Department for International Trade

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FOI2022/02983

27 September 2022

Dear [redacted],

Thank you for your email of 4 July where you requested the following information:

Under the FOIA 2000, please disclose any Export Control Joint Unit correspondence on the topic of arms exports and/or arms export licence applications to Saudi Arabia, between 1 October 2016 and 15 October 2016.

I seek to obtain correspondence on this topic between the ECJU and ministers and their teams, including the Secretary of State for Foreign Affairs, the Secretary of State for International Trade, and the Prime Minister; and also correspondence on the same topic between the ECJU and the (then) FCO's Middle East and North Africa Directorate (MENAD), the Legal Directorate and APS/Foreign Secretary and Head of Outer Office.

Specifically, I seek ECJU correspondence about both applied for and completed applications, and for correspondence in respect of both individual export license applications as well as export licenses applications generally during this time period.

Under the Freedom of Information Act 2000 ('the Act'), you have the right to:
- know whether we hold the information you require
- be provided with that information (subject to any exemptions under the Act which may apply).

We can confirm that we hold some information falling within the scope of your request.

Information held by DIT
Correspondence between ECJU officials and officials in the Ministerial offices for the Secretary of State for Foreign Affairs, the Secretary of State for International Trade, and the Prime Minister. Also correspondence between ECJU and advisers in Legal Directorate.

Information not held by DIT

Correspondence between ECJU officials and the Secretary of State for Foreign Affairs, the Secretary of State for International Trade, the Prime Minister and APS/Foreign Secretary and Head of Outer Office. Also correspondence between ECJU officials and the (then) FCO's Middle East and North Africa Directorate (MENAD).

Information exempt from disclosure

We have determined that the information we hold is exempt from disclosure under section 35(1)(a) (formulation of government policy), section 27(1)(a) (international relations) and section 43(2) (commercial interests) of the Act.

An explanation of how these exemptions apply to this information is set out below, as follows:

Section 35(1)(a) (formulation of government policy)

Section 35(1)(a) applies because the information requested relates to the formulation of government policy.

Section 35 is a 'qualified exemption' and requires us to carry out a public interest test to consider whether the balance of interest lies in releasing or withholding the information. In considering this, we have paid particular regard to the arguments in favour of disclosure, including that disclosure may be of benefit because:

- Greater transparency makes government more accountable to the electorate and increases trust, and;

- The desirability of citizens being confident that decisions are taken on the basis of the best available information.

Knowledge that the arguments relating to a debate will be released could in fact improve the quality of those arguments. Far from inhibiting the frank provision of advice, there might be circumstances where the prospect of disclosure would enhance the quality of advice.

However, while acknowledging these benefits we consider that on this occasion the arguments for upholding the exemption and withholding the information outweigh those in favour of disclosure. We consider that it is important to protect the integrity of the policy making process, and to prevent disclosures which would undermine this process. It is also important to protect the safe space for frank and free discussion and to preserve the convention on collective Cabinet responsibility.

Consequently, DIT considers that the need to withhold this information outweighs the public interest and that the Section 35 exemption is necessary because:

- Ministers and their officials need space in which to develop their thinking and explore different options in communications and discussions. We are continuing to use the information at issue here to inform the development of our ongoing policy;

  and

- Ministers and their officials need to be able to think through all the implications of different options. In particular, they need to be able to undertake rigorous and candid assessments of the risks to particular programmes and projects.

Good government depends on good decision making and this needs to be based on the best advice available and a full consideration of all the options - there may also be a deterrent effect on external experts or stakeholders who might be reluctant to provide advice because it might be disclosed.

Section 27(1)(a) (international relations)

The Department holds some information relevant to your request which is exempt from disclosure under section 27(1)(a) (international relations) of the Act. Section 27(1)(a) is also a 'qualified exemption' which requires us to carry out a public interest test to consider whether the balance of interest lies in releasing or withholding the information. This exemption recognises the need to protect information that would be likely to damage the United Kingdom's international relations, its interests abroad or its ability to protect and promote those interests.

In carrying out the public interest test, we consider that the balance of interest in releasing the information includes the following:

- it would inform public debate and promote understanding and further an understanding and participation in the public debate of issues of the day.

The public interest in maintaining the international relations exemption is likely to be strong when the disclosure of information would, for example:

- significantly weaken the United Kingdom's bargaining position in international negotiations;

- inhibit other governments' willingness to share sensitive information with the United Kingdom;

- inhibit frankness and openness in diplomatic reporting.

In this case, we have decided the balance of interest lies in withholding the information.

Section 43(2) (commercial interests) of the Act

Section 43 applies to information where its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). When this exemption applies, we have to consider whether the public interest in favour of maintaining the exemption outweighs the public interest in favour of releasing the information.

The factors we took into account in carrying out the public interest test in relation to section 43 of the Act are set out below. We considered:

- the public interest in transparency of, and proper scrutiny of, the expenditure of public money. Both transparency and scrutiny help ensure that public money is used effectively.

- the importance of demonstrating that value for public money is obtained and that public contract processes are conducted in a fair, open and honest way.

- whether information that reveals the names of organisations that have unsuccessfully applied for funding has the potential to damage their commercial interests. We considered whether this information, if disclosed, could damage these organisations' relationships with their partners and undermine confidence in future fundraising exercises resulting in lost revenue from external investors and donors. In addition, release of such information could undermine the organisations negotiating position going forward.

We concluded that the balance of the public interest test determines that the public interest in withholding this information outweighs the public interest in disclosing it. We believe it is important that organisations are able to talk frankly with government and that they can expect confidence to be maintained in market-sensitive communications with DIT; disclosure of such communications between organisations and DIT could undermine confidence in DIT and deter organisations for applying for funding in future.

Appeals procedure

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original request and should be addressed to the Information Rights Unit:

Information Rights Unit
Department for International Trade
Old Admiralty Building
London
SW1A 2DY
Email: foi@trade.gov.uk

Please remember to quote the reference number above in any future communications.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Yours sincerely**,**

Department for International Trade