



Foreign &
Commonwealth
Office

National Security Directorate
FCO
King Charles Street

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

3 June 2016

FREEDOM OF INFORMATION ACT 2000 - REQUEST REF: 0351-16

Thank you for your email of 28 March 2016 in which you requested:

All and any correspondence (including emails and meeting minutes), documentation, etc relating to FOI request 1001-15

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/510470/FOI_1001-15_Correspondence_on_Edward_Snowden.pdf

We wrote to you on 26 April and 25 May 2016 to advise that we needed additional time to provide you with a response, citing Freedom of Information Act exemption section 27 – international relations – as applying to your request.

I am writing to confirm that we have now completed the search for the information which you requested.

Please find enclosed the information that the FCO can release to you.

Some of the information requested has been withheld on the basis of a number of exemptions:

Section 27(1)(a)

Section 27(1)(a) of the Freedom of Information Act 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 held relating to the whereabouts and prospective asylum request of Edward Snowden could harm our relations with various states e.g. the US and China.

The application of s27(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 various countries. However, s27(1)(a) recognises that the effective conduct of international relations depends upon maintaining trust and confidence between governments. The disclosure of information detailing our relationships with the governments of countries concerned with this request would potentially damage the bilateral relationships between these countries and the UK. This would reduce the UK Government's ability to protect and promote UK interests through its relations e.g. with the countries mentioned above, 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 23(1)

Some of the information requested has been assessed as being exempt under section 23(1) of the Freedom of Information Act. Section 23(1) relates to information supplied by, or relating to, bodies dealing with security matters. Section 23 is an absolute exemption and therefore we are not obliged to consider the public interest in disclosure.

Section 24(1)

Some of the information requested is exempt under Section 24(1) of the Freedom of Information Act. Section 24 is a qualified exemption, which means that it is subject to a public interest test. We acknowledge the public interest in openness and transparency, but after reviewing the material we consider that there is a stronger public interest in protecting part of the material requested on national security grounds. We have therefore concluded that the exemption applies and that withholding the material serves the public interest better than release in this instance.

Section 35(1)(a)

Part of the information you request is exempt under Section 35(1)(a) of the Act which also requires the application of a public interest test. It is recognised that there is public interest in 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.

Sections 40(2) and 40(3)

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 41

Some of the information you requested is exempt under section 41 of the Act, as disclosure would be a breach of confidence. The successful working of British diplomacy depends upon sources being able to provide information in confidence without fear that this will be made public. Exemptions under Section 41 do not require the application of a public interest test.

Section 42(1)

Finally, 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 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.

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,

National Security Directorate



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