



Foreign &
Commonwealth
Office

Arabian Peninsula and Iran Department
Foreign and Commonwealth Office
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09 March 2016

FREEDOM OF INFORMATION ACT 2000 REQUEST REF: 0203-16

Thank you for your email of 16 February 2016 asking for information under the Freedom of Information Act (FOIA) 2000. You asked:

I'd like to obtain copies of the last three briefing papers received by Philip Hammond on the topic of Yemen, from the date of receipt of this request.

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 the following exemptions. Section 27(1)(a), Section 27(2), Section 35(1)(a) and (b), Section 40 and Section 42.

Section 27 – international relations is a qualified exemption and is 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 other states if it was disclosed. In this case, the release of information relating to matters could harm our relations with the Kingdom of Saudi Arabia.

The application of s.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 on this issue would increase public knowledge about our relations with the Kingdom of Saudi Arabia. However, s.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 detailing our relationship with the Saudi Government could potentially damage the bilateral relationship between the UK and the Kingdom of Saudi Arabia. This would reduce the UK government's ability to protect and

promote UK interests through its relations with the Kingdom of Saudi Arabia, 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.

Section 27(2) of the Freedom of Information Act recognises the need to protect information provided in confidence to the UK Government. In this case, the information being withheld relates to confidential discussions held between the UK Government officials and representatives of the United Nations. The application of section 27(2) requires us to consider the public interest test arguments in favour of releasing and withholding the information. We acknowledge that it is in the public interest to show that the UK Government dealt correctly with the UN in relation to the UN panel of experts report on Yemen (UN sanctions regime for Yemen established by UNSCR 2140). Disclosure of the information that was given to us in confidence would damage our relationships with the UN and they would be more guarded and less co-operative in their dealings with us. It is for these reasons that we considered that the public interest in maintaining exemption under section 27(2) outweighs the public interest in disclosure of the information.

Information you have requested is exempt under section 35(1)(a) and (b) of the Freedom of Information Act, which protects the formulation of policy and communications between Ministers. Disclosure would weaken Ministers' ability to discuss controversial and sensitive topics free from premature public scrutiny.

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. The candour of all involved would be affected by their assessment of whether the content of the discussions will be disclosed prematurely, as it formed part of briefing on ongoing policy. If discussions were routinely made public there is a risk that Ministers may feel inhibited from being frank and candid with one another. As a result the quality of debate underlying collective decision making would decline, leading to worse informed and poorer decision making. Taking into account all the circumstances of this case, I have concluded that the balance of the public interest favours withholding this 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 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) 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 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.

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Yours sincerely,

Arabian Peninsula and Iran Department

