

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 3 July 2012

**Public Authority:** Foreign and Commonwealth Office

**Address:** King Charles Street  
London  
SW1A 2AH

#### Decision (including any steps ordered)

---

1. The complainant requested information regarding the UK Government's funding of non-governmental organisations (NGOs) in the Middle East. The Foreign and Commonwealth Office (the FCO) provided some information in the form of a table but withheld the rest under section 38(1)(a) and (b) of the FOIA – information that if disclosed would endanger the health and safety of individuals. The Information Commissioner's (the Commissioner) decision is that the FCO was correct to withhold the information under section 38(1) of the FOIA. The Commissioner does not require the public authority to take any further remedial steps.

#### Request and response

---

2. On 1 February 2010, the complainant wrote to the FCO and requested information in the following terms:

##### Request A

*"1. The number of Non Governmental Organisations (NGOs) overseas currently funded or partially funded by HM Government.*

*2. The proportion of the current budget of the Foreign & Commonwealth Office used for funding or partially funding NGOs.*

*3. The proportion of the current budget of the Foreign & commonwealth Office used for aid or partial aid on a country by*

*country basis over and above that provided by the Department of International Development."*

Request B

*"1. The names of the NGOs in the Middle East funded or partially funded by HM Government.*

*2. The current annual funding cost on an individual basis of each of the NGOs in the Middle East funded or partially funded to HM Government.*

*3. The annual funding cost on an individual basis of each of the NGOs in the Middle East funded or partially funded by HM Government for the last five years from 2004."*

3. The FCO responded on 8 June 2011. The FCO provided information regarding points one and two of request A. With regards to the third point, the FCO stated that it had previously provided the information in a letter of 18 April 2011.
4. With regards to request B, the FCO provided a table of information. The table showed those NGOs in the Middle East, by country, that have received funding from the FCO between April 2004 and March 2010 and the annual cost of funding received by each of the named NGOs. The FCO advised the complainant that it had excluded some NGOs from the table on the grounds that section 38(1)(a) and (b) of the FOIA applied to the information.
5. The complainant requested an internal review on 1 July 2011. She stated that the letter of 18 April 2011 had not been received and remained dissatisfied that information had been withheld with regard to request B.

**Scope of the case**

---

6. The complainant contacted the Commissioner to complain about the way her requests for information had been handled. Due to the fact that the requests had previously been subject to a decision from the Commissioner, he accepted her complaint without a completed review by the FCO. The complainant informed the Commissioner that the letter of 18 April 2011 had not been received and disputed whether the FCO was correct to withhold information under section 38 of the FOIA.
7. During the Commissioner's investigation, the issue with the requested information concerned in request A, namely the letter of 18 April 2011,

was resolved as the FCO provided a copy of it to the complainant. Therefore, the Commissioner has only gone on to consider whether the FCO was correct in its application of section 38 to some of the information requested in request B.

## Reasons for decision

---

8. Section 38(1) of the 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."*

## The prejudice test

9. To determine whether the application of section 38(1) to the requested information was correct under the terms of the FOIA, the Commissioner has considered the 'prejudice test', in this case whether disclosure of the information would cause endangerment to the health and safety of an individual. If the exemption is engaged, he will then go on to consider whether the public interest lies in disclosing or withholding the information.

10. In *Hogan v the Information Commissioner and Oxford City Council* the Tribunal stated that:

*"The application of the 'prejudice' test should be considered as involving a number of steps. First, there is a need to identify the applicable interest(s) within the relevant exemption ... Second, the nature of 'prejudice' being claimed must be considered... A third step for the decision-maker concerns the likelihood of occurrence of prejudice."*

## ***The applicable interests within the relevant exemption***

11. 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.

12. The FCO clearly stated to the Commissioner that it was the endangerment to the health and safety of individual(s) that was being relied upon as its grounds for withholding the requested information. The FCO provided the Commissioner with its arguments as to why

section 38(1) was engaged by the information and gave examples of the risks to the health and safety of individuals working for or involved with various NGOs, the names of which had been withheld from the table of information.

