

Date 5 April 2019
Concerning Decision on objection Wob-request Cameroon and freedom of the Press

Dear [REDACTED]

In your email of 24 October 2018, you lodged a notice of objection to my decision of 17 October 2018.

In this letter you find my decision on your notice of objection.

Procedure

In your email, dated 22 August 2018, you made a request for information under the Government Information (Public Access) Act (Wet openbaarheid van bestuur; Wob). You requested documents and communications regarding Cameroon and/or Southern Cameroons, all meetings including Ambassador van Oosterom's July 11 meeting with Cameroonian ministers, and all responses to communications received about Cameroon, including but not limited to Inner City Press' communications. Furthermore, you requested all documents that reflect or are related to any communications by the Netherlands Mission to the UN about questions or comments received at the UN stakeout(s).

By email of 29 August 2018, I acknowledged receipt of your request.

By decision of 17 October 2018, I decided not to disclose the requested documents. In the decision, I have motivated why the requested information has not been made public.

By email of 24 October 2018, you lodged a notice of objection to my decision. By email of 30 October 2018, I acknowledged receipt of your notice of objection.

On 5 December 2018, a hearing took place via Skype. For the composition of the committee and the proceedings at the hearing, I refer to the report of the hearing, which is annexed to this decision and is to be regarded as repeated and inserted here.

Assessment of the notice of objection

The grounds of the objection

In your notice of objection you argued – in summary – that:

a. The refusal to deny access to all of the Cameroon-related documents is conflicting with the legislative intent of the Wob

You put forward that the exemption grounds of the Wob, on which your request for information has been denied, have been applied with a logic that would make the Ministry of Foreign Affairs entirely exempt from the Wob, which is not the legislative intent.

b. The second part of the Wob-request is not mentioned in the decision

You bring up that the second part of your request, which concerns all documents that reflect or are related to any communications by the Netherlands Mission to the UN about questions or comments received at the UN stakeout(s), has not been mentioned in the

decision. You emphasize that this part of the request is not limited to questions about Cameroon but comprises all documents related to the area around the Delegates Entrance Gate and related to freedom of the Press, communications with the UN Department of Public Information, Global Communications or UN Security.

c. The current state of affairs makes it exceedingly urgent to release the documents

In the hearing of 5 December 2018, you have argued that there are substantial questions of public interest at stake, because of which disclosure of the requested documents should be considered more important than other relevant interests at stake.

You argue that for the past two years, there has been a human rights crisis in Cameroon, but there has not been any UN Security Council meetings on this subject. You state that a meeting has taken place between Ambassador Van Oosterom and representatives of the government of Cameroon, with the purpose to prevent a Security Council meeting about this subject to take place. You state that it is very important to know about the presences of lobbyists at this meeting, and about their role there. You argue that, taking into account the purpose of UN Security Council Membership, and the policy of the Dutch Ministry of Foreign affairs, the requested documents should be disclosed.

Furthermore, you argue that in this case, it is the more important to make internal documentation public, because there are no official decisions made, and there is no action taken, in the case of Cameroon by the UN Security Council.

Considerations regarding the grounds of the objection

In relation to these arguments, I have considered as follows.

Reassessment of the decision

Before responding to the specific grounds of your objection, I want to inform you that I have reassessed whether all the documents that fall under the scope of your Wob-request were part of my decision of 17 October 2018.

In this process, new documents which falls under the scope of your Wob-request, were found. These documents have been added to the new inventory list.

A full inventory list is annexed to this decision and is to be regarded as repeated and inserted here.

Ad a.

As stated in my decision of 17 October 2018, section 10, subsection 2, sub a, of the Wob (10.2.a) provides that data should not be disclosed if the interest in disclosure is outweighed by the interest in maintaining relations between the Netherlands and other Stated or international organisations. The history of this provision shows that this ground for refusal is intended to prevent a situation in which a statutory duty to disclose information would have the effect of harming Dutch international relations.

