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FREEDOM OF INFORMATION ACT 2000 REQUEST - REF: 0430-15

Thank you for your email of 3 May 2015 asking for information under the Freedom of Information Act (FOIA) 2000. You asked the following:

For "Information under the FOI Act on a legal dispute between J Sainsbury and Egypt.

Please disclose all correspondence between the FCO and the following since June 2014 regarding the conviction of Justin King, former Sainsbury's CEO, and Mike Coupe, current Sainsbury's CEO, in an Egyptian court over a dispute about Sainsbury's investment in the Egyptian Distribution Group, founded by Amr el-Nasharty:

1. *The British ambassador to Egypt*
2. *Sainsbury's"*

I am writing to confirm that we have completed the search for the information you have requested. To clarify the extent of our search, we have interpreted your request to mean all correspondence between the following on the particular subject you specify in your request:

1. FCO representatives in London and overseas with:-
 - a. Her Majesty's Ambassador to Egypt, Mr John Casson CMG; and
 - b. Sainsbury's, including legal representatives of Sainsbury's
2. Her Majesty's Ambassador to Egypt with:-
 - a. FCO representatives in London and overseas; and
 - b. Sainsbury's, including legal representatives of Sainsbury's

We have not considered information where Her Majesty's Ambassador or Sainsbury's are not direct addressees as we do not consider this to fall within the scope of your request. We have considered all information from 1 June 2014 until the date of your request.

I can confirm that the Foreign and Commonwealth Office (FCO) does hold information relevant to your request. I am pleased to enclose some of the material which we can release to you in the attached digest.

Some information is being withheld under the following exemptions of the FOIA:

- Section 21 (1) Information accessible to the applicant by other means
- Section 27 (1) (a) (c) (d) and (2) International relations

- Section 36 (2) (b) Prejudice to the effective conduct of public affairs
- Section 40 (2) and (3) Personal information
- Section 41 (1) Information provided in confidence
- Section 42 (1) Legal professional privilege
- Section 43 (2) Commercial interests

Section 21 (1) Information accessible to the applicant by other means

Under section 21 of the FOIA, we are not required to provide information in response to a request if it is already reasonably accessible to you. Section 21 is an absolute exemption which means there is no requirement to carry out a public interest test if the requested information is exempt. Some of the information that we hold, which is relevant to your request relates to a tweet, newspaper article or an extract from a newspaper article. We have included links to these for you in the attached digest.

Section 27 (1) (a) (c) and (d) and (2) International relations

Some of the information you have requested is being withheld under section 27(1) and (2) of the FOIA. Section 27(1) provides that information is exempt if its disclosure would or would be likely to prejudice (a) the relations between the UK and any other State (c) the interests of the UK abroad or (d) the promotion or protection by the UK of its interests abroad. Section 27(2) of the FOIA recognises the need to protect information provided in confidence to the UK by another State.

Section 27 is a qualified exemption and as such we have considered the public interest in withholding the information against the public interest in disclosing it. Factors in favour of disclosure include the strong public interest in transparency and accountability, particularly given that the cases relate to a well known British company, as well as interest in wider international relations. Factors against disclosure include the strong public interest in ensuring that the FCO is able to conduct the UK's international relations effectively, and protect UK interests abroad. The effective conduct of the UK's international relations depends upon maintaining trust and confidence between governments. This relationship of trust allows for the free and frank exchange of information on the understanding that it will be treated in confidence. If the United Kingdom does not respect such confidences, our ability to protect and promote UK interests through international relations will be hampered. Other States may also be more reluctant to share information with the UK in future and may be less likely to respect the confidentiality of information supplied by the UK Government to them, to the detriment of UK interests. In this case disclosing information which relates to discussions between the UK Government and Egyptian Government could potentially damage our relationship and prevent our ability to protect our interests in future. We recognise that there is public interest in these particular court cases. However, for all the reasons mentioned above, we consider that the public interest in maintaining this exemption outweighs the public interest in disclosure.

