



Foreign &
Commonwealth
Office

Diplomatic Missions and
International Organisations Unit
Protocol Directorate

Room KG.01
King Charles Street
London SW1A 2AH

www.gov.uk/fco

10 February 2016

Dear

Freedom of Information Request: Ref: 0034-16

Thank you for your email of 13 January about serious offences allegedly committed by people entitled to, or claiming, diplomatic immunity in the UK since 2012, specifically:

1. *How many serious offences (carrying a potential penalty of at least 12 months in prison) allegedly committed by people entitled to or claiming diplomatic immunity in the UK have been drawn to the attention of the FCO since 1 Jan 2012?*
2. *For each offence above, please state:*
 - a) *Alleged offence*
 - b) *Year of alleged offence*
 - c) *Nationality of alleged offender*
 - d) *Country the offender represented as a diplomat (if different to nationality)*
 - e) *Whether a request was made for diplomatic immunity to be waived*
 - f) *Whether a waiver was granted*
 - g) *Final outcome of case (i.e. UK prosecution and sentence, withdrawal of diplomat from the UK etc)*

We can confirm that the Foreign and Commonwealth Office (FCO) does hold information related to your request.

We expect all foreign diplomats in the UK to abide by UK laws at all times. We take a proactive approach – regularly reminding missions of diplomats' obligations to respect UK laws. We take a firm line with diplomatic missions and international organisations whose diplomats commit offences.

All alleged offences are investigated by the police or other law enforcement agencies. In the case of the most serious alleged offences, we would request the immediate withdrawal of the diplomat in question unless his/her mission agreed to waive immunity and offered full cooperation with the investigation.

Under section 21 of the Freedom of Information Act (FOIA), we are not required to provide information in response to a request if it is already reasonably accessible to you. Every year the Secretary of State for Foreign and Commonwealth Affairs makes a Written Ministerial Statement to Parliament on serious offences, which have allegedly been committed by members of the diplomatic community in the UK. Some of the information you request (namely, in respect of question 1, 2(a), 2(b) and 2(d)) is contained within these statements. The last statement made on 16 July 2015 gave the figures for 2014, and a record can be found here:

<http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm150716/wmstext/150716m0001.htm>.

Figures for 2013 and a record can be found here:

<http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/140715-wms0001.htm>.

Figures for 2012 and a record can be found here:

<http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130711/wmstext/130711m0001.htm>.

The Foreign Secretary will make a further Written Ministerial Statement in July, covering alleged serious offences in 2015. This information is therefore exempt under section 22 of the FOIA (information intended for future publication). Section 22 provides that:

Information is exempt information if:

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not)
- (b) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).

The exemption under section 22 of the FOIA recognises that it must be reasonable in all the circumstances to withhold the information until the date of publication. Given the necessary preparation and administration involved in publishing the information, we consider that our publication timetable is reasonable.

In respect of question 2(c), according to our records covering 2012-2014 (see the above use of section 22 for offences allegedly committed in 2015) there was one occasion where the alleged offender held a different nationality to that of their parent mission. However, we judge this information is personal data relating to third parties and that disclosing the nationality of the alleged offender could assist in identification. Disclosure of nationality would therefore 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 as 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, section 40 confers an absolute exemption on disclosure. There is, therefore, no public interest test to apply.

In respect of questions 2(e), (f) and (g) – to the extent that 2(g) asks whether the alleged offender was withdrawn from the UK – this information has been withheld under section 27(1)(a) of the FOIA. 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 section 27(1)(a) requires us to consider the public interest test arguments in favour of releasing and withholding the information. We acknowledge that releasing information about waivers of immunity and any consequences of a decision, or failure, to grant a waiver of immunity would increase public knowledge about our relations with the states in question. But section 27(1)(a) recognises that the effective conduct of international relations depends upon maintaining trust and confidence between governments. If the

United Kingdom does not maintain this trust and confidence, its ability to protect and promote UK interests through international relations will be hampered, which will not be in the public interest. The disclosure of information about waivers of immunity and the consequences of a decision, or failure, to grant a waiver of immunity could potentially damage the bilateral relationship between the UK and other states. This would reduce the UK Government's ability to protect and promote UK interests through its relations with other states, which would not be in the public interest. For these reasons we consider that the public interest in maintaining this exemption outweighs the public interest in disclosing it.

Finally, in respect of question 2(g) – to the extent that it asks whether any of these alleged offences were brought to court and resulted in a successful prosecution – we are aware of four convictions between 2012 and 2014 (see the above use of section 22 for offences allegedly committed in 2015). In December 2014 four former Gambian diplomats (and three former locally-engaged members of staff at the Gambian mission) were convicted and sentenced for conspiracy to cheat the revenue between 2009 and 2012, having bought tobacco in commercial quantities free of tax and duty due to the former diplomats' status. The four former diplomats each received prison sentences ranging from five to seven years. Further details of this case were reported in the UK media. This case serves to highlight the Government's expectation that diplomats and diplomatic missions in the UK will respect our laws and regulations and that, when an offence takes place, we will take firm action against those responsible.

The FCO can neither confirm nor deny whether the information disclosed represents all the information held that would meet the terms of your request, as the duty to comply with section 1(1)(a) of the Freedom of Information Act 2000 does not apply by virtue of sections 23(5) and 24(2).

To the extent that section 24(2) applies, the FCO has determined that in all circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in confirming whether or not the information is held, and to give a statement of the reasons why the exemption applies would itself involve the disclosure of exempt information. Therefore under section 17(4) of the Act the FCO is not obliged to give such a statement.

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.

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Yours sincerely,

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