In order for 10.2.a of the Wob to be applied, it is not necessary for deterioration of good relations with other countries to be expected (see for example: ABRvS 10 April 2013, ECLI:NL:RVS:2013:BZ7635; ABRvS 17 September 2014, ECLI:NL:RVS:2014:3439). It is instead sufficient if the provision of information is likely in some ways to make international contacts more difficult, for example if maintaining diplomatic relations or conducting bilateral consultations with countries would be harder than before or if people in these countries would be less inclined to provide certain data than previously.

By disclosing the documents, which are now refused on basis of 10.2.a, I would undermine and harm the necessary confidentiality between the Netherlands and other

states and international organisations. States and international organisations may in their contacts with Netherlands officials at the Netherlands mission trust that these contacts are being kept confidential in the interest of the purposes and objectives of the Charter of the United Nations. Disclosure of the requested information, which inter alia includes information about negotiations of outcome documents of the Council, would have the effect of harming Dutch international relations, inter alia, as international actors would be less inclined to share certain information.

This does not mean that the Ministry of Foreign Affairs is entirely exempt from the Wob. The Ministry of Foreign Affairs assesses for each paragraph, in all documents requested, whether the information should be disclosed on basis of the Wob. As a result, the Ministry discloses significant amounts of information each year, which is published on rijksoverheid.nl. As explained above, the nature of this request touches on the very basis of the relations of the Kingdom of the Netherlands with other international actors and precludes therefore that certain information can be made available.

Nevertheless, after careful reconsideration of the confidentiality of all documents involved, I have decided that certain documents can be partly disclosed. This involves documents numbers 2, 3, 4, 5, 7, 18, 19, 20, 21, 22, 23, 24, 27, 29, 30, 36 of the full inventory list annexed to this decision. These redacted documents are attached to this decision. For a total number of 13 pages in the document numbers 2, 18, 21, 22, 23, 27, 36, no substantial information was left after applying the exemption grounds of the Wob. I therefore removed these pages from the documents.

Ad b.

Your objection that the second part of your request, concerning documents related to the area around the Delegates Entrance Gate and related to freedom of the Press, has not been mentioned in the Wob-decision, is founded. I have attended to this part of your request for the decision on your notice of objection.

Hereby I inform you that no documents, which fall under the scope of this part of your request, have been found.

Ad c

The right to request the disclosure of information on the basis of the Wob, serves the public interest of a good and democratic governance. The aim of the Wob, is to enable citizens to oversee the governmental decision making processes. The transparency which results from this, is considered to be a public interest.

According to the Wob, the only interests I can take into account in the process of making a Wob-decision, are on the one hand the interests that are mentioned in the exemption grounds of the Wob, and on the other hand the public interest of governmental transparency. The specific reasons applicants may have for requesting the disclosure of documents are irrelevant for the result of a Wob-request.

In the above sections of this decision and in my decision of 17 October 2018, I have indicated for all non-disclosed information, what other interest has outweighed the public interest of disclosure. I have motivated why these interests weigh heavier in these particular cases than the public interest does. Hence, I have included all interests that are relevant in making a Wob-decision. These consist in the public interest of disclosure, which leads to governmental transparency, and the interests that are described in the exemption grounds of the Wob.

Decision

In view of what has been considered above, I partially uphold your objection and revoke the contested decision of 17 October 2018.

Yours sincerely,



For the Minister of Foreign Affairs

You may lodge an application for review with the administrative law sector of the district court in the district in which you are resident in the Netherlands. The competent court for persons resident outside the Netherlands is The Hague district court. The application for review must be sent to the district court within six weeks of the date the decision was dispatched. Under section 6:5 of the General Administrative Law Act, the notice of objection must be signed and dated and contain at least the name and address of the person submitting it, a description of the decision against which the objection is being lodged, a copy of the decision if possible and the grounds on which it is based. The person applying for review will be charged court fees by the district court registrar. Details of the amount payable and the manner of payment will be supplied by the district court registrar.