



Foreign &  
Commonwealth  
Office

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25 August 2015

**FREEDOM OF INFORMATION ACT 2000 REQUEST REF: 0558-15**

Thank you for your email of 12 June asking for information under the Freedom of Information Act (FOIA) 2000. You asked:

*I am requesting a copy of all information held by the FCO relating to the consideration of my request for information, ref. 0711-14.*

*This request is to include all internal FCO documents relating to my request (0711-14), to the possible application of s26 and s27, and to the consideration of the public interest test in regards these two exemptions.*

*I would also like a copy of all documents (minutes, letters, emails, memos, etc), which contain "evidence that officials considered [my request] with the US before coming to the settled position that the exemption should apply, and that disclosure of this information would damage the bilateral relationship to the extent that it would not be in the public interest to disclose it."*

*Such evidence was mentioned in a letter dated 14 May 2015, from the Southern Oceans Team to myself, communicating the results of an internal review. For the avoidance of doubt, I would like a copy of all documents/evidence seen by the official who undertook the internal review.*

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.

We are releasing some of this information to you in the form of a digest of correspondence that is in scope as well as a document sent as an attachment to that correspondence, which contains Diplomatic Flight Clearance (DFC) procedures. Some of the information in these two documents has been redacted and is exempt under sections, 24, 26, 27, 35, and 40.

Section 24 (1) 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 we consider

that there is also a public interest in the FCO protecting national security. Having reviewed the requested material, we are concerned that its release would undermine and consequently adversely impact on the UK's security. We have therefore concluded that the exemption applies and that withholding the material serves the public interest better than release in this instance.

Section 26 (1) (b) allows for the withholding of information if it is likely to prejudice the operational effectiveness of Armed Forces of the Crown or any armed forces with whom they are working. The decision on whether to invoke this exemption is based on a public interest test. Factors in favour of release are the benefits of increase in public knowledge that releasing the information will have in terms of informing public debate. However, these benefits need to be balanced against the risks that releasing the information could have on the success of military operations and the security of our troops. In this case we judged that the balance of risk was against disclosure.

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 immigration matters could harm our relations with the US. 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 US. 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 US Government could potentially damage the bilateral relationship between the UK and the US. This would reduce the UK government's ability to protect and promote UK interests through its relations with the US, 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 35 (1) (a) of the Act 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 without there being a risk of premature disclosure which might have the effect of closing off better options, or inhibiting the free and frank discussion of all policy options. For these reasons we consider that in this particular case, the public interest in maintaining this exemption outweighs the public interest in disclosing it.

Section 40 of the Act relates to information which cannot be disclosed because it 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.

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Yours sincerely,

British Indian Ocean Territory Administration

Overseas Territories Directorate



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