



Foreign &
Commonwealth
Office

Eastern Europe & Central Asia Directorate
Foreign and Commonwealth Office
King Charles Street
London SW1A 2PA

27 November 2015

Dear,

Your Freedom Of Information Request: 0130-15

Thank you for your request for information which we received on 11 February 2015. In your request you asked for:

Could you please provide copies of all correspondence and records of oral conversations between FCO ministers or officials and British MPs, related to laws governing sugar production in Ukraine.

Please restrict your searches to a) correspondence exchanged in 2011 and 2012 and b) correspondence held by the central FCO department in London and the British embassy in Kiev.

You later clarified that we should concentrate our searches to Jack Straw MP.

I can confirm that the Foreign and Commonwealth Office (FCO) does hold information relevant to your request. The information that the FCO can release to you is attached.

Revised guidance has been issued to overseas posts on assistance provided to former Prime Ministers and former ministers. As a result, posts will no longer facilitate programmes for visits, including the setting up of meetings with Government figures, unless such visits support UK Government objectives. This is to avoid the inappropriate use of HMG staff and resources and to avoid the perception that former Ministers and Prime Ministers are representing HMG, rather than a commercial interest.

Former Prime Ministers and former ministers who seek logistical support as representatives of UK business must now submit requests through official UKTI channels to ensure equal support is provided to UK companies.

You should be aware that some of the information is being withheld under the following exemptions of the Freedom of Information Act (FOIA):

- Section 27 (1)(a)(c)(d) and 27(2) International relations
- Section 40 (2)and(3) Personal information
- Section 42 Legal Professional Privilege
- Section 43 Commercial interests

Section 27 (1) (a) (b) (c) and (d) and (2)

Some of the information you have requested is being withheld under section 27 (1) (a) (c) and (d) and (2) of the FOIA. Section 27 (1) provides that information is exempt if its disclosure would or would be likely to prejudice (a) the relations between the UK and any other state or (c) the interests of the UK abroad or (d) the promotion or protection by the UK of its interests abroad. Section 27(2) of the FOIA recognises the need to protect information provided in confidence to the UK Government by another Government.

In applying section 27 we have had to balance the public interest in withholding the information against the public interest in disclosing it. Factors in favour of disclosure include the strong public interest in transparency and, accountability as well as interest in wider international relations. Factors against disclosure include the strong public interest in ensuring that the FCO are able to conduct the UK's international relations effectively and protect UK interests abroad. The effective conduct of the UK's international relations depends upon maintaining the trust and confidence of other governments and international organisations. To do this there must be good working relationships with other governments, in this case Ukraine and international organisations based on confidence and trust.

This relationship of trust allows for the free and frank exchange of information, both between governments but also between politicians on the understanding that it will be treated in confidence. If the UK does not maintain this trust and confidence, our ability to protect and promote UK interests through international relations will be hampered. Other governments and international organisations may be more reluctant to share information with the UK Government in future, and may be less likely to respect the confidentiality of information supplied by the UK Government to them, to the detriment of UK interests and our ability to promote UK interests abroad. This would impact on the ability of UK officials to assist UK companies and promote UK commercial interests abroad. There would also be an impact on the willingness of officials from other states to arrange meetings with those promoting UK interests abroad. Additionally UK companies are less likely to share information with us about the difficulties they are experiencing in foreign markets and other states, which would negatively impact the ability of UK officials to assist and promote those companies.

Also, as you may be aware, several members of the then Government fled Ukraine and have been included on EU sanction lists. It is possible the release of this information would unfairly influence ongoing investigations in Ukraine and prejudice the administration of justice. This would be very likely to harm our relations with Ukraine. For practical purposes, we have considered Section 27 - Foreign Relations to cover this information rather than attempt to use the relevant exemption under English Law, Section 31(1) (c) the administration of justice.

For these reasons, we consider that the public interest in maintaining this exemption outweighs the public interest in disclosure.

Section 40 (2) and (3) Personal Information

Some of the information you have requested is personal data relating to third parties, the disclosure of which would contravene 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 section 40 confers an absolute exemption on disclosure. There is, therefore, no public interest test to apply.

Section 42 - Legal Professional Privilege

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.

Section 43 (2) Commercial Interests

Some of the information you have requested is being withheld under Section 43(2) of the FOIA. Section 43(2) protects information which would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

In applying section 43 we have had to balance the public interest in withholding the information against the public interest in disclosing it.

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 and type of information for instance the specific local circumstances of foreign markets 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.

For these reasons, we consider that the public interest in maintaining this exemption outweighs the public interest in disclosing it.

Please contact me if you have any queries about this letter.

Yours sincerely,

Desk Officer
Eastern Europe and Central Asia Directorate



We keep and use information in line with the Data Protection Act 1998. We may release this personal information to other UK government departments and public authorities.