

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 March 2025

Public Authority: Foreign, Commonwealth and Development Office

Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant has requested from the Foreign, Commonwealth and Development Office (the FCDO) information related to the sources of information and the relevant dates, resulting in sanctions imposed against Mr Zvi Bar Yosef.
2. The FCDO refused the request citing section 38 (health and safety) of the FOIA.
3. The Commissioner's decision is that the FCDO was entitled to rely on section 38 to exempt the requested information from disclosure.
4. Consequently, the Commissioner does not require further steps to be taken by the FCDO in relation to this complaint.

Request and response

5. On 22 May 2024 the complainant made the following request to the FCDO for information under the FOIA:

"I hereby make this formal request under the Freedom of Information Act 2000 for the following information relating to the FCDO "UK sanctions extremist settlers in the West Bank" as published in the Press Release on the 12 February 2024

<https://www.gov.uk/government/news/uksanctions-extremist-settlers-in-the-west-bank>

- 1. The source of the information and applicable date(s) on which the FCDO based its reason to impose sanctions against Mr. Zvi Bar Yosef.*
- 2. Does the FCDO recognize the 'Zvi's Farm' outpost, established in 2018, is on State Land and if not can it provide documentary evidence to the contrary."*
6. The FCDO acknowledged receipt of the request on 23 May 2024 indicating the response date on 20 June 2024.
7. On 20 June 2024 the FCDO extended the date for the response until 18 July 2024.
8. On 28 June 2024 the FCDO provided its response to the information request, confirming holding information within the scope of the request in relation to the first part of the request. However, it refused to provide it in its entirety citing section 38 (health and safety).
9. In relation to the second part of the request, the FCDO stated that this request did not fall under the remit of the FOI. However, it informed the complainant that it forwarded their request to the relevant department (MENAD Taskforce) which should be able to respond to the complainant.
10. The complainant requested an internal review on 5 July 2024 in respect of the first part of their request for information. Specifically, the complainant disputed that section 38 can be applied to information related to dates or organisations, which are not individuals but collective corporate bodies.
11. The complainant then contacted the FCDO on 12 July 2024, asking for a reference number related to their internal review and on 1 August 2024 asking about the response to their internal review request.
12. The FCDO provided the complainant with the internal review reference number on 6 August 2024 but did not provide a response to the complainant's internal review request.

Scope of the case

13. The complainant contacted the Commissioner on 27 September 2024 to complain about the way their request for information had been handled. Specifically, the complainant disputed the applicability of section 38 to the requested information.
14. During the process of the Commissioner's investigation, the complainant confirmed that, following the FCDO's response regarding second part of the request for information, they are only concerned with the first part relating to the relevant dates and the source of information resulting in the sanctions imposed against Mr Zvi Bar Yosef's Zvi Farm.
15. Following communication from the Commissioner on 1 October 2024, the FCDO provided its internal review response to the complainant on 29 October 2024 where it maintained its original position.
16. The FCDO provided its response to the Commissioner's investigation on 31 January 2025. On 12 February 2025 it also disclosed further information to the complainant with respect to the relevant dates within the scope of the request. Specifically, the disclosed information consisted of 'Exhibit access dates', which, as the FCDO explained '*refer to when the case builder accessed the relevant exhibits and made the decision to include in the designation case as evidence.*'
17. Following further communication, the complainant confirmed to the Commissioner that they are not satisfied with the additional information received from the FCDO. The complainant argued that the dates received are not the dates of alleged incidents resulting in sanctions, the information which they requested in their original request for information.
18. The Commissioner considers that the scope of his investigation is to determine whether the FCDO was correct to refuse the requested information in relation to the part one of the request based on section 38 of FOIA. Specifically, the withheld information relating to the source of information resulting in sanctions imposed against Mr Zvi Bar Yosef and the dates referring to dates the source of information was made publicly available.

