

Mr P John

Your Ref: 2013-027

Our Ref: N/A

17 April 2013

Dear Mr John

Freedom of Information Request

I refer to your request for information under the Freedom of Information Act 2000 ('FOIA') with reference number 2013-027.

You made your request on 19 March 2013 and I acknowledged it on 21 March 2013.

Your Request

You asked for the following information:

1. Confirmation that the SFO are aware of, and investigating the Hermitage/Magnitsky affair.
2. Confirmation that the SFO investigation is co-operating with Swiss, Cypriot, Latvian, and Lithuanian investigations.
3. Confirm whether Lord Lamont has been interviewed as a witness in relation to the Hermitage/Magnitsky affair.
4. Disclose correspondence between the SFO and Lord Lamont relating to the Hermitage/Magnitsky affair.

Our Response

The SFO can neither confirm nor deny that we hold information relevant to any part of your request. The reasons for this are set out below.

Section 30 FOIA Exemption

As a public authority, the Serious Fraud Office (the 'SFO') is required to consider all requests for information. It is required to do two things with such requests; firstly to confirm or deny whether it holds the information sought and, if it does hold the information, secondly to supply that information. In some circumstances, however, the duty to confirm or deny does not apply for certain classes of exempt information.

All of the information which you seek is information is, or would be, exempt by virtue of sections 30(1) and 30(2) FOIA. Section 30 FOIA, as a whole, exempts information relating to investigations and proceedings conducted by public authorities such as the SFO. A copy of the provision can be found at Annex 1.

Per section 30(3) FOIA, the SFO's duty to confirm or deny whether it holds the information requested does not arise.

However, section 30 FOIA is also a qualified exemption. As a result the SFO must show that in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the SFO holds the information. This is known as the public interest test. Please note that this test refers to hypothetical information of the nature which you seek and should not be taken as confirmation that the SFO actually holds that specific information.

Public Interest Test

There is a general public interest in publicising the work of the SFO so that people know that serious fraud is being dealt with effectively, to assure people about how public money is being spent and to provide information about the general conduct of our organisation.

However, considering these circumstances, the SFO is content that the public interest test strongly favours maintaining the exclusion of the duty to confirm or deny whether the SFO holds the information for the following reasons:

- There is general recognition that it is in the public interest to safeguard the investigatory process, including how an investigation is conducted and those approached for information and evidence.
- Investigating bodies should be afforded the space to determine the course of an investigation.
- Any potential witnesses need to be protected to ensure that they are not deterred from providing intelligence, making statements or reports in fear that such information might be publicised.
- The right of access to information should not undermine the investigation and prosecution of criminal matters nor dissuade individuals from coming forward to

report wrongdoing. Release of information such as you have described might dissuade other individuals from providing information to the SFO in future.

- Release of any information relating to any on-going investigation, including confirming or denying whether such information is held, would likely cause prejudice to that investigation or prosecution.
- Release of such information may also have a prejudicial effect more generally in relation to the investigatory and prosecution processes of the SFO or other similar public authorities. Simply confirming or denying that an investigation was taking place, could affect an investigation, or potential future investigation.

In addition, as the SFO investigates the most serious and complex cases, which usually involve obtaining evidence from overseas, they can take many months or years to conclude. Therefore, we believe that in most cases several years would need to elapse between the date of any information being obtained, and potentially used by the SFO, and the point at which it could be considered for release (notwithstanding other exemptions or qualifications which may apply). In some cases, the timeframe may need to be even longer. It is also worth noting that it is likely that the public interest in disclosure and non-disclosure of this sort of information can both diminish over time. If, in the future, it could be determined that such information would not be exempt from release under section 30 FOIA, it may still be exempt under section 31 FOIA.

Further Queries

I hope this information is useful to you. If you have any queries about this response, you may ask for a review. You should do this in writing to me within two months of the date of this email. It would assist us with any review if you could tell us which aspects of my reply concern you and why you are dissatisfied.

If you are not content with the outcome of an internal review, you may apply directly to the Information Commissioner for a decision. The Information Commissioner will not usually consider a case unless you have exhausted the internal review procedure. The Information Commissioner's address is:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Yours sincerely

Kyle Soo
Trainee Solicitor

Annex 1

30 Investigations and proceedings conducted by public authorities

(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of—

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained—
 - (i) whether a person should be charged with an offence, or
 - (ii) whether a person charged with an offence is guilty of it,
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct.

(2) Information held by a public authority is exempt information if—

- (a) it was obtained or recorded by the authority for the purposes of its functions relating to—
 - (i) investigations falling within subsection (1)(a) or (b),
 - (ii) criminal proceedings which the authority has power to conduct,
 - (iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or
 - (iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and
- (b) it relates to the obtaining of information from confidential sources.

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2).

(4) In relation to the institution or conduct of criminal proceedings or the power to conduct them, references in subsection (1)(b) or (c) and subsection (2)(a) to the public authority include references—

- (a) to any officer of the authority,
- (b) in the case of a government department other than a Northern Ireland department, to the Minister of the Crown in charge of the department, and
- (c) in the case of a Northern Ireland department, to the Northern Ireland Minister in charge of the department.

[(5) In this section—

“criminal proceedings” includes service law proceedings (as defined by section 324(5) of the Armed Forces Act 2006);

“offence” includes a service offence (as defined by section 50 of that Act).]

(6) In the application of this section to Scotland—

- (a) in subsection (1)(b), for the words from “a decision” to the end there is substituted “a decision by the authority to make a report to the procurator fiscal for the purpose of enabling him to determine whether criminal proceedings should be instituted”,
- (b) in subsections (1)(c) and (2)(a)(ii) for “which the authority has power to conduct” there is substituted “which have been instituted in consequence of a report made by the authority to the procurator fiscal”, and
- (c) for any reference to a person being charged with an offence there is substituted a reference to the person being prosecuted for the offence.