



Foreign &
Commonwealth
Office

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

4 March 2016

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

FREEDOM OF INFORMATION ACT 2000 REQUEST REF: 0160-16

Thank you for your email of 5 February 2016 asking for information under the Freedom of Information Act (FOIA) 2000. You asked:

- 1. Could you please send the UK's submission to, and any further correspondence with, the United Nations Working Group on Arbitrary Detention (UNWGAD), with regards to the Julian Assange case.***

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 website:

- a. 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.

Nevertheless, I have attached a full copy of our response of 13 November 2014 to the WGAD.

I have also attached the response of 13 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.

- 2. Could you also send any correspondence between the UK and Sweden related to UNWGAD and the Assange case.***

. Some information you requested is exempt under sections 27, 40 and 42 of the FOIA 2000.

Section 27

Some of the information you requested is exempt under section 27 of the Act. 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. 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 Sweden. 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 Swedish Government could potentially damage the bilateral relationship between the UK and Sweden. This would reduce the UK government's ability to protect and promote UK interests through its relations with Sweden, 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 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) outweighs the arguments in favour of disclosure.

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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.

From the Permanent Representative

58 Avenue Louis Casati 1216

Cointrin

Switzerland

13 November 2014

Mads Andenas
Chair-Rapporteur
Working Group on Arbitrary Detention
OHCHR
Palais des Nations
1211 Geneva 10

Dear Special Rapporteur,

Thank you for your letter of 16 September 2014.

We were surprised to see the allegation of arbitrary detention in respect of Julian Assange and disappointed that you would give credence to this allegation.

Mr Assange entered the Ecuadorean Embassy in London of his own free will on 19 June 2012. He has therefore been there for over two years. He is free to leave at any point.

The Ecuadorean Government granted Mr Assange 'diplomatic' asylum under the 1954 Caracas Convention, not 'political' asylum. The UK is not a party to the Caracas Convention and does not recognise 'diplomatic' asylum. Therefore the UK is under no legal obligations arising from Ecuador's decision.

We consider that the use of the Ecuadorean Embassy premises to enable Mr Assange to avoid arrest is incompatible with the Vienna Convention on Diplomatic Relations. It is astonishing to see WGAD implying otherwise.

Mr Assange is wanted for interview in Sweden in connection with allegations of serious sexual offences. He is subject to a European Arrest Warrant in relation to these allegations. The UK has a legal obligation to extradite him to Sweden. The British Government takes violence against women extremely seriously and co-operates with European and other partners in ensuring justice is done.

Mr Assange has been given every opportunity to challenge his extradition including before the Supreme Court of the United Kingdom. His extradition has been approved by our courts, taking full account of his human rights and the other protections he enjoys under the UK's Extradition Act 2003. The changes to the UK's extradition law referred to in the communication commenced on 21 July 2014 and are not retrospective. Mr Assange has exhausted all his avenues of appeal under the Extradition Act 2003. It would be inappropriate to speculate on how the UK courts might interpret new legislation in any case. We know of no reason why Mr Assange would not be subject to independent, rigorous and fair process, including if necessary a free and fair trial, in Sweden.

UK and Ecuadorean Ministers and officials have been in regular dialogue regarding Mr Assange. We are committed to reaching a workable solution in line with our legal obligations.

Karen Pierce CMG

Ambassador and Permanent Representative of the United Kingdom to the UN and International Organisations in Geneva

From the Permanent Representative
58 Avenue Louis Casai 1216
Cointrin
Switzerland

13 February 2016

Mr Seong-Phil Hong
Chair-Rapporteur
Working Group on Arbitrary Detention
OHCHR
United Nations Office at Geneva
Palais des Nations
1211 Geneva 10

Dear Chair-Rapporteur,

**Opinion no. 54/2015 concerning Julian Assange
(Sweden and the United Kingdom of Great Britain and Northern Ireland)**

I have been instructed to write to you with the UK's initial response to opinion no. 54/2015 of the Working Group on Arbitrary Detention in the matter of Julian Assange.

Having considered the majority opinion and the individual dissenting opinion of Working Group member Vladimir Tochilovsky, the UK is surprised and disappointed by the outcome of your deliberations, and has serious doubts about the legal arguments you have put forward. Moreover, in our view, the opinion seriously undermines the credibility of the Working Group.

The UK will respond in full to the majority opinion in line with rule 21 of the working methods of the Working Group.

