against the Arms Trade v IC & MOD* (EA/2007/0040) at [80]-[81]; *Home Office v IC & O* (EA/2011.0265) at [125]-[126]; *APPGER v ICO and FCO* (EA/2011/0049) at [128]-[130]; and *Gilby v IC and FCO* (EA/2007/0071) at [23]) on what amounts to 'prejudice to international relations' – is wrong in law.
14. The FTT is not bound to follow these four earlier decisions but it should be very slow to depart from them because it should 'value consistency in decision-making' (see *London Borough of Camden v IC & YV* [2012] UK 190 (AAC) at [12]). The guidance in those four decisions is correct in law and should not be departed from.
15. Further and in any event, this issue is academic on the facts of this case. The ICO did not, in the Decision Notice, make any reference to the guidance in *CAAT*. On the contrary, the ICO went straight to the words of section 27(1)(a) and found that

disclosure would not just be 'likely' but would actually occur if the redacted information were disclosed.

16. The ICO's decision on that issue was correct. It is now supported by the evidence of Edward Oakden, the Director of the Middle East for the FCO. His evidence should be given significant weight as he '*far better informed, as well as having far more relevant experience, than any judge, for the purpose of assessing the likely attitude and actions*' of Bahrain (see *APPGER v IC and MOD* [2011] UKUT 153 (AAC) at [56]).

### **Ground 3 – public interest balance**

17. ICO was correct to find that the public interest weighs against disclosure for the reasons it gave. Little, if anything, else may be said in open. The ICO was correct to find that the withheld information does not go to the particular concerns that the Appellant has about the UK concealing wrongdoing or about Mr Henderson's culpability.

### **CONCLUSIONS**

18. For the reasons given above, this appeal should be dismissed.

RORY DUNLOP

13 February 2015

**IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL  
(INFORMATION RIGHTS) UNDER SECTION 57 OF THE FREEDOM  
OF INFORMATION ACT 2000**

APPEAL EA/2014/0259

BETWEEN:

MARC OWEN JONES

Appellant

And

INFORMATION COMMISSIONER

Respondent

And

FOREIGN AND COMMONWEALTH OFFICE

Second Respondent

**Statement of Edward Oakden**

1. I am Edward Oakden, a diplomat based at the Foreign and Commonwealth Office (FCO). I am a member of the senior civil service cadre, at SMS 2 level, two grades below the Head of the Diplomatic Service. My current position is that of Director of the Middle East, a post I have held since August 2013. I joined the

FCO in 1981 and have worked in various posts both in and outside the Middle East including as the British Ambassador to the UAE in 2006-2010. I have extensive experience of Middle Eastern matters.

2. I make this statement to the best of my knowledge and belief. Where I do not have direct knowledge of a subject or point, I have relied on information from others. I have no reason to believe that their information is inaccurate.

### 3. The request

I understand the request for information by the Appellant was made in June 2013 and is as follows

*I am writing respectfully to request the release of a retained section of a report entitled 'Bahrain: Internal Political Situation 1977' - File No. NBB014/1. The National Archives record for this retained extract is FCO 8 2827 Folio 4.*

*I believe the piece concerns a conversation between DE Tatham and the head of Bahrain's Special Branch. It was dated 1st December 1977*

### 4. The FCO response

The information sought was held on the closed shelves at the National Archives on the grounds that international relations could be damaged were it to be released. Those grounds still exist- I believe that disclosure would damage UK-Bahrain relations,

[REDACTED]

[REDACTED]

[REDACTED]

5. The extent to which HMG has the trust and support of the Bahraini government directly affects our ability to achieve our national interests both within Bahrain and the wider region. Defence co-operation is one key pillar of the bilateral relationship. We also co-operate successfully across a range of other areas, including human rights and political reform assistance, security and counter-terrorism and trade and investment.

[REDACTED]

[REDACTED]

8. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

10.

[REDACTED]

[REDACTED] Bahrain is a generous host to the Royal Navy and the Royal Air Force, providing basing and overflight rights free of charge. In December 2014, the Foreign Secretary signed a Memorandum of Understanding with the Government of Bahrain to establish a more permanent naval base in Bahrain, which the King has agreed to fund. The new agreement will provide improved facilities for UK Royal Navy personnel; allow us to expand our operational effectiveness in a volatile region; and will also provide us with a forward base for naval operations. [REDACTED]

[REDACTED]

11.

[REDACTED]

[REDACTED]

- 12. If the Bahraini authorities were to conclude that confidential information exchanged during the course of UK reform assistance projects could now be released, they could be less inclined to continue to accept such assistance, as we have also seen happen in other countries. Disclosure of this material would then cause damage to our initiatives to enhance human rights, civil liberties and good governance at a time when the UK is providing increasingly sensitive assistance on police reform in the security sector.

- 13. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16.

[REDACTED]

[REDACTED]

17. I believe that the facts stated in this statement are true.

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Date:.....February 2015.....

