

IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL (INFORMATION RIGHTS)

UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000

EA/2011/0111

B E T W E E N:-

FOREIGN & COMMONWEALTH OFFICE

Appellant

-and-

THE INFORMATION COMMISSIONER

Respondent

CONSENT ORDER

Pursuant to rule 37(1) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, upon reading the parties' agreed statement (in Annex A),

IT IS ORDERED BY CONSENT THAT:

1. The appeal is withdrawn.
2. The Decision Notice FS 50310785 dated 14 March 2011 to be amended in the terms set out in Annex B.

Dated this 26th day of May 2011

Signed.....

Treasury Solicitor

For the Appellant

Signed.....

Information Commissioner

For the Respondent

ANNEX A

STATEMENT OF REASONS

1. This appeal concerns a request made to the Appellant seeking information concerning the funding of various overseas non-governmental organisations. Full details of the request, the Appellant's response and the Respondent's decision are set out in the Decision Notice and are not repeated here. Briefly, the Appellant refused to comply with the request under section 12 FOIA on the grounds that to do so would exceed the appropriate costs limit. The Respondent ordered the Appellant to disclose the requested information by way of Decision Notice FS 50310785 dated 14 March 2011.
2. In its notice of appeal, the Appellant asserts that part of the requested information is exempt under sections 27(1)(d) and 38(1)(a) FOIA.
3. Where the Respondent does not accept that an authority may rely on section 12 FOIA, the Respondent's normal approach would be to specify the following steps: (i) that the public authority disclose the requested information or (ii) if it relies on a claim that any of the exemptions in Part II FOIA apply, to issue a refusal notice under section 17 FOIA.
4. Should the public authority issue a refusal notice in compliance with such a Decision Notice, the complainant is at liberty to make a further application to the Respondent under section 50 FOIA for a decision in respect of that refusal. Alternatively, if the authority does not accept the Respondent's finding in relation to the application of section 12 FOIA, it can appeal the decision to this Tribunal.
5. In this particular case, the Respondent did not order the second of the steps referred to in §3 above and he accepts that in the circumstances he should have done so.
6. In the circumstances, the parties jointly invite the Tribunal to dispose of this appeal under rule 37 by way of this consent order and by varying the Decision Notice in the terms set out in Annex B.

ANNEX B

1. To substitute §34 of the Respondent's Decision Notice FS 50310785 as follows -

“Steps Required

34. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- Disclose the requested information to the complainant, or
- In so far as it relies on a claim that any of the exemptions in Part II FOIA apply, issue a refusal notice under section 17 FOIA.

The public authority must take the steps required by this notice within 21 days of the date of this notice.”