Reasons for decision

Section 38 – health and safety

19. Section 38 of FOIA states:(1)

'Information is exempt information if its disclosure under this Act would be likely to –

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

20. In order to satisfy the Commissioner that this exemption is engaged the public authority must demonstrate that there is a causal link between the endangerment and disclosure of the information.
21. The public authority must also show that disclosure would or would be likely to endanger the health and safety of any individual. The effect cannot be trivial or insignificant. Endangering physical health usually means an adverse physical impact and often involves medical matters, this can relate to either individuals or a group of people. Endangering mental health implies that the disclosure of information might lead to a psychological disorder or make mental illness worse. This means that it must have a greater impact than causing upset and distress.
22. In its correspondence to the Commissioner, the FCDO judged that the disclosure of the requested information would be likely to endanger the safety of individuals and group of individuals. In fact, in its submissions to the Commissioner, the FCDO sought to rely on both limbs of the exemption, that is 38(1)(a) and 38(1)(b).
23. The FCDO said:

"The document in scope of the FOI request contains evidence used to show reasonable grounds to suspect that the designated individual was an "involved person" within the meaning of the Global Human Rights Sanctions Regulations 2020. The evidence comprises of open-source news articles, which are publicly available. The evidence used contains references to specific villages, witness accounts from those villages for harm they suffered and images of Palestinians who have given accounts of the violence and intimidation they have been subjected to by West Bank extremist settlers."
24. The FCDO recognised that the evidence is already publicly available. However, it judged that there is an increased risk of harm to the Palestinian individuals if it was to be revealed that the FCDO used and compiled their publicly available information and relied on those individuals' accounts to justify sanctions.
25. It further argued that if the evidence was publicly disclosed, there would be an identifiable link between the decision to sanction and the witnesses and villages referenced in the document. Public disclosure of

the evidence would risk wider dissemination naturally increasing the risk to the mental and physical health and safety through retaliation actions towards those who provided accounts of harms they were subjected to and likely cast a spotlight on their indirect contribution in the FCDO's decision to impose sanctions.

26. FCDO further added that the withheld information contains more details than the sources already in the public domain. It said that *"this could be read as reflecting an official assessment of the credibility of the sources and weight afforded to the particular accounts cited"* which could increase the risk of harm through retaliation even further.
27. To demonstrate a clear link between disclosure of the information that has actually been requested and any endangerment to an individual which may occur, the FCDO referred to the UN Office for the Coordination of Humanitarian Affairs, which said that 2024 was the most violent year for settler violence in the West Bank since records began, with over 1,400 incidents recorded. It continued to say that settlers often respond to Palestinian and international activity with punitive attacks and reprisals on Palestinians and villages.
28. The FCDO further added:

"Violent settlers follow and respond to events in real time and communicate targets via social media, sharing details of individuals and villages. After a deadly attack by Palestinians killed three Israelis on 6 January, violent settlers shared a message that said, "Jewish blood is not cheap" and calls to "block the roads of the enemy". That evening settlers rampaged through the Ramallah and Nablus areas setting fire to buildings. Following the Palestinian prisoner release on Sunday 19 January, that evening and on 20 January settlers rioted in the West Bank near Ramallah and Qalqilya. They set fire to vehicles and property and broke the windows of moving cars with stones. Given the pattern of behaviour relating to violent reactivity, we can expect that the release of information in scope could escalate existing tensions and act as a trigger to violent activity against the Palestinian communities in the West Bank, and more specifically, the individuals and villages references in the sources of information."
29. It concluded that: *"There is a risk that disclosure of evidence that includes the names of villages impacted could prompt further violence by settlers aligned with or inspired by Zvi Bar Yosef."*
30. The Commissioner recognises that a public authority will not necessarily be able to provide evidence in support of a causal link, because the endangerment relates to events that have not occurred. However, there must be more than a mere assertion or belief that disclosure would lead

to endangerment: there must be a logical connection between the disclosure and the endangerment in order to engage the exemption.

