

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 March 2023

Public Authority: Foreign, Commonwealth & Development Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant submitted a request to the Foreign, Commonwealth & Development Office (FCDO) seeking information about projects currently funded or partially funded by the FCDO in the occupied Palestinian territories. The FCDO explained that it did not hold some parts of the requested information, provided some of the information falling within the scope of the request and sought to withhold further information on the basis of the following sections of FOIA: 21(1) (information reasonably accessible), 27(1)(b), (c) and (d) and 27(2) (international relations), 38(1)(a) and (b) (health and safety) and 43(2) (commercial interests). The complainant challenged the FCDO's reliance on these exemptions with the exception of section 21(1).
2. The Commissioner's decision is that the withheld information is exempt from disclosure on the basis of sections 27(1)(b), (c) and (d) of FOIA.
3. No steps are required.

Request and response

4. The complainant submitted the following request to the FCDO on 9 September 2021:

'I hereby make this formal request under the Freedom of Information Act 2000 for the following information relating to the West Bank Protection Consortium that includes the British Consulate General Jerusalem

1. The number of and details of projects currently funded or partially funded by Foreign, Commonwealth and Development Office in the "OPT" Palestinian territories.
 2. The current annual budgeted funding cost on an individual basis of each of the projects in the "OPT" Palestinian territories funded or partially funded by the Foreign, Commonwealth and Development Office directly or indirectly.
 3. The annual funding cost on an individual basis of each of the projects in the "OPT" Palestinian territories funded or partially funded by Foreign, Commonwealth and Development Office and the Department for International Development for the last two financial years from 2019/20, 2020/21'.
5. At the request of the FCDO, the complainant clarified the information being sought by question 1 of the request on 14 September 2021 as follows:

'Information is required regarding projects currently funded or partially funded by Foreign, Commonwealth and Development Office in the "OPT" Palestinian territories as follows:-

Title of project

Description of project

Reason for funding of project Initiator of the project

Geographical coordinates of the project

Confirmation of the ownership of the land where the project is established as registered in the appropriate Land Registry.'

6. The FCDO contacted the complainant on 12 October 2021 and confirmed that it held information falling within the scope of the request but considered this to be exempt from disclosure on the basis of sections 27 (international relations) and 43 (commercial interests) of FOIA and explained that it needed additional time to consider the balance of the public interest test.

7. The FCDO provided the complainant with a response to his request on 5 November 2021. The FCDO provided the names of seven projects which fell within the scope of the request and explained that some of the information relating to each of these projects was considered to be exempt from disclosure on the basis of section 21 (information reasonably accessible) because it was online; the FCDO provided links for each of the seven projects where such information could be accessed. However, the FCDO explained that some information regarding projects 6 and 7 was exempt from disclosure on the basis of sections 27(1)(a) and 43(2) of FOIA.
8. The complainant contacted the FCDO on 7 December 2021 and asked it to conduct an internal review of this response.
9. The FCDO informed him of the outcome of the internal review on 3 March 2022. The review explained that:

'I can confirm that the information requested, where it is held, in relation to projects 1 to 5 can be found in the links to the Development Tracker provided below. We hold the geographical coordinates for projects 2, 3 and 5 which are also published in the Development Tracker and I can confirm that we do not hold details [of] ownership of the land for any of the projects funded by the FCDO. We are however withholding some initiators/partners relevant to project 6 under sections 27 (1) (b) (c) and (d) (International relations), 38 (1) (a) and (b) (Health and Safety) and Section 43(2) (Commercial interests) of the Freedom of Information Act 2000.'
10. The internal review implied, albeit did not specifically state, that similar information was also being withheld regarding project 7, as stated in the initial FCDO response. The internal review also noted that the FCDO was no longer relying on section 27(1)(a) of FOIA to withhold any information.

Scope of the case

11. The complainant contacted the Commissioner on 9 May 2022 in order to complain about the way his request for information had been handled. More specifically, he raised the following grounds of complaint:
 - Firstly, he explained that as noted in his request for an internal review it was his understanding that the FCDO was 'engaged' in Area C in the OPT but none of the seven projects identified by the FCDO appeared to cover these activities. Therefore, he argued that the response provided by the FCDO had failed to provide all of the requested information.

- Secondly, he disputed the FCDO's reliance on the exemptions it had cited (with the exception of section 21) to withhold information falling within the scope of his request.
 - Thirdly, he also argued that it is unclear whether the information being withheld in respect of the initiator/partners related only to project 6 or to other projects as well.
12. In relation to the complainant's first point of complaint the FCDO advised the Commissioner that two of the projects (numbers 4 and 7) involved work in area C. In the Commissioner's view this addresses this ground of complaint.
13. With regard to the third ground of complaint, during the course of his investigation the Commissioner established that the FCDO's position was that it was withholding some of the initiators/partners in relation to project 6 and all of the initiators/partners in relation to project 7. In the Commissioner's view this addresses this ground of complaint.
14. The focus of the Commissioner's decision notice is therefore simply on the complainant's second ground, ie the FCDO's reliance in the exemptions to withhold information falling within the scope of the request. In addition to the exemptions cited above, the FCDO also explained that it now also sought to rely on section 27(2) of FOIA to withhold information about both projects.

