



Foreign & Commonwealth Office

ASEAN Department
Foreign and Commonwealth
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1 September 2014

Freedom of Information Requests: 0854-13 and 0855-13

Further to our previous letters in response to your request for information, which we received on 16 September 2013. In your request you asked for;

Under the Freedom of Information Act and within the date range 26 March to 15 April 2012

- 1. Please supply any information in any form, including briefing notes and interdepartmental discussions with, for example, the Office of the Prime Minister and the Prime Minister's Media Team, concerned with the decision to allow the Prime Minister to raise and discuss the issue of the proposed recovery of buried Spitfires in Myanmar/Burma with President of Thein Sein of Myanmar/Burma during the Prime Minister's visit to Myanmar/Burma in April 2012.*
- 2. Please supply any briefing notes and/or any other material in any medium including e-mails and texts, which were supplied to the Prime Minister's Office in order that the Prime Minister could undertake an informed discussion of the proposed recovery of the buried Spitfires with President Thein Sein.*
- 3. Please supply all information, including discussions, briefing notes, e-mails and texts, supplied to the Prime Minister's Spokesman and his Media Team which relate to the Buried Spitfires Project and any subsequent briefings regarding this project to any members of the media.*
- 4. Please supply all records of the section of the Prime Ministers talks with President Thein Sein, which relate to the proposed joint heritage project to recover Buried Spitfires in Myanmar/Burma. (Ref: 0854-13)*
- 5. For the period 1 April 2012 to 1 November 2012, please supply all records in any medium, including records of telephone conversations, e-mails and texts, between the University of Leeds [including [Redacted] and/or [Redacted] of the University of Leeds] and the FCO, which discuss the involvement of the University of Leeds with [Redacted] and the proposed project to recover buried Spitfires from Myanmar/Burma. (Ref: 0855-13)*

I can confirm that the Foreign and Commonwealth Office does hold information falling within the terms of your request. The information that we can release to you is attached as a digest.

I also wish to advise that some of the information you requested has been withheld as it falls under Section 27(1)(a) (International relations), Section 35 (Formulation of government

policy), Section 36(2)(b)(i) (Prejudice to the effective conduct of public affairs - free and frank advice), Section 40 (personal information), Section 41 (Information provided in confidence), and Section 43(2) (Commercial interests).

Section 27(1)(a) recognises the need to protect information that would be likely to prejudice relations between the United Kingdom and other states if it was disclosed. The application of s27(1)(a) requires us to consider the public interest in favour of releasing the information against that of withholding it. We acknowledge that releasing information on this issue would increase public knowledge about UK activities in Burma but s27(1)(a) recognises that the effective conduct of international relations depends upon maintaining trust and confidence between governments. In this case, we judge that the potential negative impact to this trust and confidence (and thus the Government's ability to protect and promote UK interests) in releasing this information outweighs the minor benefit in its release. For this reason we consider that the public interest in maintaining this exemption outweighs the public interest in disclosing the information.

Section 35 recognises the need to protect the policy-making process in order to maintain the delivery of effective government. In this case, the Act makes clear that officials need to be able to conduct rigorous and candid risk assessments of their policies including considerations of the pros and cons. For this reason, we judge that the risk to the provision of advice on the formulation and implementation of Government policy posed by the release of information outweighs the benefits, and we have maintained this exemption.

Some of the information is exempt under Section 36(2)(b)(i) of the Act, which relates to prejudice of effective conduct of public affairs. Information to which this section applies is exempt if, in the reasonable opinion of a qualified person, disclosure of the information under this Act would, or would be likely to, inhibit the free and frank provision of advice. The factors in favour of disclosure of this information, including the general public interest and greater transparency and accountability, were weighed against the need to allow internal discussion between officials across Government in the UK and overseas. Officials need space in which to develop their thinking and explore options in communications and discussions. Disclosure of the process of interdepartmental consideration may also undermine the collective responsibility of the government. Should disclosure result in reluctance on the part of officials 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.

Some of the information you have requested, 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.

Section 41 (1) of the Freedom of Information Act – information provided in confidence, allows for information to be exempt if it was obtained by the public authority from any other person and the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person. Section 41 also confers an absolute exemption on disclosure, and therefore a public interest test is not required.

Section 43 exempts information, disclosure of which would be likely to prejudice the commercial interests of any person. This exemption recognises that it would not be in the public interest to disclose information about a particular commercial body if that information was not common knowledge and would be likely to be used by competitors in a particular market to gain a competitive advantage. The information we considered under this request had no bearing on the use of public money, or the Government's own commercial activities, decreasing the public interest in its disclosure. For these reasons, we concluded that the public interest in withholding the information outweighs that of disclosure, and we have maintained the exemption.

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Please contact me if you have any queries about this letter.

Yours sincerely,

ASEAN Department



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