



Neutral citation number: [2024] UKFTT 255 (GRC)

Case Reference: EA/2023/0189

**First-tier Tribunal
General Regulatory Chamber
Information Rights**

**Heard by: remotely by video conference
Heard on: 1 February 2024 (hearing)
15 February, 15 March 2024 (in chambers)
Decision given on: 26 March 2024**

Before

**TRIBUNAL JUDGE HAZEL OLIVER
TRIBUNAL MEMBER JO MURPHY
TRIBUNAL MEMBER KERRY PEPPERELL**

Between

DR COLIN L. LECI

Appellant

and

**(1) THE INFORMATION COMMISSIONER
(2) THE FOREIGN, COMMONWEALTH AND DEVELOPMENT OFFICE**

Respondents

Representation:

For the Appellant: In person

For the First Respondent: Did not attend

For the Second Respondent: Aaron Moss, counsel

Decision: The appeal is allowed in part.

Substituted Decision Notice:

FCDO was not entitled to withhold information under section 27(1)(b) of the Freedom of information Act 2000 ("FOIA"). The information that this exemption was applied to is outside the scope of the request, and so FCDO was not required to disclose it for this reason.

FCDO was entitled to withhold the remaining information under section 27(1)(a), 27(1)(c) and 27(1)(d) FOIA, being the identities of some of the initiators for project 7 ("Middle East Peace Process"). As we have found that these exemptions apply to all of the withheld information, no further action is necessary.

The directions made under Rule 14(6) in relation to the content of the closed bundle and closed witness statement remain in force.

REASONS

Mode of hearing

1. The proceedings were held by video (CVP). All parties joined remotely. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way.
2. This appeal was joined to be heard together with appeal EA/2023/0011, NGO Monitor v Information Commissioner and the Foreign, Commonwealth and Development Office (the “NGO Monitor appeal”). We have issued separate decisions in both appeals, but have taken account of the entirety of the evidence and submissions from the combined hearing where relevant in reaching this decision.

Background to Appeal

3. This appeal is against a decision of the Information Commissioner (the “Commissioner”) dated 7 March 2023 (IC-169593-N2S7, the “Decision Notice”). The appeal relates to the application of the Freedom of Information Act 2000 (“FOIA”). It concerns information about specific projects funded by the Foreign, Commonwealth and Development Office (“FCDO”) in the occupied Palestinian territories.
4. On 9 September 2021, the Appellant wrote to FCDO and requested the following information (the “Request”):

“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 Appellant clarified the information being sought under question 1 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. FCDO responded to the Request on 12 October 2021 and confirmed that it held information falling within the Request but that it needed further time to consider the public interest tests. The FCDO subsequently disclosed information in relation to seven projects, by providing links to information in development trackers about each project (“Devtracker”). FCDO issued a refusal notice on 5 November 2021 in respect of some information regarding projects 6 and 7.

7. The Appellant requested an internal review on 7 December 2021 and the FCDO provided an internal review on 3 March 2022. FCDO upheld its position and stated that it was withholding some of the initiators/partners relevant to project 6 under sections 27(1)(b), (c) and (d), s.38(1)(a) and (b), and s.43(2) FOIA. The response did not specifically refer to information being withheld for project 7.

8. The Appellant complained to the Commissioner on 9 May 2022. During the Commissioner’s investigation, FCDO confirmed that it was withholding details of some of the initiators/partners for project 6 (“Humanitarian access in the OPTs”), and all of the initiators/partners for project 7 (“Middle East Peace Process”).

9. The Commissioner decided:

a. FOIA sections 27(1)(b) (prejudice to relations between the UK and any international organisation or international court), (c) (prejudice to the interests of the UK abroad), and (d) (prejudice to the promotion or protection by the UK of its interests abroad) were engaged. It is plausible that disclosure under FOIA would be likely to have an impact on relations with its international partners who supplied the information, and logical to argue that this is likely to impact on the interests which the exemptions in sections 27(1)(c) and (d) are designed to protect.

b. The public interest in maintaining the exemptions outweighs the public interest in disclosing the information. The Commissioner accepted that there is public interest in government departments being open and transparent about which organisations receive UK government funding, and particular interest in information relating to the funding of projects in Palestine. However, the Commissioner agreed with FCDO that there is a significant public interest in ensuring that the UK’s international relations are not harmed, and a public interest in the ensuring that the UK’s ability to protect and promote its interests abroad is not undermined. These arguments attract particular weight in the context of the complex and politicised environment to which these projects relate.