Section 36 (2) (b) Prejudice to the effective conduct of public affairs

Some of the information you have requested is exempt under section 36(2)(b) of the Act. It is the view of a Minister of the Crown that disclosure of this information would be likely to make officials more circumspect about exchanging views for the purpose of deliberation. The disclosure of information in this case could therefore inhibit the candour of future exchanges of views within government. We recognise that there is a general public interest in ensuring transparency of decision making. However, the Act recognises the strong public

interest in protecting the space that Ministers, advisers and officials have to consider and discuss options to ensure that policy is given full and proper consideration. This process is likely to be affected by advisers' and officials' assessment of whether the content of such discussion will be disclosed in the relatively near future. Reluctance on their part to give or seek advice, or to feel able to engage in candid exchanges of views, would result in less informed and therefore less effective decision making. For these reasons, we consider that the public interest in maintaining this exemption outweighs the arguments in favour of disclosure.

Section 40 (2) and (3) Personal information

Some information has been withheld under section 40 because it is personal data relating to third parties, the disclosure of which would contravene one of the data protection principles. In such circumstances sections 40(2) and (3) of the FOIA apply. In this case, our view is that disclosure would breach the first data protection principle, which states that personal data should be processed fairly and lawfully. It is the fairness aspect of this principle which, in our view, would be breached by disclosure. In such circumstances section 40 confers an absolute exemption on disclosure. There is, therefore, no public interest test to apply.

Section 41 (1) Information provided in confidence

Some of the information you have requested is being withheld under section 41(1) of the FOIA. Section 41(1) provides that information is exempt where disclosure would constitute an actionable breach of confidence. Section 41(1) is an absolute exemption for the purposes of the FOIA. In reaching our decision to withhold this information, the FCO has taken into account that there is a public interest defence to an action for breach of confidence. However, we are satisfied that disclosure of the information requested would constitute an actionable breach of confidence and that the FCO could not successfully rely on the defence that an overriding public interest justified breaching its duty of confidence.

Section 42 (1) Legal professional privilege

Some of the information you have requested is being withheld under section 42(1). Section 42(1) of the FOIA recognises the validity of withholding information that is subject to Legal Professional Privilege (LPP), which exists in order to encourage both clients and legal advisers to be frank and open with each other. The legal adviser must be in possession of all material facts in order to provide sound advice. The client must, therefore, feel confident that it can disclose all relevant facts to its legal adviser without fearing that this information will be disclosed to the public. In turn the legal adviser will consider the issues and the arguments and weigh up their relative merit.

Transparency of decision making and knowing that decisions are taken in the correct legal context are two reasons why it might be argued that information subject to section 42(1) should be disclosed. However, the provision of legal advice relies for its effectiveness on each side being open and candid with the other. Such candour is ensured by the operation of LPP. The importance of this principle was debated and reinforced in the House of Lords in *Three Rivers District Council and BCCI v The Governor and Company of the Bank of England* [2004] UKHL 48. For these reasons, we consider that the public interest in maintaining LPP under section 42(1) outweighs the arguments in favour of disclosure.

Section 43 (2) Commercial Interests

Some information has been withheld under Section 43(2) of the FOIA. Section 43(2) protects information which would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

In applying section 43 we have had to balance the public interest in withholding the information against the public interest in disclosing it. The factors in favour of disclosure of this information, including the general public interest and greater transparency and accountability, were carefully weighed against the need to allow business-people and commercial organisations the space to conduct their lawful business competitively and without fear of disclosure of sensitive commercial information. We consider that this transparency also poses risks to the protection of commercially confidential information. Failure to protect such commercially sensitive information could limit the sources of information and interlocutors available to the FCO which in turn would impact our ability to promote the British economy and lobby for the interests of British businesses overseas.

In this case, after such consideration we believe that the public interest in withholding the redacted information outweighs the public interest in its release.

Once an FOI request is answered, it is considered to be in the public domain. To promote transparency, we may now publish the response and any material released on gov.uk in the [FOI releases](#) section. All personal information in the letter will be removed before publishing.

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Yours sincerely,

Middle East and North Africa Directorate

