



Foreign & Commonwealth Office

Central Africa Team
Foreign and Commonwealth Office
King Charles Street
London SW1A 2AH

Email: msu.adcs@fco.gov.uk
Website: www.gov.uk

30 October 2014

Your Freedom Of Information Request: 0280-14

Thank you for your request for information which we received on 11 March 2014. In your request you asked:

'Please can you release all briefing papers, memos and emails pertaining to the answer given to this parliamentary question:

Lord Lester of Herne Hill: to ask Her Majesty's Government what assessment they have made of the activities of Hussar Ltd, a United Kingdom company based in Jersey with a London office, with regard to the purchase of gold in the Democratic Republic of Congo. HL3791'

I can confirm that the Foreign and Commonwealth Office (FCO) does hold information relevant to your request. I am attaching a number of these documents in the form of a digest of information. Some information falls under the following exemptions of the Freedom of Information Act 2000 (FOIA) and has, therefore, been withheld:

Section 27 (1) (a) (b) (c) and (d) and (2) - International Relations

Some of the information you have requested is being withheld under section 27 (1) (a) (b) (c) and (d) of the FOIA. Section 27 (1) (a) (b) (c) and (d) provides that information is exempt if its disclosure would or would be likely to prejudice the relations between the UK and any other state or international organisation, the interests of the UK abroad, or the promotion or protection by the UK of its interests abroad.

Section 27(2) provides that information is also exempt information if it is confidential information obtained from a state other than the United Kingdom or from an international organisation.

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 strong public interest in government transparency and accountability. Disclosure would also increase public knowledge of relations between the UK and other members of the UN Security Council, as well as Uganda. 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 and international organisations based on confidence and trust. 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 UK does not maintain this trust and confidence, its ability to act as a significant player in the international arena, and protect and promote UK interests through international relations, will be hampered. Other governments, UN bodies and other 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.

For these reasons, we consider that the public interest in maintaining this exemption and withholding this information outweighs the public interest in disclosing it.

Section 31(1)(a) and (g) – Law Enforcement

Further to these reasons, some of the information has also been withheld under section 31(1)(a) and (g) of the FOIA because disclosure would, or would be likely to, prejudice the prevention or detection of crime or the exercise by a public authority of its functions in the pursuit of law enforcement. Exemption under section 31(1)(a) and (g) is designed to cover all aspects of the prevention and detection of crime. For this request, release of the information concerned could inadvertently disclose how UK agencies' actions generally to prevent or detect crime are carried out. Maintaining confidence in law enforcement and the criminal justice system is crucial to the public interest. Such public interest considerations, depending on the circumstances, may favour or prevent disclosure. We believe that the public interest in maintaining this exemption outweighs the public interest in disclosure.

Section 35(1)(a) – Formulation of Government Policy

Some of the information you requested is exempt under section 35(1)(a). This section is statutory recognition of the public interest in allowing government to have a clear space, immune from exposure to public view, in which it can debate matters internally with candour and free from the pressures of public political debate.

In this case, there is a general public interest in being able to understand better the way in which Government works and how or why decisions in the area of foreign relations are reached. It is also in the public interest to release information about the process by which policy decisions were made in order to demonstrate that advice was sought from the appropriate quarters and that the final policy direction was developed on a sound basis.

However, this section of the FOIA provides statutory recognition of the need for a clear space for Ministers, officials and providers of expert advice to debate matters internally and conduct robust risk assessments with complete candour, free from the pressures of public political debate in order to produce realistic and properly considered policies. Government officials need to be able to expose the merits and de-merits of all the policy options as appropriate. Specific factors in favour of withholding this information are the fact that it relates to the formulation and development of government policy in respect of the approach to be followed in dealing with the UN Sanctions Committee. There is a risk that officials' candour in considering the drawbacks of various options in similar cases in the future would

be affected by their assessment of whether the content of such discussions will be subsequently disclosed in the near future or that particularly sensitive exchanges of views would not be recorded for the written record. For these reasons, the public interest in withholding this information outweighs the public interest in disclosing it.

Section 40 (2) and (3) - Personal Information

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 FOIA 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) - Information Provided in Confidence

Some of the information you have requested is being withheld because it is exempt under section 41 (1) of the FOIA. This 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 FOIA) 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 42 - 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 clients to be frank and open with their legal adviser. It is important that the government is able to seek legal advice so that it can make its decisions in the correct legal context. The legal adviser must be in possession of all material facts in order to provide sound advice. The government must, therefore, feel confident that it can disclose *all* relevant facts to its legal adviser. It should be able to do so 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 process of providing 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, I consider that the public interest in maintaining LPP under section 42(1) outweighs the arguments in favour of disclosure.

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.

The copies of information being supplied to you continue 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. To re-use Crown Copyright documents please consult the [Open Government Licence v3](#) on the National Archives website.

Information you receive which is not subject to Crown Copyright continues to be protected by the copyright of the person, or organisation, from which the information originated. You must ensure that you gain their permission before reproducing any third party (non-Crown Copyright) information.

Yours sincerely,

Central Africa Team



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.