



Foreign &
Commonwealth
Office

Arabian Peninsula and Iran Department
Foreign and Commonwealth Office
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14 December 2016

FREEDOM OF INFORMATION ACT 2000 REQUEST REF: 0709-16

Thank you for your email of 25 July asking for information under the Freedom of Information Act (FOIA) 2000. You asked:

I would be grateful if you could provide me with all emails, notes, letters, or other documents or records relating to the FCO exercise of reviewing all correspondence and parliamentary proceedings on the subject of allegations of breaches of international humanitarian law (IHL) in Yemen by the Saudi-led Coalition and the publication of the Written Ministerial Statement on this matter.

In relation to:

On 21st July 2016 a Written Ministerial Statement was published by Mr Tobias Ellwood, The Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs: 'Corrections to Parliamentary Questions and Westminster Hall Debates: Written statement - HCWS125' (<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-07-21/HC>). It stated:

'The Foreign and Commonwealth Office (FCO) has recently reviewed all correspondence and parliamentary proceedings on the subject of allegations of breaches of international humanitarian law (IHL) in Yemen by the Saudi-led Coalition. During this exercise it became clear that the drafting of answers to four written questions and two responses given in debates relating to allegations of breaches of IHL did not fully reflect HMG's policy as set out in numerous other written questions and debates on this topic...'

With apologies for the delay in sending you a substantive response, I am writing to confirm that we have now completed the search for the information which you requested.

I can confirm that the Foreign and Commonwealth Office (FCO) does hold information relevant to your request: please see the attached digest. Some of the information concerned has been withheld using the following exemptions: section 35, section 36, section 40 and section 42.

Some of the information you have requested is exempt under section 35(1)(a) of the Freedom of Information Act, which protects the formulation of government policy. Section 35 is a qualified exemption and I have considered whether the balance of the public interest

favours our release of this material. There is a general public interest in disclosure of information and I recognise that openness in government may increase public trust in and engagement with the government. I recognise that the decisions Ministers make may have a significant impact on the lives of citizens and there is a public interest in their deliberations being transparent. These public interests have to be weighed against a strong public interest that policy-making and its implementation are of the highest quality and informed by a full consideration of all the options. Ministers must be able to discuss policy freely and frankly, exchange views on available options and understand their possible implications, without being inhibited by concerns that those discussions and views might be made public (unless it is in the public interest to do so). The information in this case refers to our review of all correspondence and parliamentary proceedings on the subject of allegations of breaches of international humanitarian law (IHL) in Yemen by the Saudi-led Coalition. It is our view that disclosure of this information would mean that we would risk undermining decision making and policy formulation on this subject in future. For these reasons we consider that the public interest in maintaining this exemption outweighs the public interest in disclosure of the information.

Some information has also been withheld under Section 36(2)(b) (i) and (ii), which concerns 'prejudice to the effective conduct of public affairs'. Information to which these limbs of the exemption apply is exempt from release if, in the reasonable opinion of a qualified person, disclosure would, or would be likely to, inhibit the free and frank provision of advice, or the free and frank exchange of views for the purposes of deliberation. This exemption requires the application of a public interest test. We acknowledge the general public interest in transparency in the decision-making processes in public authorities. However, there is also a strong public interest in protecting the space Ministers and officials have to consider and discuss options, to ensure that full and proper consideration to policy is given. The candour of contributions to this process is likely to be affected by officials' assessment of whether the content of such discussion will be disclosed in the near future. This would have a negative impact on the quality of decision making, which is clearly not in the public interest. For these reasons, it is the opinion of an FCO Minister that the disclosure of the information concerned would be likely to inhibit the free and frank provision of advice and the free and frank exchange of views for the purposes of deliberation, and we consider that the public interest in withholding this information outweighs the public interest in release.

Some of the information you have requested, is personal data including 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 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, and correspondence in the context of litigation. 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 to advise appropriately.

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.

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,

Arabian Peninsula and Iran Department



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