

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 18 November 2009**

**Public Authority:** Foreign & Commonwealth Office  
**Address:** Old Admiralty Building  
London  
SW1A 2PA

### Summary

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The complainant asked the Foreign and Commonwealth Office ("the FCO") for information concerning the Charity Crescent Relief (London). The FCO refused to disclose the requested information, initially citing the exemptions at sections 27 and 31 of the Act. The FCO also neither confirmed nor denied that it held any additional information citing sections 23 and 24 of the Act. The FCO dropped reliance on section 27 during the Commissioner's investigation. The Commissioner found that the exemptions were engaged and that the public interest in maintaining the exemptions outweighed the public interest in disclosing the information. The Commissioner therefore found that FCO had acted correctly in withholding the information.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### Background

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2. In 2006 it was widely reported that the Charity Commission formally investigated the aid group Crescent Relief, following allegations that the charity was linked to a foiled airline bombing plot with aeroplanes departing from London. In the course of this inquiry the Charity Commission froze the accounts of the charity.

## The Request

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3. On 20 August 2006 the complainant requested information from FCO in relation to the charity Crescent Relief (London). Specifically the complainant asked for:

“Information concerning the charity Crescent Relief (London).

If any part of the information requested is covered by one or more of the absolute exemptions in the Act please treat this request as a request for that part of the information which is not covered by the absolute exemption.

If you need further details in order to identify the information requested or a fee is payable please let me know as soon as possible.

If you are of the view that that there may be further information of the kind requested but it is held by another public authority please let me know as soon as possible. Please continue with this application as quickly as possible. I believe that the information is required in the public interest for the following reasons:

1. To uphold public confidence that the Government monitors the activities of British charities working abroad in sensitive regions;
2. To provide assurance that the Government works with British charities on providing effective relief from poverty and disasters;
3. To ensure that public funds are spent correctly in connection with keeping effective relationships between Government and UK charities operating overseas”.

4. On 6 September 2006 the FCO sought refinement of the request on the basis that potentially the scope of the complainant’s request was quite broad. The complainant responded on 11 September 2006, clarifying that the information being requested in relation to Crescent Relief was confined to information held post 2001. On 20 September 2006 the FCO wrote to the complainant explaining that its response would be delayed due to consideration of the public interest test in relation to the application of exemptions in sections 27(1)(a) and (2) (international relations) and 30(1) (investigations and proceedings conducted by public authorities) of the Act.
5. Subsequently on 23 October 2006 the FCO provided its substantive response to the complainant and refused to provide the information requested. In refusing the request the FCO relied upon sections 27(1)(a) and 27(2) and section 31(1)(a) and (c) to withhold information. The FCO confirmed it was not applying the exemption at section 30(1) of the Act to the requested information. The FCO also neither confirmed nor denied that it held any additional information about Crescent Relief applying sections 23(5) and 24(2).
6. On receipt of the FCO’s refusal the complainant requested an internal review of this decision, the result of which was provided on 3 November 2006. The internal review upheld the FCO’s original decision not to disclose the information and upheld its decision to apply sections 27(1)(a) (2), 31(1)(a) and (c) and sections 23(5) and 24(2) of the Act.

## The Investigation

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### Scope of the case

7. The Commissioner considered the FCO's handling of this case, the application by the FCO of the exemptions claimed and the balance of the public interest as it applied to the qualified exemptions cited by FCO.
8. Initially the FCO withheld information under the section 27 exemption. This stance was maintained at internal review but in the course of the Commissioner's investigation the FCO identified that this exemption had been applied to information that had been generated after receipt of the request and was therefore not held at the time of the request. As a result the FCO sought to withdraw its reliance on this exemption.
9. The Commissioner is satisfied that this information fell outside the scope of the request and therefore he did not make a determination on the application of section 27 and proceeded to consider the remaining exemptions applied by the FCO.