The Appeal and Responses

10. The Appellant appealed on 2 April 2023. His grounds of appeal as relevant to the issues discussed at the hearing are:

- a. The integrity of the FCDO's activities is being undermined by secrecy and lack of scrutiny and transparency, with reference to the precedent of previous decisions of the Commissioner involving its predecessor DFID.
- b. FCDO stated one of its core objectives is reducing poverty overseas but has not qualified this in detail regarding the activities of the West Bank Protection Consortium.
- c. According to a photograph of a notice attached to a school gate, the partners of the West Bank Protection Consortium are clearly defined. This places their project sponsor details on such projects openly for all to see.
- d. There is no reason at all to believe that the information sought regarding funding of West Bank Protection Consortium would increase any alleged danger of staff employed by the Consortium as no such details were requested.

11. The Commissioner's response maintains that the Decision Notice was correct, and makes the following points in response to the grounds of appeal:

- a. Previous decision notices do not create any binding precedent, and each request is considered based on the circumstances and submissions.
- b. The context and author of the photograph provided by the Appellant is not clear, and this does not undermine the evidence from the FCDO or change the decision.
- c. The Commissioner did not need to consider section 38.

12. FCDO was joined as a party to the proceedings. FCDO relies on the following prejudice-based exemptions for all of the information:

- a. Sections 27(1)(a) (relations between the United Kingdom and any other State), stating that the argument will be developed in closed witness evidence. This exemption was not relied on during the Commissioner's investigation.
- b. Section 27(1)(b) (relations between the United Kingdom and any international organisation or international court), based on specific objections from an international organisation with which the Second Respondent is partnered.
- c. Sections 27(1)(c) (the interests of the United Kingdom abroad) and (d) (the promotion or protection by the United Kingdom of its interests abroad), based on it being harder for the government to pursue its policy aims abroad, and the likelihood that downstream partners would cut ties and cease to accept funding.
- d. Sections 27(2) and (3) (confidential information obtained from a State other than the United Kingdom or from an international organisation or international court), on the same basis as for section 27(1)(b).
- e. Section 43(2) (commercial interests), on the basis that FCDO's partners for the projects have expressed concern that identifying them as working with FCDO could be used by entities to maliciously limit future funding of projects, which would have a negative commercial impact on these partners.

13. FCDO's response also relied on section 38 (health and safety). However, FCDO withdrew its reliance on this exemption in an email to the Tribunal on 21 January 2024.

14. The Appellant had initially raised an issue about whether FCDO held further information about geographic location. This was not addressed by FCDO and was not raised by the Appellant at the hearing, and so we have not considered this issue in our decision.

15. The Appellant submitted a reply to both responses, and his relevant points are addressed in the discussion below.

Applicable law

16. The relevant provisions of FOIA are as follows.

1 General right of access to information held by public Authority.

(1) *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.*

.....

2 Effect of the exemptions in Part II.

.....

(2) *In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that—*

- (a) *the information is exempt information by virtue of a provision conferring absolute exemption, or*
- (b) *in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.*

.....

27 International relations

(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,*
- (c) *the interests of the United Kingdom abroad, or*
- (d) *the promotion or protection by the United Kingdom of its interests abroad.*

(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.*

(3) *For the purposes of this section, any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.*

.....

(5) *In this section—*

.....

“State” includes the government of any State and any organ of its government, and references to a State other than the United Kingdom include references to any territory outside the United Kingdom.

.....

58 Determination of appeals

(1) *If on an appeal under section 57 the Tribunal considers—*

- (a) *that the notice against which the appeal is brought is not in accordance with the law, or*
- (b) *to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,*

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

(2) *On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.*

17. Section 27 is a qualified exemption, meaning that the information should only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

18. The approach to be taken prejudice-based exemptions was set out in the First Tier Tribunal decision of **Hogan v Information Commissioner** [2011] 1 Info LR 588, as approved by the Court of Appeal in **Department for Work and Pensions v Information Commissioner** [2017] 1 WLR 1:

- a. Firstly the applicable interests within the relevant exemption must be identified.
- b. Secondly the nature of the prejudice being claimed must be considered. It is for the decision maker to show that there is some causal relationship between the potential disclosure and the prejudice, and that the prejudice is “real, actual or of substance”.
- c. Thirdly, the likelihood of occurrence of prejudice must be considered. Whether disclosure “would” cause prejudice is question of whether this is more likely than not. To meet the lower threshold of “would be likely to” cause prejudice, the degree of risk must be such that there is a “real and significant risk” of prejudice, or there “may very well” be prejudice, even if this falls short of being more probable than not.

