



Foreign &
Commonwealth
Office

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16 December 2009

Mr Bimmler
whatdotheyknow.com

By e-mail: request-17694-19eb9071@whatdotheyknow.com

Dear Mr Bimmler

FREEDOM OF INFORMATION ACT REQUEST: 0738-09

On the 5 September you submitted a Freedom of Information request to the Foreign & Commonwealth Office (FCO) asking for:

... access to all records held by the FCO in connection with the negotiations of a Prisoner Transfer Agreement with the Great Socialist People's Libyan Arab Jamahiriya.

If ... too large ... restrict ... to documents created in December 2007.

I am writing to advise you that following a full search of our paper and electronic records I can confirm the Foreign and Commonwealth Office does hold some information falling under the terms of your request. In keeping with the spirit and effect of the Freedom of Information Act, all information is assumed to be releasable to the public unless exempt. Please find attached a digest of the releasable information.

Some of the information you requested is being withheld as it falls under the exemptions in sections 27, 28, 36, 40 and 42 of the Freedom of Information Act: <http://www.justice.gov.United Kingdom/guidance/freedom-of-information.htm>.

Section 27 (1) & 27 (2) – International Relations

Section 27(1)(a) and (2) of the FOIA recognises the need to protect information that would be likely to prejudice relations between the United Kingdom and other states. In this case, the release of information about relations between the United Kingdom and Libya and the US would be likely to harm our relations with both States. The

application of sections 27(1)(a) and (2) 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 Libya and the US. But section 27(1)(a) recognises that the effective conduct of international relations depends upon maintaining trust and confidence between governments and organisations. If the United Kingdom does not maintain this trust and confidence, its ability to protect and promote the United Kingdom's interests through its international relations will be hampered, which will not be in the public interest. The disclosure of information detailing our relationship with the Libyan and US Governments could potentially damage the bilateral relationship. We also considered under section 27(2) the impact that releasing the information would have on the effective conduct of international relations in maintaining trust and confidence between Governments. This relationship of trust allows for the free and frank exchange of information on the understanding that it will be treated in confidence. If the United Kingdom does not respect such confidences, its ability to protect and promote the United Kingdom's interest through its international relations will be prejudiced. Libya and the US may be more reluctant to share sensitive information with the United Kingdom Government in future and may be less likely to respect the confidentiality of information supplied by the United Kingdom Government, to the detriment of the United Kingdom's interests. This would reduce the United Kingdom government's ability to protect and promote its interests which again would not be in the public interest. For these reasons we consider that the public interest in maintaining these exemptions outweighs the public interest in disclosing it.

Section 28 – Relations within the United Kingdom

Section 28 (1) of the FOIA recognises the need to protect information that would be likely to prejudice relations between two or more administrations in the United Kingdom. In this case, the release of information about relations between the United Kingdom and the Scottish Executive could harm relations between us. The application of section 28 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 how the UK Government and Scottish Executive work together. But section 28 (1) recognises that the devolution settlement relies on an atmosphere of trust, co-operation, sharing information and respect between the four administrations. The Memorandum of Understanding between the four administrations makes it clear there is a strong commitment to freedom of information whilst respecting confidential information between bodies. If the UK Government does not maintain this trust and confidence, there may be a resulting breakdown in relations which would compromise the effectiveness of the settlement. The disclosure of information detailing our working relationship with the Scottish

Executive could potentially result in a breakdown of relations between us, which we consider would not be in the public interest.

Section 36 – Prejudice to effective conduct of public affairs

Some of the information you have requested is exempt under section 36 (2) (b) (i) & (ii) of the FOIA. It is the opinion of an FCO Minister that the disclosure of this information would be likely to inhibit the free and frank provision of advice and the free and frank exchange of views for the purposes of deliberation. This exemption requires the application of a public interest test. We acknowledge that there is a strong public interest in open and accountable government. However, there is a strong public interest in protecting the space Ministers and officials have to consider and discuss options, to ensure that full and proper consideration to policy is given. The candour of contributions to this process would be likely to be affected by officials' assessment of whether the content of such discussion could be disclosed in the near future. This would have a negative impact on the quality of decision making, which is clearly not in the public interest. For these reasons, we consider that the public interest in withholding this information outweighs the public interest in release.

Section 40 – Personal information

Some of the data you requested constitutes personal information under Section 40 of the FOIA, the disclosure of which would contravene one of the data protection principles. In such circumstances, Section 40 (2) and (3) of the FOIA applies. 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, Section 40 confers an absolute exemption on disclosure. Only the names of public figures have been included.

Section 42 (1) – Legal professional privilege

Some of the information relating to this case is exempt under Section 42 (1) of the FOIA. Section 42 is a qualified exemption. We have considered the public interest arguments both for and against disclosure. For disclosure are the arguments that the public will be able to see that advice has been taken, and also be able to assess the quality of that advice. However, in favour of withholding the information is the weighty argument that legal professional privilege (LPP) exists in order to encourage clients to be frank and open with their legal adviser, secure in the knowledge that those communications will not be disclosed without their consent. 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 must 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. For these reasons, the FCO believes that the public interest in maintaining these

exemptions outweighs the public interest in disclosure.

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If you are unhappy with the service you have received in relation to your request and wish to make a complaint or request a review of our decision, you should contact me within 40 days of receipt of this letter.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the Foreign & Commonwealth Office. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

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

Yours sincerely

Emily

Emily Summers
Open Government Liaison Officer
North Africa Team



Data Protection Act 1998

The FCO processes personal data as notified to the Information Commissioner (www.informationcommissioner.gov.uk) for the purpose of working for the United Kingdom's interests in a safe, just and prosperous world. Such personal data may be shared with other United Kingdom Government Departments and public authorities.