



Foreign &
Commonwealth
Office

Asia-Pacific Directorate
Foreign and Commonwealth Office
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27 September 2016

FREEDOM OF INFORMATION ACT 2000 REQUEST REF: 0540-16

Thank you for your email of 30 May 2016 asking for information under the Freedom of Information Act (FOIA) 2000. You asked:

'Please supply all items of information held by the FCO in relation to the arrangement for Jaguar to buy vehicles from the Beijing embassy and gift nine Land Rovers.

<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-05-26/HCWS11>

This should include, but not be limited to, any correspondence leading up to the arrangement, any invoices or official papers detailing the arrangement and any minutes of relevant minutes.'

On 14 June, you agreed that the scope of the request could be narrowed to:

'I am happy for the scope of my request to be narrowed to the specifics suggested, but would like it to include the paperwork showing the final agreement between JLR and FCO if possible'.

'correspondence between FCO and JLR and records of internal meetings.'

I can confirm that the Foreign and Commonwealth Office does hold information falling within the terms of your request. The information that we are able to release is enclosed in the attached document.

Some of the the information that you requested is exempt under Section 35(1)(a) of the Freedom of Information Act (FOIA) which also requires the application of a public interest test. It is recognised that there is public interest in the greater transparency in the decision making process to ensure accountability within public authorities. However, officials need to be able to conduct rigorous and candid risk assessments of their policies and programmes including considerations of pros and cons without there being a risk of premature disclosure which might close off better options and inhibit the free and frank discussion of all policy options. For these reasons we consider that the public interest in maintaining this exemption outweighs the public interest in disclosing it.

Some information is being held under section 38 (1) (a) and (b) of the FOIA. In applying the public interest test we took into consideration the factors in favour of

disclosure; in this case that releasing such information would demonstrate openness and public accountability towards the security arrangements for the personnel at the British Embassy in Beijing. But disclosing specific details of security arrangements would pose a significant risk to the personal safety of the staff. I concluded that the public interest in maintaining this exemption outweighed the public interest in disclosing the 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.

Some of the information you have requested is exempt under section 42(1) of the FOIA. Section 42(1) 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) outweigh the arguments in favour of disclosure.

Some of the information is exempt 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. We consider that this transparency also poses risks to the protection of commercially confidential information. Failure to protect such commercially sensitive information would limit the sources of information and interlocutors available to the FCO and limit the FCO's ability to promote the British economy and lobby for the interests of British businesses overseas. In this case after

such consideration we believe that the public interest in withholding the redacted information outweighs the public interest in its release.

Once an FOI request is answered, it is considered to be in the public domain. To promote transparency, we may now publish the response and any material released on gov.uk in the [FOI releases](#) section. All personal information in the letter will be removed before publishing.

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Yours sincerely

China Department



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