### Chronology

10. On 6 November 2006 the complainant contacted the Commissioner to complain about the way his request for information had been refused.
11. On 23 January 2008 the Commissioner wrote to the FCO and asked for its representations regarding the handling of this case. In particular clarification was sought as to how release of the requested information would prejudice international relations and the prevention or detection of crime or the administration of justice. The Commissioner also apologised to the complainant and the FCO for the delay in beginning the investigation.
12. The Commissioner noted that initially the complainant had been asked to narrow the scope of his request. However given that both parties agreed to focus on the 'refined' request of 11 September 2006 the Commissioner did not raise this as an issue.
13. As requested the FCO also provided to the Commissioner, in confidence, information relevant to the complaint and confirmed that its view remained as set out in its internal review, the results of which had been conveyed to the complainant.
14. Following a review of the withheld information, on 29 September 2008 the Commissioner sought further explanation of the FCO's rationale for its decision to withhold the requested information under sections 27 and 31 and its stance in neither confirming nor denying that it held any additional information regarding Crescent Relief. After some delay, the FCO responded on 12 November 2008, providing further comments in relation to its application of the exemptions. The Commissioner then proceeded to a decision notice in this case.

## Findings of fact

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15. The Charity Commission has legal powers to open an inquiry into a charity as per the Charities Act 1993 (Section 8). The Commission also has a range of powers that are available to it when a Section 8 Inquiry is open; however these powers may only be exercised where the relevant grounds have been established. These grounds are detailed in Annex A.
16. On completion of its inquiry, the Charity Commission issues a full report setting out its findings.
17. In August 2006 the Charity Commission, which is a government established independent commission, publicly stated that it had frozen the accounts of the aid group Crescent Relief and started a formal inquiry into the possible 'terrorist abuse of charitable funds'.
18. This complex and sensitive investigation would focus on whether or not the charity's funds, or money raised on its behalf, was used unlawfully and would be carried out in conjunction with law enforcement agencies.

## Analysis

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### Exemptions

#### Section 31(1)(a) - Prejudice to the prevention or detection of crime

19. Section 31(1)(a) provides an exemption from disclosure for information which would, or would be likely to, prejudice the prevention or detection of crime . The FCO also cited section 31(1)(c), which provides an exemption from disclosure for information which would, or would be likely to, prejudice the administration of justice. The full text of the exemptions can be found in the Legal Annex at the end of this Notice. The Commissioner considered section 31(1)(a) first, as the FCO's arguments were more focused on this exemption.
20. The FCO explained that on 23 August 2006 the Charity Commission had used its powers under the Charities Act 1993 to initiate an inquiry into Crescent Relief (London) and at the time of the request this inquiry was ongoing. In addition the Charity Commission had issued Orders under section 18 (1)(iv) of the Charities Act 1993 to restrict transactions on the accounts ('freezing orders') held by Crescent Relief.
21. The FCO argued that some of the requested information was exempt because it related to these 'freezing orders' and liaison with law enforcement agencies in the fight against terrorism. Disclosure of this information would prejudice the procedures followed by government if it were to try and freeze the assets of other charities and would thus jeopardise the prevention or detection of crime.

22. The FCO also argued that as the investigation was ongoing, any release of information would prejudice the investigation as a whole by hindering the completion of enquiries being conducted within a legal framework and the formation of coherent judgements in relation to Crescent Relief.
23. The Commissioner's view is that the prejudice test is not a weak test and a public authority must be able to point to prejudice which is "real, actual or of substance" and to show some causal link between the potential disclosure and the prejudice. Accordingly the Commissioner's approach to assessing prejudice is as set out by the Tribunal in *Hogan v the ICO and Oxford City Council (EA/2005/0026 and EA/2005/0030)*.
24. In *Hogan* the Tribunal outlined three steps in the application of the prejudice test. Firstly, there is a need to identify the applicable interest(s) within the relevant exemption ie ensuring that the prejudice claimed is to the interest stated. In this case prejudice was being claimed to the interests of prevention/detection of crime.
25. Secondly, the nature of 'prejudice' being claimed must be considered ie the public authority must be able to show that some causal relationship exists between the potential disclosure and the prejudice and that the latter is not trivial or insignificant. If the prejudice is trivial eg the information is already in the public domain, disclosure is unlikely to have any real detrimental or prejudicial effect, or if the nature of the prejudice claimed cannot be adequately linked backed to the disclosure of the information in question, then the exemption cannot be engaged.
26. Finally the likelihood of occurrence of prejudice must be considered. "Likely to prejudice" means that the possibility of prejudice should be real and significant, and certainly more than hypothetical or remote, whereas "would prejudice" places a much stronger evidential burden on the public authority and must be at least more probable than not. Where the level of prejudice has not been specified then, unless there is clear evidence that the higher level should apply, the lower threshold should be used.
27. The Commissioner accepts that whilst the sanctions against Crescent Relief were a matter of public record, the reasons behind such sanctions and the source of the information obtained would not have been in the public domain. The Commissioner accepts disclosure of the requested information would prejudice the ongoing investigation. Disclosure would also undermine UK strategies and co-operations with other agencies in combating sophisticated money laundering by individuals and organised groups. The Commissioner is therefore satisfied that the section 31(1)(a) exemption is engaged. He has therefore not considered the outcome under section 31(1)(c).