19. In relation to the exemptions in section 27, the Upper Tribunal in **All Party Parliamentary Group on Extraordinary Rendition v Information Commissioner and Ministry of Defence** [2011] UKUT 153 held that appropriate weight needs to be attached to evidence from the executive branch of government about the prejudice likely to be caused to particular relations by disclosure of particular information (see paragraph 56). This reflects the fact that the executive is likely to be better informed and have more experience in assessing the consequences of disclosure. Similarly, as set out by the Upper Tribunal in **FCO v Information Commissioner and Plowden** [2013] UKUT 275, the international relations exemption requires the Tribunal to rely more on the evidence than on its own experience when considering the executive’s assessment of the balance of the public interest. This is because the executive has expertise in relation to foreign policy matters, and Tribunal members are unlikely to have had personal experience of the diplomatic consequences of disclosure.

Issues and evidence

20. The scope of the withheld information in this appeal was clarified during the hearing. The only information that is now being withheld by FCDO is the names of some of the initiators for project 7 (“Middle East Peace Process”).

21. There was some confusion about the scope of the Appellant's Request. FCDO had withheld names of subcontractors as well as project initiators. This followed the same approach as in the NGO Monitor appeal, where the requested information was specifically about subcontractors. However, the Appellant confirmed during the hearing that he had not been asking for information about subcontractors, only project initiators. FCDO was then able to confirm that all information about project initiators for project 6 ("Humanitarian Access in the OPTs") was already available in the online development trackers. They had withheld information about subcontractors, but this was not in fact covered by the Request.

22. This clarification also meant that FCDO was no longer relying on sections 27(1)(b), 27(2) or 27(3), as these exemptions had only been applied to subcontractors in project 6.

23. The issues are:

- a. Are sections 27(1)(a), (c) and/or (d) engaged in relation to the withheld information?
- b. If so, does the public interest in maintaining the exemption outweigh the public interest in disclosing the information?
- c. Is section 43 engaged in relation to the withheld information?
- d. If so, does the public interest in maintaining the exemption outweigh the public interest in disclosing the information?

24. By way of evidence and submissions we had the following, all of which we have taken into account in making our decision:

- a. An agreed bundle of open documents.
- b. A closed bundle of documents (for both this appeal and the NGO Monitor appeal), containing the withheld information and unredacted versions of correspondence with the Commissioner.
- c. A redacted open witness statement from Alison McEwen, the Deputy Consul General, at the British Consulate General Jerusalem.
- d. An unredacted closed version of Ms McEwen's witness statement.
- e. Two witness statements from Shaun Sacks, senior researcher at NGO Monitor.
- f. A witness statement from Anne Herzberg, Legal Adviser at NGO Monitor.
- g. Comments from the Appellant on Ms McEwen's witness statement.
- h. Written submissions from the FCDO and NGO Monitor.
- i. Oral submissions from all parties at the hearing.
- j. A joint bundle of Authorities.

25. The witness statements from Mr Sacks were largely directed at section 38 (which is no longer relied on by FCDO). We have taken them into account to the extent that they provide relevant background information and material relevant to the public interest in disclosure. Similarly, we have taken account of Ms Herzberg's statement to the extent that it contains material relevant to the public interest balance.

26. NGO Monitor argued during the combined hearing that FCDO's evidence as provided to the Commissioner had not been accurate, and they also questioned the accuracy of Ms McEwen's evidence. We allowed cross-examination of Ms McEwen by both Appellants. The Tribunal also questioned Ms McEwen in some detail during the closed part of the hearing. This included points that had been raised by NGO Monitor's representative during cross-examination that could only be fully answered in the closed hearing. We note that Ms McEwen is the Deputy Consul General at the British Consulate General Jerusalem ("BCGJ"), which means she is well placed as a locally based

expert to give evidence on the UK's relationships with Israel, the Palestinian Authority and local NGOs. Having heard and tested Ms McEwen's evidence, we find that she gave clear answers during cross-examination and questions from the Tribunal, and we find no reason to doubt the accuracy of this evidence.

