



Foreign &
Commonwealth
Office

South America Department
Foreign and Commonwealth Office
King Charles Street
London SW1A 2AH

6 April 2017

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

FREEDOM OF INFORMATION ACT REQUEST REF: 0870-16

Thank you for your request for information of 14 September, which you further clarified on 29 September, advising that the date range for the FOI request should cover the period September 2014 – February 2016 inclusive.

In your request you asked:

Please would you let me know in writing if you hold information of the following description:

Information concerning the United Nations Working Group on Arbitrary Detention's report and investigation involving the case of Julian Assange, including:

- *UK government legal opinions;*
- *communications with Sweden;*
- *communications with the United Nations.*

I can confirm that the Foreign and Commonwealth Office does hold information relevant to your request. Under section 21 of the Act, we are not required to provide information in response to a request if it is already reasonably accessible to you. Some of the information relevant to your request can be found at the following websites:

- www.ohchr.org/Documents/Issues/Detention/A.HRC.WGAD.2015.docx

This is the Working Group on Arbitrary Detention's (WGAD) opinion on the Assange case. The UK government's response to the WGAD is reflected in paragraphs 47 to 50.

I have attached a copy of our response of 13 November 2014 to the WGAD. I have also attached the response of 3 February 2016 to the release of the WGAD's opinion on Assange by the UK Permanent Representative to the United Nations in Geneva, Julian Braithwaite.

The Swedish response (in English) to the opinion can be found at:

<http://www.regeringen.se/contentassets/d6defff7264540f7b195e11f6f1093a7/comments-by-the-government-of-sweden-re-opinion-no.-542015-ref.-gso-2182>

Section 27

Some of the information within the scope of your request has been withheld using section 27 – international relations. 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 the information requested could harm international relations. The application of Section 27 (1) (a) requires us to consider the public interest test arguments in favour of releasing and withholding the information. Section 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. We acknowledge that releasing information on this issue would increase public knowledge about our relations with other governments. However, the disclosure of the requested information could potentially damage international relations. This would reduce the government's ability to protect and promote UK interests. For these reasons, we consider that the public interest in maintaining this exemption outweighs the public interest in disclosing it.

Section 35

The rest 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 the 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.

Section 40

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

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) outweigh the arguments in favour of disclosure.

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.

Yours sincerely,

South America Department



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.