### **Public interest arguments in favour of disclosing the requested information**

28. Section 31 is a qualified exemption and is therefore subject to a public interest test. This requires the Commissioner to determine whether the public interest in maintaining the exemption outweighs the public interest in disclosure. The Commissioner considered the balance of the public interest in this case.

29. There is a considerable public interest in ensuring transparency in matters relating to charitable organisations. The Commissioner's view is that there is considerable public interest in the accountability of charities for their use of money donated by the public, including having proper audit procedures in place, and the need to uphold public confidence in the monitoring of charities, especially in relation to overseas charities. The disclosure of the requested information would support this public interest. Given the importance of public confidence on the issues related to the request the Commissioner finds that this is a significant public interest factor in favour of disclosure.

### **Public interest arguments in favour of maintaining the exemption**

30. The Commissioner accepts the FCO's view that there is a significant public interest in allowing the relevant authorities to complete their enquiries. There is also a significant public interest in ensuring that charities and their processes are adequately policed so that if and when wrong doing is suspected, authorities can take appropriate action in a timely manner. The Commissioner notes that disclosure in this case would have a significant impact on the specific criminal investigations and also other similar or related investigations.

### **Balance of the public interest arguments**

31. The Commissioner has taken into account the fact that at the time of the request investigations were ongoing into the allegations concerning Crescent Relief and notes that this supports a case for significant weight to be placed on maintaining the section 31(1)(a) exemption. Although the public interest factors in favour of disclosure are weighty the Commissioner finds they are outweighed by the need to protect the interests inherent in section 31(1)(a), noting that the effects of disclosure would be severe.
32. Taking into account all of the factors of this case the Commissioner considers that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The Commissioner considers that section 31(1)(a) was correctly applied in this case.

### **Sections 23 and 24**

33. In the FCO's explanation for its refusal to confirm or deny that it holds any further information relating to Crescent Relief as sought by the complainant it relies on both sections 23 and 24 of the Act.
34. Under section 23(1), information held by a public authority is exempt from disclosure if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in section 23(3), such as the Security Service, the Secret Intelligence Service and the Government Communications Headquarters (see the Legal Annex). Under section 23(5) the duty to confirm or deny that a public authority holds the requested information does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly

supplied to the public authority by, or relates to, any of the bodies specified in section 23(3). Section 23 affords an absolute exemption.

35. The FCO stressed that in any case relating to information held by them about a charitable organisation with international connections, particularly one about which there has been media reporting regarding suspected links with extremist groups and the initiation of an investigation by the Charity Commission, some might assume that such information includes information supplied by the security bodies covered by section 23 of the Act. To confirm or deny whether this was the case would harm national security as inferences, correct or otherwise, would be made.
36. The FCO also confirmed that it had consulted with relevant parties (FCO Departments/Agencies and the Charity Commission) regarding the requested information and the consensus was that the information should be withheld.

### **Section 24 (2)**

37. Section 24(2) provides that the duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security. This section is not subject to the requirement that the information in question must have been provided by, or relate to, one of the bodies listed in section 23(3). The exemption in section 24 is a qualified one and it is therefore necessary to consider whether, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether FCO holds the information.
38. With regard to sections 23 and 24, the FCO determined that to give a statement as to why these exemptions applied would itself involve the disclosure of exempt information and thus under section 17(4) of the Act it was not obliged to give such a statement.
39. The Commissioner is of the view that any additional information (if it were held) concerning Crescent Relief could relate to one of the bodies specified in section 23(3). Conversely the information could have been supplied by other bodies or individuals not listed in section 23(3). Press releases issued by the Charity Commission only referred to working with 'law enforcement agencies'.
40. The Commissioner has noted the Information Tribunal case of *Baker v the Information Commissioner and the Cabinet Office (EA/2006/0045)* ('the Baker case'), concerning the Cabinet Office's refusal to confirm or deny that it held information about the number of MPs subject to telephone tapping or other surveillance, since the Wilson Doctrine was established.
41. The Cabinet Office argued (paragraph 34) (and the Tribunal concurred) that "it is important that any response under the Freedom of Information Act does not allow any deduction as to whether or not there is any involvement by a section 23 body. It is equally important to protect the fact of whether or not a.....body which is not listed in section 23 is involved and it is for that purpose the exemption at section 24(2) is claimed".



