

The Campaign for Freedom of Information

Suite 102, 16 Baldwins Gardens, London EC1N 7RJ
Tel: 020 7831 7477
Fax: 020 7831 7461
Email: admin@cfoi.demon.co.uk
Web: www.cfoi.org.uk



**Does the public interest test include the benefit to
the public overseas?**

September 2010

Introduction

The Campaign has published a short submission it made to the First Tier Tribunal (Information Rights) on an aspect of the FOI Act's public interest test. This deals with the question of whether the public interest in disclosing information is limited to the potential benefits to the UK public or whether the benefits to the public in another country can also be considered.

The case arose from a request by Dr Susan Williams, an academic historian, who had applied to The National Archives for 1961 correspondence between the British Prime Minister, Harold Macmillan and Roy Welensky, Prime Minister of the Federation of the Rhodesia and Nyasaland. TNA refused the information on the grounds that disclosure could prejudice international relations.

Dr Williams complained to the Information Commissioner who ruled that a small part of the correspondence was exempt and that the rest should be disclosed. Dr Williams appealed to the Tribunal arguing that the remaining passages were not exempt and that even if they were, the public interest favoured disclosure because of the benefits to public understanding in both the UK and the Democratic Republic of Congo.

The ICO replied that only the benefits to the UK public could be considered and that any benefits to the people of the Congo were irrelevant to the Act's public interest test.

The Campaign's submission challenged this view. It argued that in appropriate cases requesters should be able to argue that disclosures are in the public interest where the benefits are experienced overseas, for example, in helping relieve natural disasters, control infectious diseases or prevent the loss of endangered species.

Before the Tribunal hearing took place Dr Williams discovered that although The National Archives was resisting disclosure, it had already released the disputed correspondence some years earlier. She nevertheless asked the Tribunal to rule on the public interest question but it declined to do so.

The Campaign's submission is being published in case the same issue arises in a future case.

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

EA/ 2010/0100

BETWEEN

Dr SUSAN WILLIAMS

Appellant

-and-

THE INFORMATION COMMISSIONER

Respondent

Appendix 1

NOTE BY MAURICE FRANKEL

1. I am Maurice Frankel, Director of the Campaign for Freedom of Information, of Suite 102, 16 Baldwins Gardens, London EC1N 7RJ. I have worked for the Campaign since it was established in 1984 and have been its director since 1987.
2. The Appellant has invited me to make a submission addressing one aspect of the scope of the public interest test in section 2(2)(b) of the FOI Act. This is whether the “public interest” in disclosure refers to the benefit of disclosure to the UK public or whether in an appropriate case it may include the benefit to the public of another country.
3. In the present case the Information Commissioner has submitted that the enhanced understanding of the public of the Democratic Republic of Congo is not a factor that can properly be taken into account under the public interest test. [*Response by the Information Commissioner, para. 30*]

4. Rather than deal with the specific circumstances of this case, this submission discusses a hypothetical scenario. Suppose that a request has been made for information relating to a land dispute between two tribes in a central American state. It is assumed that the British government has never had any involvement in this matter, that there has been no public discussion of the issue in this country and no UK organisation has expressed concern about it. However, relevant documents are held by The National Archives and a request for them has been made from overseas by a citizen of that state.¹
5. It is also assumed that TNA has demonstrated that disclosure would be likely to prejudice the UK's relations with the state concerned. How would the public interest test operate in such a case?
6. On the face of it, there would appear to be no benefit to the UK public from disclosure. Any benefit is likely to be restricted to those living in the country concerned. Regardless of whether or not such a benefit can properly be considered as part of the public interest in disclosure under s.2(2)(b), it is not obvious (without further information) that much weight would be attached to it.
7. But suppose the land dispute had given rise to violent conflict leading to continuing large scale loss of life? Suppose that release of the information might dispel the myths that had fuelled the conflict and help bring it to an end? As before, it is assumed that neither the conflict nor the loss of life has attracted any public attention in the UK and the British government has no role to play in resolving the matter. This would classically be, in Neville Chamberlain's words, "a quarrel in a far-away country between people of whom we know nothing".
8. It would surely be unthinkable to argue that, although lives could be saved, there would be no public interest in the disclosure because the lives to be saved would not be British and the place in which they would be saved

¹ Under section 1(1) of the FOI Act the right of access to information is available to "any person", without regard to nationality or residence. The Explanatory Notes on the FOI Act state, in relation to section 8, "In particular, the applicant need not be a United Kingdom national or resident". (http://www.legislation.gov.uk/ukpga/2000/36/pdfs/ukpgaen_20000036_en.pdf)

was not the UK. In the circumstances of this scenario there would, it is submitted, be a substantial public interest in favour of disclosure.

9. Is the public interest in the saving of life overseas an entirely different type of public interest to the public interest in enhancing public understanding overseas? It is submitted that it is not. In this hypothetical scenario, the saving of life would be *the result of* the enhanced public understanding flowing from the disclosure. The same principle - contributing to the understanding of people overseas - would be fundamental to both scenarios, though the practical consequences would differ.
10. The fact that the FOI Act's rights are available to "any person", and not restricted to UK citizens or residents recognises that requests will sometimes be made from other countries. Requests might, for example, be made about matters such as the action taken to cope with natural disasters, which may involve great suffering in those countries. It would have been perverse of Parliament, it is suggested, to allow such requests to be made, but prevent the relief of that suffering being cited in support of the public interest in disclosure.
11. Other disclosures can be envisaged which might help control the spread of infectious diseases in developing countries or prevent the loss of endangered species overseas. The fact that the disclosures may make no direct contribution to the prevention of illness or the protection of the environment in the UK cannot mean that there is no public interest in them that can be taken into account under the UK FOI Act.
12. The view that benefits to non-UK populations overseas may be considered to be in the public interest is surely not contentious. An entire, well funded department of the UK government, the Department for International Development, is dedicated to this purpose. It gave £93.9 million in aid to the Democratic Republic of Congo in 2008/09.²
13. Overseas aid often goes towards improving education. If such spending is regarded by the UK government as in the public interest, FOI disclosures

² <http://www.dfid.gov.uk/where-we-work/africa-west--central/congo-democratic-republic/?tab=2>

which benefit public understanding in those countries must also be capable of being so.

14. Naturally, the weight to be given to any such consideration may be great or small, depending on the circumstances but, it is submitted, the potential benefits overseas cannot be ruled out as a matter of principle.

.....
(*signed*)

Maurice Frankel
16 September 2010