

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 October 2012

Public Authority: The Foreign and Commonwealth Office
Address: Old Admiralty Building
London
SW1A 2PA

Decision (including any steps ordered)

1. The complainant requested information relating to the number of non-governmental organisations (NGOs) in the Middle East receiving UK Government funding and the value of that funding. The Foreign and Commonwealth Office (FCO) refused the information citing section 38 of FOIA (health and safety).
2. The Commissioner's decision is that the exemption is not engaged.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - disclose to the complainant the number of NGOs excluded from the table of information previously provided to the complainant by the FCO, and the total funding attributable to those NGOs.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. The background to this complaint is that the complainant had been in correspondence with the FCO regarding the UK Government's funding of non-governmental organisations (NGOs) in the Middle East. The FCO had provided her with some information in the form of a table. That

table showed, by country, those NGOs in the Middle East that have received FCO funding, within a given timeframe, and the annual cost of the funding received.

6. For the purposes of this decision notice, that table will be referred to as 'the table of information'.
7. The FCO advised the complainant that it had excluded some NGOs from the table of information on the basis that disclosure would be likely to endanger the health or safety of individuals working for those organisations. The decision notice in that case - FS50402662 - was issued on 3 July 2012.
8. During the course of her correspondence in that case, the complainant wrote to the FCO on 13 June 2011 and requested information in the following terms:

"there is no reason covered under section 38(1) of the act not to provide the total number of the NGO's that have been excluded and the total funding".
9. The complainant wrote to the FCO on 25 August 2011 clarifying the information she was seeking:

"... items 1, 2 & 3 had been addressed in the FCO letter of 08/06/11, subject to the exemption at s38 of the FOIA being applied. I requested the decision to apply the exemption reviewed with a view to the FCO providing, as a minimum, the total number of NGOs excluded from their response and the total funding attributable to those excluded NGOs".
10. Further correspondence followed, and, as noted above, a decision notice was issued.
11. The complaint in this case arises from the FCO's failure to address the complainant's request for information about the total number of NGOs excluded from its response of 8 June 2011 and the total funding attributable to those excluded NGOs.
12. Given the background to this request, the Commissioner exercised his discretion to accept the complaint without the request for information having been internally reviewed by the FCO.
13. The FCO wrote to the Commissioner confirming that it is relying on section 38(1)(a) and (b) (the health and safety exemption) to withhold the requested information.

Scope of the case

14. The complainant contacted the Commissioner to complain about the way her request for information had been handled.

"I do not see any realistic basis on which the FCO could contend that section 38 applies to the information in question, since this information would not assist anyone to identify any relevant individuals".

15. The Commissioner considers the scope of his case to be the FCO's citing of section 38.

Reasons for decision

16. Section 38(1) of FOIA states that:

"Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or*
(b) endanger the safety of any individual."

17. The FCO is citing section 38(1)(a) and (b) in this case.

The applicable interests

18. As section 38(1) provides that information relating to the endangerment of health and safety of an individual can be withheld, the prejudice involved in disclosure of the information requested must therefore relate specifically to health and safety.

19. The FCO provided the Commissioner with arguments as to why it is relying on the endangerment to the health and safety of individual(s) as its grounds for withholding the requested information. In this respect, it explained why it considered that disclosing information within the scope of the request would pose a risk to the health and safety of individuals working for, or involved with the NGOs, details of which were excluded from the table of information.

The nature of the prejudice

20. The FCO explained to the Commissioner the types of risk it considered individuals would be subject to if the requested information was disclosed. The Commissioner understands those risks to include

persecution, intimidation and harassment. With respect to the threat to the safety of individuals the FCO described it as:

"a real and severe threat".

21. The Commissioner accepts that the content of the FCO's correspondence of 6 September 2012 evidences the nature of the prejudice.

The likelihood of the prejudice

22. The FCO recognised that disclosure of the requested information would not, in itself, directly identify specific NGOs. However, it argued, nevertheless, that disclosure in this case would be likely to endanger the health or safety of individuals.

Is the exemption engaged?

23. In order to engage the section 38 exemption, a public authority must be able to evidence a causal relationship between the potential disclosure and the identified prejudice.
24. The Commissioner accepts that the FCO's arguments regarding endangerment would have merit in circumstances where the Middle Eastern area(s) involved were identifiable from the requested information. However, in this case the Commissioner's view is that the FCO has not provided cogent evidence or arguments to demonstrate how the Middle Eastern area(s) involved can be identified from the requested information. He therefore finds that the FCO has failed to demonstrate a causal link between the potential disclosure and endangerment.
25. It follows that the Commissioner is not satisfied that disclosure of the number of NGOs - and the total funding - excluded from the table of information would be likely to endanger the health or safety of individuals. Specifically, he is not persuaded that the FCO has evidenced that any individual could be identified by disclosure of the information at issue.
26. He has consequently determined that the exemption under section 38(1) is not engaged. The number of NGOs excluded from the table of information, and the total funding attributable to those excluded NGOs, should therefore be disclosed.

Right of appeal

27. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

28. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
29. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Steve Wood
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