42. In the *Baker* case the Cabinet office went on to explain that “if the Cabinet Office were to rely solely on either section 23(5) or on section 24(2) in neither confirming nor denying that information was held, in those cases where section 23(5) was relied upon alone that reliance could itself reveal that one of the bodies listed in section 23(3) was involved. That in itself would constitute the release of exempt information. Thus it is necessary to rely on both sections 23(5) and 24(2) consistently in order not to reveal exempt information in a particular case”. The Tribunal agreed with that conclusion and in applying section 23 and 24 in this instance the FCO have also adopted this approach.
43. The Commissioner recognises that the *Baker* case concerned a request for details of a specific act of surveillance, whereas the present information request has been couched in far more general terms. However, having regard to the reasoning of the Tribunal when combined with the reasons given by FCO for its reliance on the exemptions in sections 23(5) and 24(2) the Commissioner considers that those exemptions are also engaged in the present case and FCO was entitled to neither confirm nor deny holding any additional information.
44. However, section 24 is a qualified exemption and the Commissioner needs to assess whether, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether FCO holds the information.
45. In the *Baker* case discussed above the Tribunal approved the view expressed by the Cabinet Office that “the use of a neither confirm nor deny response on matters of national security can only secure its purpose if it is applied consistently”.
46. In this case whilst it was publicly known that the Charity Commission had frozen the accounts of Crescent Relief, what was not known was the extent of discussions with third parties or any additional material, as requested by the complainant, which may or may not have involved a section 23 body. In this case the Commissioner agrees that arguments related to consistency weigh heavily in favour of maintaining section 24(2). The Commissioner considers that, in all the circumstances of this case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in the FCO confirming whether it holds the information.

## The Decision

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47. The Commissioner’s decision is that the public authority dealt with the request for information in accordance with the Act.

## Steps Required

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48. The Commissioner requires no steps to be taken.



## Right of Appeal

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49. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 18<sup>th</sup> day of November 2009**

**Signed .....**

**Steve Wood  
Assistant Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Annex A

The Charity Commission has a range of powers that are available to it under the Charities Act 1993. Under section 8 the Commission can initiate an inquiry where the following grounds have been established:

- \* where there has been any misconduct or mismanagement in the administration of the charity, or
- \* it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity.

Where these grounds exist the Commission can, where it is appropriate, use one or all of the following powers:

- \* suspend any trustee, officer, agent or employee of the charity pending consideration of whether to remove them from their office or employment
- \* appoint additional charity trustees
- \* vest property held by, or in trust for, the charity in the Official Custodian
- \* freeze bank accounts or otherwise prevent any person or organisation from parting with the charity's property
- \* stop a charity's debtors making the payment of a debt to the charity
- \* restrict the transactions that the charity can enter into
- \* appoint an Interim Manager to run the charity on a temporary basis

The Commission is not a prosecuting authority and cannot conduct criminal investigations. Where evidence of a criminal offence is uncovered this is passed to the police.

## Legal Annex

### Relevant Statutory Obligations under the Act

**Section 1(1)** provides that –

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

**Section 17(1)** provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.”

**Section 17(3)** provides that –

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming –

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

**Section 17(4)** provides that –

“A public authority is not obliged to make a statement under sub-section (1)(c) or (3) if, or to the extent that the statement would involve the disclosure of information which would itself be exempt information.”

**Section 23** provides that –

“(1) Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)

(2) A certificate signed by a Minister of the Crown certifying that the information to which it applies was directly or indirectly supplied by, or relates to, any of the bodies specified in subsection (3) shall, subject to section 60, be conclusive evidence of that fact.

(3) The bodies referred to in subsections (1) and (2) are:

- (a) the Security Service,
- (b) the Secret Intelligence Service,
- (c) the Government Communications Headquarters...”

(5) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).”

**Section 24** provides that –

“(1) Information which does not fall within section 23 (Bodies dealing with security matters) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.

(2) The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.”

**Section 27** provides that –

“(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) relations between the United Kingdom and any other State,
- (b) relations between the United Kingdom and any international organisation or international court...

(2) Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.”

**Section 31** provides that –

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.