



Foreign &
Commonwealth
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6 November 2014

FREEDOM OF INFORMATION ACT 2000 REQUEST REF: 0686-14

Thank you for your email of 14 July asking for information under the Freedom of Information Act (FOIA) 2000. You asked:

I would like copies of all documents and correspondence held by the FCO referencing or discussing Rurelec's international arbitration against Bolivia. I would expect this to include:

- 1. Internal correspondence, notes, or meeting minutes*
- 2. Communication with Bolivian government representatives*
- 3. Communication with Rurelec representatives*

I am writing to confirm that we have now completed the search for the information which you requested.

I can confirm that the Foreign and Commonwealth Office (FCO) does hold information relevant to your request. The information that the FCO can release to you is attached. However, some of the information is being withheld under the following exemptions of the Freedom of Information Act (FOIA):

- section 27 (1) (a) and 27 (2) - international relations,
- section 40(2) – personal information,
- section 41(1) – information provided in confidence, and
- section 43 (2) – commercial interests

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

In applying section 27 we have had to balance the public interest in withholding the information against the public interest in disclosing it. Factors in favour of disclosure include the public interest in transparency and, accountability as well as interest in wider international relations. Factors against disclosure include the strong public interest in ensuring that the FCO are 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 the trust and confidence of other governments and international organisations. To do this there must be good working relationships with other governments, in this case the Government of Bolivia, based on confidence and trust. This relationship of trust allows for the free and frank exchange of information, both between Governments but also between politicians on the understanding that it will be treated in confidence. If the UK does not maintain this trust and confidence, our ability to protect and promote UK interests through international relations, will be hampered. Other governments and international organisations may be more reluctant to share information with the UK Government 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, the information being withheld relates to confidential discussions held between the UK Government officials and representatives of the Government of Bolivia.

For these reasons, we consider that the public interest in maintaining this exemption outweighs the public interest in disclosure.

Some of the information contained in the attached document 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 Freedom of Information Act apply. In this case, our view is that disclosure would breach the first data protection principle. This 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 s.40 confers an absolute exemption on disclosure. There is, therefore, no public interest test to apply.

Some information has been withheld under Section 41(1), as it is information that was provided in confidence by Rurelec PLC. It is our view that disclosure of this information would constitute an actionable breach of confidence and so disclosure would also be unlawful under the Act. In these circumstances, Section 41 of the FOIA confers an absolute exemption on disclosure and there is no public interest test to apply.

Section 43(2) of FOIA exempts from disclosure information which would be likely to prejudice the commercial interests of any person. Section 43(2) is a prejudice-based exemption, so the test for exemption is whether or not the individual's commercial interests would be prejudiced by disclosure and again, it is subject to balancing the public interest. It is recognised that there is a general public interest in the disclosure of commercial information to ensure, for example: transparency in the accountability of public funds; proper scrutiny of government action; and the effective use of public money.

However, where disclosure would make it less likely that companies or individuals would provide the department with information in the future or where disclosure would make it more difficult for individuals to be able to conduct commercial transactions, or have future dealings

with public bodies, without fear of suffering commercially as a result, these are factors that may weigh in favour of non-disclosure. After assessment of the above factors, in this case, we consider the balance of public interest favours withholding this information.

In keeping with the spirit and effect of the Freedom of Information Act, all information is assumed to be releasable to the public unless it is exempt. The information we have supplied to you may now be published on our website together with any related information that will provide a key to its wider context.

The information supplied to you continues to be protected by the Copyright, Designs and Patents Act 1988. You are free to use it for your own purposes, including any non-commercial research you are doing and for the purposes of news reporting. Any other re-use, for example commercial publication, would require the permission of the copyright holder. Most documents supplied by the FCO will have been produced by government officials and will be protected by Crown Copyright. You can find details on the arrangement for re-using Crown Copyright information on the [TNA](#) website.

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Yours sincerely,

South America Department



We keep and use information in line with the Data Protection Act 1998. We may release this personal information to other UK government departments and public authorities.