Closed Evidence

27. We heard closed evidence from Ms McEwen and a gist of this evidence, as provided to the parties at the hearing, is as follows:

- a. The Tribunal asked why identifying named subcontractors was likely to cause more harm than the already public avowal that the FCDO funds ICLA more generally. Ms McEwen answered that this is because of the "extra level of detail" which creates more grit in the relationship.
- b. The Tribunal put specific questions to Ms McEwen that had been flagged by questions in open cross-examination as being matters that could only be answered in closed, and Ms McEwen answered these questions.
- c. In relation to Dr Leci's appeal, Ms McEwen clarified the position that no information was now being withheld for project 6, but the names of a number of initiators for project 7 are being withheld. Sections 27(1)(b), 27(2) and 27(3) are no longer relied on as these exemptions related to project 6 only.
- d. The Tribunal put some detailed questions to Ms McEwen in relation to the application of the remaining exemptions to both appeals, including in particular the basis for asserting prejudice to relations with other states.

28. We have prepared a short closed annex to this decision which is to be provided to the Information Commissioner and the FCDO only. It is not to be provided to the public or published on the public register of decisions. This closed annex discusses the content of the withheld information. It is closed because publishing this part of the decision publicly would reveal the withheld information and discussions held during the closed hearing, and would defeat the purpose of the proceedings.

Discussion and Conclusions

29. In accordance with section 58 of FOIA, our role is to consider whether the Commissioner's Decision Notice was in accordance with the law. As set out in section 58(2), we may review any finding of fact on which the notice in question was based. This means that we can review all of the evidence provided to us and make our own decision. We deal in turn with the issues.

30. **Are sections 27(1)(a), (c) and/or (d) engaged in relation to the withheld information?** We start with **section 27(1)(a) – prejudice to relations between the United Kingdom and any other State**. FCDO's position is based on relations between the UK and Israel, and between the UK and the Palestinian Authority. Although the Palestinian Authority is not recognised as a State in the UK, Ms McEwen explains in her statement (paragraph 67) that they are a territory outside the UK which may be the subject of international law or agreements, and are recognised by 139 UN Member States. We agree that relations with the Palestinian Authority fall within this exemption.

31. ***What are the applicable interests within the relevant exemption?*** These are the UK's interests in maintaining good relations with Israel and the Palestinian Authority. Ms McEwen's statement sets out the UK Government's longstanding position on the Israeli-Palestinian conflict - support for the creation by agreement of a sovereign, independent, democratic, contiguous and viable Palestinian state living in peace and security side-by-side with Israel based along the 1967 borders (known as the two-state solution). She explains the importance of having a strong bilateral relationship with the Government of Israel, based on a deep and historic partnership. She also explains the UK's bilateral relationship with the Palestinian people and the Palestinian Authority, and the fact that this UK-Palestine relationship is important to helping the UK to achieve its goals in the Occupied Palestinian Territories ("OPTs"). We accept that the UK has clear interests in maintaining good relations with both Israel and the Palestinian Authority, both in support of work towards the goal of a two-state solution and more widely.

32. ***Is there some causal relationship between the potential disclosure and the prejudice, and is that prejudice "real, actual or of substance"?*** FCDO's position is that disclosure of the withheld information would risk damaging relations with both Israel and the Palestinian Authority. In relation to Israel, information was provided in the closed part of her statement and discussed during the closed hearing, and is addressed in the closed annex to this decision. In relation to the Palestinian Authority, Ms McEwen says that release of information about Norwegian Refugee Council ("NRC") partners would likely be considered a betrayal by the UK. NRC is a lead agency involved in project 7 (this is public information shown in the development tracker). Further context was provided in the closed part of her statement and is addressed in the closed annex to this decision. Ms McEwen's overall position, as summarised in the gist of the closed session, was that provision of detail about funding partners by the UK Government would create more "grit" in these relationships – meaning more friction. We are satisfied on the detailed evidence provided by Ms McEwen (both open and closed) that there is a clear causal relationship between the potential disclosure and prejudice to relations between the UK and Israel, and the UK and the Palestinian Authority. We are also satisfied that this prejudice is real, actual and of substance. In making this assessment we have taken into account the need to give appropriate weight to evidence from the executive branch of government about the prejudice likely to be caused to international relations, acknowledging that this Tribunal is not expert in this area. We have seen detailed evidence and explanation from Ms McEwen on this point, she is a local expert on these relationships, and we have no reason to doubt that this evidence is accurate.

