



Foreign &
Commonwealth
Office

Africa Department Central & Southern
Africa Directorate
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14 November 2014

FREEDOM OF INFORMATION ACT 2000 - REQUEST REF: 0902-14

Thank you for your email of 19 September 2014 asking for information under the Freedom of Information Act (FOIA) 2000. You asked:

“Please supply all correspondence (both internal and external) and minutes of meetings relating to Pathfinder Minerals' dispute over mining rights in Mozambique.”

I am writing to confirm that we have now completed the search for the information which you requested and that we hold information falling within the scope of your request.

Please find attached the information that the Foreign and Commonwealth Office (FCO) can release to you. Some of the information has been withheld under the following exemptions:

- Section 27 International relations
- Section 35 Formulation of government policy
- Section 40 Personal information
- Section 43 Commercial interests

Some of the information relevant to your request is being withheld under section 27(1)(a) (International relations) of the FOIA. The application of section 27(1)(a) requires us to consider the public interest test arguments in favour of releasing and withholding the information. Section 27(1)(a) of the FOIA recognises the need to protect information that would be likely to prejudice relations between the United Kingdom (UK) and other states if it was disclosed.

Factors in favour of releasing the information included the general public interest in disclosure and greater transparency of the decision making process. Factors in favour of withholding the information included consideration that the effective conduct of the UK's international relations, and its ability to protect and promote its interests abroad, would be compromised if certain information held within government were made known publicly. Were the information to be released other states may become concerned that the confidence

within which they consider their exchanges with the UK to take place might not be respected. Some of the information we have reviewed contains confidential exchanges between Her Majesty's Government (HMG) and the Government of Mozambique, the release of which would impact on our relations with Mozambique. Furthermore, if that information was to be disclosed other states may question whether confidential information shared with the UK would be respected and this could impact on the UK's conduct of international relations. After careful consideration we believe that the factors in favour of withholding the papers outweigh the factors in favour of disclosing the information.

Some of the information the FCO holds in relation to your request is being withheld under section 35(1) (a) (Formulation of government policy) of the FOIA. This exemption also requires the application of the public interest test. Factors in favour of releasing the information included the general public interest in disclosure and greater transparency of the decision making process. Factors in favour of withholding the information included the consideration that good government depends on good decision making and needs to be based on the best advice available and a full consideration of all the options. The advice should be broad based and there may be a deterrent effect on external experts or stakeholders who might be reluctant to provide advice because it might be disclosed. A further consideration was that the impartiality of the civil service might be undermined if advice was routinely made public as there is a risk that officials could come under political pressure not to challenge ideas in the formulation of policy, thus leading to poor decision making. To disclose the papers on the formulation of the current policy could constrain consideration of advice in relation to future cases. We therefore believe that the factors in favour of withholding the papers regarding the policy formulation outweigh the factors in favour of disclosing the information.

Some of the withheld information is personal data relating to third parties. It is our view that disclosure of this information would breach the first data protection principle, which states that personal data should be processed fairly and lawfully. Section 40(2) and (3) of the FOIA therefore apply. It is the fairness aspect of this principle which we think would be breached by disclosure in this case. In such circumstances section 40 confers an absolute exemption on disclosure. We do not therefore have to apply the public interest test.

Some of the information has also been withheld under section 43(2) of the FOIA, which relates to commercial interests. The use of this exemption was carefully considered. 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. This is a particularly strong consideration given the correspondence relates to a matter currently subject to legal proceedings in Mozambique. Disclosure would, in my view, be likely to prejudice the commercial interests of any person relevant to the request. In this case after such consideration we believe that the public interest in withholding the redacted information outweighs the public interest in its release.

In keeping with the spirit and effect of the FOIA, 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.

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Yours sincerely,

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