31. The Commissioner cannot give an expert opinion on whether disclosure of the information would be likely to endanger the physical or mental health, or safety of an individual, and he recognises that the question of the degree of endangerment is not a straightforward one.
32. However, the Commissioner acknowledges that, in the context of the request in this case, the withheld information relates to a current and a sensitive issue and, based on the FCDO's arguments, as well as various reports in the public domain, there exists a causal and a clear link between the disclosure of the information and the likelihood of endangerment to the physical and mental health, and the safety of individuals.
33. He is satisfied that the risk of endangerment to health and safety in this case is not based on mere assumption or belief and that the risk is logical and substantially more than remote. He also accepts that the degree of the endangerment is placed at the lower level of 'would be likely to occur'.
34. Taking all the above into account, the Commissioner accepts that the exemption under section 38(1)(a) and (b) is engaged with regard to the withheld information. He is satisfied that there is a causal relationship between the disclosure of that information and the harm that sections 38(1)(a) and (b) are designed to protect.
35. At this point, the Commissioner finds it important to specifically address the part of the withheld information which the complainant raised and which relates to the *"applicable date(s) on which the FCDO based its reason to impose sanctions against Mr. Zvi Bar Yosef"*.
36. The complainant disputed that 'dates' can be exempt under section 38.
37. The Commissioner appreciates why the complainant disputed the FCDO's decision to withhold this information, and he asked the FCDO to provide its reasoning.
38. In response the FCDO explained that the information in scope of the request relates to two types of dates both attached to the source of information considered as evidence. The dates in question are:
 - "a. Date Published – referring to the date the source was made publicly available online or through other medium

b. Date Accessed – referring to when the case builder accessed the website and made the decision to include in the document as evidence.”

39. FCDO went on to explain that:

“We judged that the ‘Date Published’ information falls within the Section 38 exemption because there is a risk that this date could be used to find the source of information given that it is publicly available. For example, searching one of the ‘Date Published’ dates, along with ‘Zvi Bar Yosef’ (the designated person to whom the requested information relates) brings up the exact article referenced in the document. This article as a source of information has been assessed, as have all the other articles to be exempt under Section 38 for the reasons outlined (...). Therefore, there remains a risk that through searching the ‘Date Published’ and the name of the designated person, the source of information could be identified. This could also, in turn, identify individuals and villages who provided accounts and therefore pose a risk to their health and safety.”

40. The FCDO added that, following a review of the decision to withhold ‘date accessed’ information, it decided to release this information to the complainant.

41. The Commissioner considered the reasons to withhold the information related to ‘dates’ and although he accepts that on its own such information may not be exempt under section 38, he is satisfied that in the circumstances of this case the combination of different pieces of information, i.e. dates and published articles, as explained by FCDO above, could lead to identification of the sources of information contributing to the decision to impose sanctions, and consequently increase the risk of endangerment to health and safety of individuals.

42. Having concluded that section 38 is engaged the Commissioner has gone on to consider the balance of the public interest.

Public interest test

43. As section 38 is a qualified exemption, even if the exemption is engaged, the information must be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

Public interest arguments in favour of disclosing the information

44. In support of the disclosure of the information they requested, the complainant told the Commissioner:

"I believe it is in the public interest that the information requested should be available to the public as it is not classified. For a Department of State to refuse to provide even the basic information regarding dates when the accusations took place that resulted in sanctions on the individual the FCDO is attempting to hide behind the FOI clearly calls for an investigation by the Information Commissioner."

45. FCDO considered the factors in favour of disclosure of the requested information and accepted that it would support accountability, transparency and would help furthering the understanding and participation in the public debate. It recognised that:

(...) "the release of this particular information would provide further transparency and understanding of a significant part of the sanctions designation process and the type of evidence the FCDO relies on when building cases and policy. Release of this information would also serve to hold the FCDO to account against the legal tests and threshold required under the Sanctions and Anti-Money Laundering Act. Furthermore, release of this document may also promote openness and transparency on broader UK foreign policy in relation to addressing violence in the West Bank, and the measures taken, including sanctions."

46. The FCDO went on to say:

"Whilst the FCDO does not publicly disclose the sources of information on which the decision to designate were made, we note that the FCDO does publish a press notice which outlines the grounds of designation. In the case of an 'information request' pursuant to a request to Ministerial Review, or in the course of litigation relating to a designation, we also provide information to the designated person, including the evidence base, with the caveat that they may not publish or transmit onwards other than to their legal representative. In this particular case, the press notice also referenced other measures taken to address violence in the West Bank, which supports transparency of the HMG's broader regional foreign policy. The Statement of Reasons for each designated individual or entity is also published on the UK Sanctions List, further supporting the FCDO's transparency regarding sanctions policy."