33. ***If the information is disclosed, would this cause the prejudice, meaning this is more likely than not? Alternatively, or would it be likely to do so, meaning there is a "real and significant risk" of prejudice even if this falls short of being more probable than not?*** One of the Appellant's points of appeal is based on a photograph of a notice attached to a school gate, in which he says the partners of the West Bank Protection Consortium are clearly defined. We have seen a copy of this notice (page F160 in the open bundle). His position is that this openly shows the project sponsors' details for all to see, and so the prejudice claimed by FCDO is not likely to occur as the information is already available. We have considered this point and find that the photograph of the sign does not indicate that little prejudice would be caused by disclosure of the withheld information. Our detailed reasoning for this is provided in the closed annex to this decision. We can confirm that there are good reasons for this finding, based on the totality of the evidence before the Tribunal. In written evidence the Appellant has also said that information about the West Bank Protection Consortium and its contractor and sub-contractors is available online, and he has provided a chart from the Swedish International Development Cooperation Agency and a list of NGOs that make up AIDA (pages F201 to F210 in the open bundle). Again, we find that the availability of this information does not indicate that little prejudice would be caused by disclosure of

the withheld information, as explained in the closed annex to this decision. We have seen no other evidence which would indicate that the withheld information has been published already, either by the implementing partners themselves or elsewhere.

34. As covered in paragraph 32 above, Ms McEwen's statement explains the basis for saying that prejudice would be caused to the relationship with Israel. This is discussed further in the closed annex to this decision. She also explains in some detail in her open statement why disclosure of NGO partners would damage relations with the Palestinian Authority. She says that, although the Palestinian Authority do not have a universally good relationship with Palestinian NGOs, it does support those that seek to hold Israel to account for its conduct in the occupation and which challenge Israel to abide by International Humanitarian Law. She says that the NGO implementing partners in these cases are focused on providing legal aid to Palestinians at risk of forced displacement due to the occupation, so are in the category of NGOs the Palestinian Authority sees as allies. We note that this evidence was not challenged in cross-examination. Ms McEwen provided further information in the closed part of her statement about the likely reaction of the Palestinian Authority to release of the withheld information, which is discussed in the closed annex to this decision.

35. We have also taken account of the more general evidence that was given by Ms McEwen in the closed part of the hearing about extra "grit" being created in the relationships by disclosure of the detail contained in the withheld information.

36. Ms McEwen's statement also assesses the likelihood of organisations using disclosed information to seek to embarrass the UK Government as high. However, this is specifically in the context of ICLA downstream partners, which is the issue in the NGO Monitor appeal. Therefore, we have not taken this paragraph into account in this appeal.

37. On the evidence that we have which is relevant to this appeal, we find that disclosure would be likely to cause this prejudice. We do not find that it "would" cause the prejudice, because we had limited evidence that was directly relevant to the specific withheld information in this appeal as opposed to the information withheld in the NGO Monitor appeal. However, on the totality of the evidence (both open and closed) we are satisfied that there is a real and significant risk of this prejudice occurring. In making this finding we have again taken into account the need to give appropriate weight to evidence from the executive branch of government in relation to this exemption, and the fact the evidence has been provided by a local expert on these relationships.

38. We have considered **sections 27(1)(c) and (d)** together – **prejudice to the interests of the United Kingdom abroad, or the promotion or protection by the United Kingdom of its interests abroad**. FCDO's overall position is that the UK Government depends on its relationships with foreign partners to deliver UK interests, and this is best served when they can operate internationally with the most appropriate partners.

39. ***What are the applicable interests within the relevant exemption?*** The relevant interests for both exemptions are the UK's interests in being able to work with the most appropriate chosen partners to deliver the UK's objectives abroad. As stated by Ms McEwen, "*UK interests are best served when the UK Government can operate internationally with the most appropriate partners to deliver our objectives*".

40. ***Is there some causal relationship between the potential disclosure and the prejudice, and is that prejudice "real, actual or of substance"?*** Ms McEwen explains in her statement why it may be necessary to withhold the names of some international partners – "*Sometimes those*

partners are not popular with the government of the country they operate in, and some governments actively try to reduce the space for civil society (including our partners) to operate, as we have seen in the treatment of some Palestinian NGOs by the Israeli government. However, this is not unique to Israel and the OPTs. In order to support UK interests, we may need to work with partners regardless of the views of their government of the day. This means that it is sometimes appropriate to keep the identity of those partners confidential; this protects the partners from unnecessary attention from their government and protects the UK's relationship with the government. If the UK could not guarantee that the identity of our partners could be kept confidential in these circumstances, the UK would lose the trust of those organisations and others like them around the world. This would not serve UK interests" (paragraph 90).

