



Foreign &
Commonwealth
Office

**Caribbean and Bermuda Overseas
Territories Department**

Foreign and Commonwealth Office
King Charles Street
London SW1A 2AH

Website: <https://www.gov.uk>

09 May 2016

FREEDOM OF INFORMATION ACT 2000 REQUEST REF: 0196-16

Thank you for your email of 15 February 2015 asking for information under the Freedom of Information Act (FOIA) 2000. You asked for:

'copies of any documentation that you have relating to the possible introduction of same-sex marriage or civil unions in Bermuda and Pitcairn, and any correspondence between the FCO and/or the Governor of Bermuda with the Attorney-General and/or Premier of Bermuda on the topic of same-sex marriage or civil unions.'

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 find attached the information that the FCO can release to you. Some of the information has been withheld using sections 27 and 42 – International relations and Legal Professional Privilege (LPP). These are both qualified exemptions and are subject to a public interest test.

Section 27(1)(a) of the FOIA recognises the need to protect information that would be likely to prejudice relations between the United Kingdom and any other State, which is defined as including the British Overseas Territories. In this case, and at this time, the release of some of the information that we hold relating to same sex marriage or civil union matters could harm our relations with the governments of the Overseas Territories.

In relying on s27 (1) (a) as an exemption, we are required to balance the public interest test arguments in favour of releasing and withholding the information. We acknowledge that releasing information on this issue would increase public knowledge about our relations with the Government of Bermuda and their approach to the possible introduction of same-sex

civil unions in that territory. However, s27 (1) (a) recognises that the effective conduct of international relations depends upon maintaining trust and confidence between governments. This is especially significant in the case of a British Overseas Territory with whose Governments we share a particularly close relationship by reason of the fact that the UK is their sovereign power. This allows Bermuda to consult the UK in the knowledge that this dialogue can be conducted in confidence until the matter is resolved. If the United Kingdom does not maintain this trust and confidence, its ability to protect and promote UK and Bermudian interests through international relations will be hampered, which will not be in the public interest. This matter is proving to be particularly contentious at this time, and therefore needs to be dealt with sensitively. The disclosure of information on this matter at this time could potentially damage our bilateral relationship, and jeopardise the outcome. For these reasons we consider that, the public interest in maintaining this exemption outweighs the public interest in disclosing it.

Some of the information you have requested is exempt under section 42(1). Section 42(1) of the Act 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 UK government and in this case also the Governor of Bermuda and the Government of the Pitcairn Islands, are able to seek legal advice so that decisions can be made in the correct legal context. The legal adviser must be in possession of all material facts in order to provide sound advice. The government and the Governor and the Government of the Pitcairn Islands must, therefore, feel confident that they can disclose *all* relevant facts to their legal advisers. 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. We recognise that there is a public interest in citizens knowing that policies of this nature have been developed with the benefit of sound legal advice. However, in the circumstances of this case, this public interest does not outweigh the opposing public interest in maintaining the current convention.

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 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. We have therefore removed references to officials below Senior Management Service (SMS) grade as they have a reasonable expectation that their names will not be made public. In this circumstance, s.40 confers an absolute exemption on disclosure. There is, therefore, no public interest test to apply.

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Yours sincerely,

Overseas Territories Directorate



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