At this stage, however, we wish to set out some important points which seem to have been disregarded by the majority of the Working Group, as follows:-

- This is essentially a bilateral issue between Sweden and Ecuador. The United Kingdom is committed to reaching a workable solution in respect of Mr Assange, in line with our legal obligations under UK and European law.
- The majority opinion claims that Mr Assange's imprisonment immediately following his arrest under the European Arrest Warrant constituted detention "outside the cloak of legal protection". There is no basis, in law or fact, for this finding, as the UK will be setting out in our formal response.
- The majority opinion of the Working Group further refers to Mr Assange being held under "house arrest" for a period of 550 days. Yet Mr Assange was released on conditional bail, which was an alternative to being remanded in custody, by the UK authorities. The conditions imposed by the court were considered necessary, given the fears that he would abscond. Those fears turned out to be well-founded, as Mr Assange then chose to enter the Embassy of Ecuador, and is still, 3 years later, effectively evading justice by his self-imposed confinement there. Mr Assange chose to take the matter to the appellate court and Supreme Court. The UK rejects the allegation in the opinion that it was a failure of case management that led to this process taking 18 months.

- In terms of Mr Assange's current location, it is beyond doubt that Mr Assange is free to leave the Embassy of Ecuador at any point. There is no basis for the majority opinion to assert that his decision to remain constitutes detention by the United Kingdom.

Violence against women is a serious crime which has no place in any society. Allegations of sexual assault are extremely serious matters which require proper investigation. The suggestion of the majority opinion that extradition is disproportionate is highly questionable. It fails to take account of the rights of the alleged victims and also seems inappropriate from a UN human rights body.

Yours sincerely,

JULIAN BRAITHWAITE

FOI 0160-16 : Redacted documents

Document 1:

From: [REDACTED]
Sent: 27 January 2016 15:29
To: [REDACTED]
Cc: [REDACTED]
Subject: Fw: Working Group on Arbitrary Detention - Opinion OFFICIAL

CLASSIFICATION:OFFICIAL

[REDACTED] to see. I hope they'll be able to discuss\$

[REDACTED] also saw [REDACTED] of the MoJ today. If you'd like to talk on secure vtc later this week, let us know.

[REDACTED]

[REDACTED]
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[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Document 2:

From: [REDACTED]

Sent: 01 February 2016 10:35

To: [REDACTED]

Cc: [REDACTED]

Subject: Ecuador/Sweden

[REDACTED]

I understand that our respective [REDACTED] spoke last week. Further to our conversation last week, I confirm we have now been instructed by our Ministers to make a robust response to this opinion. We will therefore be

- Writing to the UNWGAD chair this week
- Sending our PermRep into the OHCHR this week
- Issuing a robust press statement on release of opinion (likely to be Friday)
- Tweeting (after release of opinion)
- Formally responding to the WGAD opinion

I'd be grateful if you could let us know what plans you/your colleagues in other departments have?

Best,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Document 3

From: [REDACTED]

Sent: 03 February 2016 16:07

To: [REDACTED]

Subject: UN Working Group on Arbitrary Detention

Dear all

As I think you're all aware, the UN Working Group on Arbitrary Detention is due to publish its opinion in the Julian Assange case in Geneva on Friday. Our Ambassador to the UN in Geneva, Julian Braithwaite, has today written to the Chair-Rapporteur of the Working Group setting out the UK's surprise and disappointment at the opinion's findings. We will be exercising our right to respond in full in due course, but wanted to put our strong objections on record before the opinion becomes public.

I attach the letter for your information, and look forward to staying in touch on this issue.

With all best wishes

[REDACTED]

[REDACTED]

Document 4:

From: [REDACTED]
Sent: 04 February 2016 08:50
To: [REDACTED]
Subject: RE: UN Working Group on Arbitrary Detention

Dear [REDACTED]

Thanks very much – that would be very helpful.

All best

[REDACTED]

From: [REDACTED]
Sent: den 3 februari 2016 17:06:41
To: [REDACTED]
Subject: UN Working Group on Arbitrary Detention

Dear all

As I think you're all aware, the UN Working Group on Arbitrary Detention is due to publish its opinion in the Julian Assange case in Geneva on Friday. Our Ambassador to the UN in Geneva, Julian Braithwaite, has today written to the Chair-Rapporteur of the Working Group setting out the UK's surprise and disappointment at the opinion's findings. We will be exercising our right to respond in full in due course, but wanted to put our strong objections on record before the opinion becomes public.

I attach the letter for your information, and look forward to staying in touch on this issue.

With all best wishes

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]