41. We accept this explanation that, in some circumstances, disclosure of the identity of the UK's partners could cause them to lose trust in the UK. This would cause prejudice to the UK's interests in working effectively with its chosen partners. We also accept that this is potentially an issue for work within the OPTs. We note that this paragraph was not challenged in cross-examination. We are therefore satisfied that there is a causal relationship between disclosure and prejudice to the UK's interests abroad (both to the actual interests to the promotion or protection of those interests), and the prejudice is real and of substance.

42. ***If the information is disclosed, would this cause the prejudice, meaning this is more likely than not? Alternatively, or would it be likely to do so, meaning there is a "real and significant risk" of prejudice even if this falls short of being more probable than not?*** The points discussed in paragraph 33 about the photograph and website information provided by the Appellant is also relevant here. He argues that the prejudice claimed by FCDO is not likely to occur as the information is already publicly available. We reject this argument for the same reasons as explained above. Again, we have seen no other evidence which would indicate that the withheld information has been published already, either by the implementing partners themselves or elsewhere.

43. Ms McEwan's evidence is that disclosure of the identity of implementing partners is "highly likely" to undermine the UK's relationship with them and with other Palestinian NGOs. She says it is likely to mean they would not partner with the UK in the future, and likely to have a chilling effect on other future partners who would choose not to work with the UK. She says that this would be highly likely to undermine the UK's ability to deliver its objectives in the OPTs.

44. Ms McEwen says in her statement that there is a medium likelihood that current and potential future recipients of UK funding in the OPTs and Gaza will reassess the risk of partnering with the BCGJ in light of disclosure. This would not only affect current projects but would have a chilling effect on possible future projects in which the FCDO would wish to engage. She also believes other NGO partners in the region working on sensitive issues may reassess the risk of being beneficiaries of UK funding, impacting UK interests.

45. Ms McEwen also says in her statement that there is a medium risk that NGOs will respond to the increasing harassment and pressure by taking on less controversial or high-profile cases, outsourcing such cases to distance themselves from the case, or abandoning legal aid work over time. This would affect the BCGJ's ability to meet its country business plan objectives and have a negative impact on UK interests.

46. We have taken into account the need to give appropriate weight to evidence from the executive branch of government about the prejudice likely to be caused to the UK's interests abroad,

acknowledging that this Tribunal is not expert in this area. We have seen detailed evidence and explanation from Ms McEwen on this point, she is a local expert on these relationships, and we have no reason to doubt that this evidence is accurate. Ms McEwen's evidence on this issue is credible and was not challenged in cross-examination. We note that much of the information requested by the Appellant is published on Devtracker, which indicates that there is some particular sensitivity about the withheld information for project 7. We have also taken into account some of the evidence provided about project 6. Although this is no longer directly relevant to the appeal as it relates to information outside the scope of the Request, it does support some of the concerns of NGOs operating in the OPTs. We discuss this point further in the closed annex to this decision.

47. We find based on this evidence that disclosure of the withheld information would undermine the UK's relationship with the implementing partners within the scope of the Request (meaning it is more likely than not), as Ms McEwen assesses this as "highly" likely. We also find that it would be likely to cause current and future recipients of UK funding in the OPTs and Gaza to reassess the risks of partnering with the BCGJ, and would be likely to cause NGOs to change their work focus, as Ms McEwen assesses this as medium risk. If these things occurred, they would clearly damage the UK's ability to work with its chosen overseas partners and achieve its objectives in the OPTs.

48. **If so, does the public interest in maintaining the exemption outweigh the public interest in disclosing the information?** We have assessed this at the time of the Request, without taking into account more recent events in the area. In accordance with the recent Court of Appeal decision in *Department for Business and Trade v Information Commissioner and Brendan Montague* [2023] EWCA 1378, we have also considered together the public interests in upholding the specific exemptions relied on by FCDO (which all fall under the overall exemption relating to international relations under section 27).