### ***The nature of the prejudice***

13. The Tribunal in *Hogan* stated that the prejudice must be '*real, actual or of substance*'.
14. The evidence provided to the Commissioner referred to above included background on the hostile political situation in the various areas of the Middle East involved and details surrounding the political regime's ban on all international organisations working in its domain.
15. The FCO went on to provide evidence regarding the types of risk individuals would be subjected to if the information were disclosed. This evidence was based on experience of previous similar events which had taken place. The FCO identified a real risk of arrest and interrogation by the relevant authorities controlling the Middle Eastern areas involved. It stated that there had been reports of interrogation methods such as psychological and physical torture being used in order to obtain information from those arrested. Once convictions had been made these often led to serious charges being brought against those who had been tried such as espionage, acting against the regime and propaganda against the state. The FCO stressed the severity of the penalties the charges carried namely long prison sentences or more seriously the death penalty. The Commissioner accepts that the endangerment described would be *real, actual and of substance*. The Commissioner accepts the evidence set out in the FCO's letters of 27 March and 18 April 2012.

### ***The likelihood of the prejudice***

16. Having established that the nature of the endangerment to the health and safety of individual(s) caused by disclosure is clearly of substance, the Commissioner has gone on to consider the likelihood of the prejudice occurring. The public authority must be able to find evidence of a causal relationship between the potential disclosure and the identified prejudice.
17. The FCO provided the Commissioner with evidence of a range of circumstances in which prejudice could occur. It noted that it was not only the individuals working for or with the NGOs that would be at risk but also those participating in the functions of the NGOs. Based on past experience, the FCO stated that it was likely that the families of both sets of people would also be at risk.

18. Due to the volatile political situation in the areas the NGOs operate, the FCO argued that the number of opportunities for the prejudice to arise would occur frequently. The evidence provided by the FCO itself showed the frequency of the prejudice occurring. The FCO described the types of ways the prejudice would occur. The FCO supplied a plausible explanation about how individuals working with or involved with the NGOs might be sought out if the details of certain NGOs were disclosed. It is not possible to reveal the detailed arguments here without revealing the withheld information and other information provided in confidence to the Commissioner. The FCO argued that placing information in the public domain regarding the funding of the NGOs by the UK Government would facilitate these tasks in the first instance and encourage them in the second, not only in the various areas of the Middle East but in the UK too. The more information the authorities are able to obtain, the greater the risk to the health and safety of individuals involved. The Commissioner is also convinced by the explanation provided by the FCO, outlining the political circumstances in which the NGOs operate. The Commissioner accepts the evidence set out in the FCO's letters of 27 March and 18 April 2012. The evidence supplied by the FCO supports a clear potential chain of events that demonstrates a strong causal link between disclosure and endangerment.

### ***Conclusion***

19. The Commissioner's view is that it is the health and safety of individual(s) which is prejudiced through disclosure of the requested information. The impact would be real, actual and of substance as demonstrated by the FCO and the endangerment is more likely than not. The Commissioner therefore finds that disclosure would endanger the health and safety of any individual. Therefore section 38(1) of the FOIA is engaged.

### **Public interest test**

20. As section 38 is a qualified exemption, the Commissioner has gone on to consider whether the balance of the public interest test favours disclosure of the information or the maintenance of the exemption.

### ***Arguments in favour of disclosure***

21. The FOIA legislation carries an intrinsic principle of transparency and openness concerning public bodies and provides the general public with the right to request access to information held by public authorities.
22. As well as weight to the general principle of openness, disclosure of the requested information in this case specifically would increase transparency regarding expenditure of public money on overseas aid

and funding of organisations operating in the Middle East. This would enable the public to better to debate the balance between funding for NGOs across the Middle East and NGO funding globally.

***Arguments in favour of maintaining the exemption***

23. Balanced against the positive nature of the disclosure of information under the remit of the FOIA, is the substantial risk to the health and safety of those working, volunteering and participating with the NGOs, along with their families, which has been well-evidenced by the FCO. The impact has been demonstrated to be of a significant of severity and there is strong risk of it occurring. This adds considerable weight to the argument for maintaining the exemption. The Commissioner has accorded strong weight to protecting individuals from this risk. Further weight is added as a significant number of individuals would be at risk.

***Balance of the public interest test***

24. The Commissioner has considered the the real and severe threat to the health and safety of many individuals which disclosure of the requested information would cause against the public interest arguments in favour of disclosure against. He has decided that the public interest in maintaining the exemption outweighs the public interest in disclosure.

## Right of appeal

---

25. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

26. 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.
27. 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**  
**Head of Policy Delivery**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**