Public interest arguments against the disclosure the information

47. The FCDO considered factors against the disclosure, particularly taking into account risk to safety of individuals and communities in volatile regions. In this particular case it considered that the risk of violence towards individuals and communities in retaliation, following disclosure is significant.

48. In its response to the Commissioner, it explained:

"Officials identified the specific information under review and assessed how its disclosure could lead to risks. In this case, the focus was on the nature of the evidence contained within the document in scope that might provoke retaliation against the individuals and villages named. Officials conducted a high-level risk analysis by engaging with British Embassy Tel Aviv and British Consulate Jerusalem to evaluate the geopolitical climate and potential for violence if this particular information was released. It was also assessed that, whilst recognising the importance of openness in decision-making, releasing the requested information in this specific case would likely to escalate tensions and undermine efforts to maintain stability in the region. Therefore, in balancing the factors in favour and against disclosing the information, the FCDO decided to maintain this exemption as the balance weighted in favour of protecting individuals from harm and preserving public safety, rather than the public's right to access the requested information."

The Commissioner's findings

49. The Commissioner will invariably place significant weight on protecting individuals from risk to their physical and mental wellbeing and their safety. The natural consequence of this is that disclosure under FOIA will only be justified where a compelling reason can be provided to support the decision.
50. Clearly in any such situation where disclosure would be likely to lead to endangerment to health or safety, there is a public interest in avoiding that outcome.
51. In reaching a decision in this case the Commissioner must take into account the fact that disclosure under FOIA is effectively an unlimited disclosure to the world at large, without conditions. The wider public interest issues must therefore be considered when deciding whether or not the information requested is suitable for disclosure.
52. The Commissioner has considered both sides of the argument. He is aware that the subject matter to which the request relates considers live, sensitive and controversial matters with frequent media coverage and ongoing public debate. He is also aware that at the heart of this issue, and particularly this request, there are individuals and communities at risk to their health and safety.
53. The Commissioner has found that disclosing the requested information would be likely to endanger individuals' health and safety. As the Commissioner's guidance notes, once section 38 is engaged it is difficult

to find in favour of disclosure¹. Whilst the Commissioner recognises the general public interest in transparency and openness, he is satisfied that the high public interest threshold for disclosure in this case has not been met.

54. Consequently, the Commissioner is satisfied that the FCDO was entitled to rely on section 38 to withhold the requested information in this case.

Other matters

Internal review response – time limit

55. FOIA does not prescribe a time limit within which public authorities must complete internal reviews. However, the Commissioner's guidance² explains that an internal review should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances.
56. Indeed, there is no legal requirement for a public authority to have an internal review process in place under the FOIA regime (this is different from the EIR³), although it is recommended as good practice under the Section 45 Code of Practice⁴ (Code of Practice) and most public authorities choose to do so. This also includes the FCDO in this case which offered an internal review to the complainant if he was dissatisfied with the FCDO's response to his request for information.
57. It follows therefore that, when an internal review process is offered to the requesters, there is an expectation that the public authority will adhere to the recommendations outlined in the Code of Practice.
58. As part of his complaint, the complainant expressed dissatisfaction with the length of time taken by the FCDO to respond to his internal review request which he made on 5 July 2024.
59. In fact, the FCDO did not respond to the internal review request until 29 October 2024 following communication from the Commissioner.

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-38-health-and-safety/#text7>

² <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/#20>

³ <https://www.legislation.gov.uk/uksi/2004/3391/regulation/11>

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

60. The Commissioner finds this excessive and wishes to remind the FCDO about the importance of the timely response to internal review requests. He also wishes to point out that he will consider complaints where an internal review is delayed or remains outstanding after 40 working days of it being requested.

Right of appeal

61. 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

62. 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.
63. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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