49. **Public interest in disclosure.** The Appellant's position is based on the importance of transparency. His appeal says that "*the integrity of the FCDO's activities are being undermined by secrecy and lack of scrutiny and transparency*". In his closing submissions, the Appellant said that there is lots of public interest in both the financial and political implications of the destination of taxpayer funding, and there needs to be more openness from FCDO on this issue. He is concerned that this indicates "*clandestine operations without accountability*".

50. We accept that there is a strong public interest in disclosure of the requested information in this case. There is a clear public interest in government departments being open and transparent about the destination of UK government funding, so that this can be questioned and the government held to account for what taxpayer money is being used for. This public interest is strengthened by the sensitive political context of the OPTs. Although we are considering matters at the time of the Request (so before the terrible recent events involving Israel and Gaza), there was still a complicated and difficult political environment which enhances the public interest in knowing about UK government funding in the OPTs.

51. We have taken into account the fact that the majority of the information requested by the Appellant is available through Devtracker. It is only some names under one of the projects that are being withheld. Ms McEwen says in her statement (paragraph 30) that FCDO's official development assistance programming work is not "clandestine", as alleged by the Appellant – she says that they are open about its existence, objectives and methods, and information on it is published on the FCDO Devtracker through business cases and annual review summaries. This is not a full answer to the Appellant's case, as there is not complete transparency, and it could be argued that the most sensitive names that are being withheld could attract the most public interest. However, this is not

a situation where information about all projects is being kept confidential. The public interest in transparency is partly met by the information that is already available.

52. We heard some evidence from Ms McEwen during the hearing about the due diligence process for funded project partners. FCDO conducts its own due diligence process for its main project partners, and then relies on those partners to do their own due diligence for any subcontractors based on global criteria. We note that the Appellant's Request relates to project initiators only, not subcontractors. This means that FCDO will have conducted its own due diligence in relation to the appropriateness of these funding recipients. Although this does not negate the public interests in transparency, it does provide some reassurance that FCDO is checking the organisations which are receiving taxpayer funding.

53. **Public interest in maintaining the exemption.** Ms McEwen's statement did not directly address how to balance the interests in favour of and against disclosure. However, the detailed evidence about the risk of damage to international relations shows how disclosure would not be in the public interest. Based on the evidence, we have found that disclosure would damage relations with the implementing partners within the scope of the Request, meaning that it is more likely than not that it would prejudice the interests of the UK abroad and/or the promotion or protection by the UK of its interests abroad. We have also found that disclosure would be likely to cause current and future recipients of UK funding in the OPTs and Gaza to reassess the risks of partnering with the BCGJ, and cause NGOs to change their work focus. In addition, we have found that disclosure would be likely to damage international relations with both Israel and the Palestinian Authority. This combined risk of damage to international relations and UK interests abroad is clearly not in the public interest. The public interest in preserving international relations in this case is particularly strong because of the sensitive and complicated political context of the OPTs at the time of the Request.

54. **Conclusions.** The public interests both in favour of and against disclosure are strong in this case. Disclosure would be likely to prejudice international relations with both Israel and the Palestinian Authority, and it would prejudice UK interests abroad. This is a combination of prejudice to UK interests that is seriously damaging to the public interest. Although the public interest in transparency is strong, it is met to some extent by the majority of the information being published on Devtracker, and by the due diligence checks carried out by FCDO on its direct funded project initiators. Having considered the factors set out above, we find on balance that the public interest in maintaining the exemptions outweighs the public interest in disclosing the information. We therefore find that FCDO was entitled to rely on the exemptions in sections 27(1)(a), 27(1)(c) and 27(1)(d) in relation to the withheld information, consisting of the identities of some of the initiators for project 7 ("Middle East Peace Process").

55. **Section 43 exemption.** We had only limited evidence on this point in the statements and during the hearing. As we have already found that the withheld information is covered by the other exemptions, we have not gone on to make a decision on whether section 43 also applied.

56. We uphold the appeal in part for the reasons set out above and in the closed annex to this decision. As FCDO has withdrawn its reliance on section 27(1)(b), which formed part of the Commissioner's decision, this part of the appeal is upheld. The information that this exemption was applied to is outside the scope of the Request (as it relates to subcontractors rather than project initiators), and so FCDO was not required to disclose it for this reason. No further action is necessary because the other exemptions apply to all of the remaining withheld information.

Signed Judge Hazel Oliver

Date: 22 March 2024