

Note No A113/06

Protocol Division of the Foreign and Commonwealth Office, presents its compliments to all Diplomatic Missions in London and has the honour to inform them about recent developments related to requests for information, under the Freedom of Information Act, about serious offences allegedly committed by persons entitled to diplomatic immunity.

Missions will be aware that the Freedom of Information Act came into force in the United Kingdom on 1 January 2005. The Act gives any person of any nationality the right to request access to official information held by public authorities. In November 2004, the Foreign and Commonwealth Office briefed all Missions in London on the procedure and implications of the Act. Full details of the Act can be found on the Information Commissioner's website (www.ico.gov.uk).

During the past year, newspaper journalists have submitted requests to Protocol Division for information about offences allegedly committed by persons entitled to immunity, which could potentially carry a prison sentence. To date, the journalists have asked for the names and level of the alleged offenders, the countries they represent, and for details of the nature and circumstances surrounding the alleged offences. The names of the alleged offenders may not be disclosed because this would contravene The Data Protection Act, which states that such personal data must be processed fairly and lawfully. However, following a request for an internal review by a journalist, some details of the nature and circumstances surrounding the alleged offences, as well as levels of representation, were released into the public domain on 24 February.

The Foreign and Commonwealth Office considers that the release of the names of the countries represented by alleged offenders is information which is exempt under Section 27 (International Relations) of the Freedom of Information Act. The Freedom of

Information Act provides that information is exempt information if its disclosure would, or would be likely to, prejudice relations between the United Kingdom and any other State, the interests of the United Kingdom abroad, or the promotion or protection by the United Kingdom of its interests abroad. In January, following his response to a complaint by a journalist, the Information Commissioner upheld the Foreign and Commonwealth Office's refusal to disclose the names of the countries represented by alleged offenders. The full text of the Decision Notice can be found on the Information Commissioner's website and the reference is FAC0069504.

The Freedom of Information Act allows for any enquirer, who is not satisfied with the Information Commissioner's decision, to lodge an appeal to the Information Tribunal. In line with this provision, a journalist has exercised this right and appealed to the Information Tribunal for the release of the names of the countries represented by alleged offenders. The Information Tribunal will consider whether the FCO was right to rely on Section 27 of the Act and whether the FCO correctly applied the public interest test in reaching its decision.

Protocol Division avails itself of this opportunity to renew to all Diplomatic Missions and the assurance of its highest consideration.

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