Reasons for decision

Section 27 – international relations

15. The FCDO applied sections 27(1)(b), (c) and (d) of FOIA to all of the withheld information. These state that:

'Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

- (b) relations between the United Kingdom and any international organisation or international court,
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad.'

The FCDO's position

16. The FCDO argued that disclosure of the information would be likely to prejudice the UK's relations with the international organisations that it

was funding through the projects falling within the scope of the requests. Furthermore, the FCDO argued that the likely effect of disclosure would be to prejudice the UK's interests and the promotion and protection of these interests more widely with international organisations.

17. In support of this position, FCDO explained that its international partners had made it clear that they did not want details of their downstream partners to be disclosed. The FCDO noted that good international relations and the ability to maintain relations with international organisations are fundamental to the FCDO's core objective of reducing poverty overseas. FCDO argued that disclosure of the information provided by an international institution against their wishes is likely to have an adverse effect on the UK's ability to conduct relations with international organisations. The FCDO argued that such disclosure would be likely to be viewed as a lack of discretion and so lead to distrust, or at the very least, a lack of confidence in the UK's ability to conduct international relations in an appropriate manner.

The Commissioner's position

18. In order for a prejudice based exemption, such as section 27, to be engaged the Commissioner believes that three criteria must be met:
 - Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption.
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance.
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., disclosure would be likely to result in prejudice or disclosure would result in prejudice. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.
19. Furthermore, the Commissioner has been guided by the comments of the Information Tribunal which suggested that in the context of section 27(1), prejudice can be real and of substance 'if it makes relations more

difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary'.¹

20. With regard to the first criterion of the test set out above, the Commissioner accepts that the type of harm that the FCDO believes would be likely to occur if the information was disclosed is applicable to the interests protected by sections 27(1)(b), (c) and (d).
21. With regard to the second and third criteria, in the Commissioner's view it is plausible to argue that disclosure of the withheld information under FOIA would be likely to have an impact on relations between its international partners who supplied the information. The Commissioner considers this to be self evident given that such information has been provided on the basis that it would be treated confidentially and the FCDO has been asked not to disclose this information. The Commissioner also notes that in the context of its submissions on section 38, the FCDO explained that its Conflict, Stability and Security Fund Team has made a conscious effort not to release detailed information about project partners due to the difficulties they have experienced whilst working in such a highly complex and politicised environment.
22. Furthermore, the Commissioner accepts that if the FCDO's relations with the international organisations with which it partners with in the region are harmed then it is logical to argue that this is likely to impact on the interests in which the exemptions contained at sections 27(1)(c) and (d) are designed to protect.
23. Sections 27(1)(b), (c) and (d) are therefore engaged.

Public interest test

24. Section 27 is a qualified exemption and therefore the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemptions contained at section 27(1)(b), (c) and (d) outweighs the public interest in disclosing the information.
25. The FCDO acknowledged that there is was a public interest in the disclosure of the withheld information disclosed. The complainant also argued that there was a clear public interest in the disclosure of the withheld information.

¹ Campaign against Arms Trade v the Information Commissioner and Ministry of Defence EA/2007/0040 (26 August 2008)

26. However, the FCDO argued that such an interest was outweighed by the public interest in maintaining the exemption. In support of this position, FCDO emphasised that there was a very strong public interest in the UK being able to maintain good relations with international organisations with whom it works. The FCDO argued that a breakdown in trust between the UK and the international organisations it was working with in Palestine caused by the disclosure of the information would be likely to have an adverse effect on the UK's ability to pursue these wide-ranging and significant areas of policy interest. In the FCDO's view damage to relations with these partners would make it much more difficult for FCDO to carry out the public policy objectives of reducing poverty. In a similar vein, the FCDO argued that there is a very strong public interest in the UK being able to support partner organisations in preserving good working relations and essential information flows with their clients and international partners. The FCDO emphasised that disclosure would be likely to damage relationships with its key partners and impede its ability to promote international development. The FCDO explained that it considered such outcomes to be clearly against the public interest.
27. The Commissioner accepts that there is public interest in government departments being open and transparent about which organisations receive UK government funding. The Commissioner appreciates that there is a particular interest in information relating to the funding of projects in Palestine. However, the Commissioner agrees with the FCDO that there is a significant public interest in ensuring that the UK's international relations are not harmed. Moreover, the Commissioner agrees with the FCDO that there is a public interest in ensuring that the UK's ability to protect and promote its interests abroad is not undermined. The Commissioner considers these arguments to attract particular weight in the context of the complex and politicised environment to which these projects relate. In the Commissioner's view this is a more compelling argument than the case for disclosure in this case, and therefore he has concluded that the public interest favours maintaining the exemptions contained at sections 27(1)(b), (c) and (d).
28. In light of this decision the Commissioner has not considered the FCDO's reliance on the other exemptions it cited to withhold the information.

Right of appeal

29. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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

Jonathan Slee
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