



Mike Emery  
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FOI Reference: FOI322143  
01/03/2016

Dear Mike Emery

I refer to your request where you asked:

“ Dear Sir, RE: **War on Syria**

Have David Cameron's attacks on Syria been authorised by the United Nation? What is his legal justification for attacking Syria or Syrians? Yours sincerely Mike Emery PS This is a Freedom of Information request.

Yours faithfully,

Mike Emery”

In compliance with our section 16 FOIA duty, you may be interested to see the answer that the Prime Minister gave to the House on 1st December 2015:

“Mr Speaker, let me turn to the question of legality. It is a long-standing constitutional convention that we don't publish our formal legal advice. But the document I have published today shows in some detail the clear legal basis for military action against ISIL in Syria. It is founded on the right of self-defence as recognised in Article 51 of the UN Charter. The right of self-defence may be exercised individually where it is necessary to the UK's own defence and of course collectively in the defence of our friends and allies.

Mr Speaker, the main basis of the Global Coalition's actions against ISIL in Syria is the collective self-defence of Iraq. Iraq has a legitimate government, one that we support and help. There is a solid basis of evidence on which to conclude, firstly, that there is a direct link between the presence and activities of ISIL in Syria, and their ongoing attack in Iraq and, secondly, that the Assad regime is unwilling and/or unable to take action necessary to prevent ISIL's continuing attack on Iraq – or indeed attacks on us. It is also clear that ISIL's campaign against the UK and our allies has reached the level of an “armed attack” such that force may lawfully be used in self-defence to prevent further atrocities being committed by ISIL. And this is further underscored by the unanimous adoption of UN Security Council Resolution 2249.

The Prime Minister also commented that he:

“welcomes United Nations Security Council Resolution 2249 which determines that ISIL constitutes an ‘unprecedented threat to international peace and security’ and calls on

states to take ‘all necessary measures’ to prevent terrorist acts by ISIL and to ‘eradicate the safe haven they have established over significant parts of Iraq and Syria’; further notes the clear legal basis to defend the UK and our allies in accordance with the UN Charter”

You may also wish to know that there is a substantial volume of information on this subject that is in the public domain, including the Prime Minister’s speeches and the full record of the House of Commons debate of 2 December 2015.

The parliamentary record of the debate is available at:

<http://www.publications.parliament.uk/pa/cm201516/cmhansrd/chan80.pdf>.

The PM’s statement responding to the Foreign Affairs Committee report on military operations in Syria is available at: [www.gov.uk/government/speeches/pm-statement-responding-to-fac-report-on-military-operations-in-syria](http://www.gov.uk/government/speeches/pm-statement-responding-to-fac-report-on-military-operations-in-syria).

The Foreign Affairs Committees’ report on the extension of offensive British military operations in Syria is available at: [www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs-committee/publications/](http://www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs-committee/publications/).

This letter constitutes a Refusal Notice in respect of your request in accordance with the terms of section 17 of FOIA.

Section 1 of FOIA places two duties on public authorities. Unless exemptions apply, the first duty (contained in section 1(1)(a)) is to confirm or deny whether the information specified in a request is held. I confirm that the Cabinet Office holds information falling within the scope of your request.

The second duty (contained in section 1(1)(b)) is, unless one or more of the exemptions contained in Part II of FOIA applies, to disclose the information that has been confirmed as being held. The duty to disclose does not apply in respect of the information you have requested because the following exemptions apply:

Section 23(1) - Information supplied by, or relating to, bodies dealing with security matters

Section 26(1) - Defence

Section 27(1) - International Relations

Section 35(1)(c) - Information relating to the provision of advice by any of the Law Officers or any request for the provision of such advice

Section 40(2) - Protection of personal data

Section 42 - Legal Professional Privilege

Section 23(1) is an absolute exemption, in accordance with section 2(3)(b) of FOIA, and so the public interest balance test set out in section 2(2)(b) does not apply. Some of the information you have requested is exempt because it is information falling within the terms of section 23(1), that is, information which “was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)”.

Section 40(2) is also an absolute exemption. Some of the information within the scope of your request is personal data, disclosure of which would contravene the data protection principles (as defined in section 40(7) of FOIA).

All the other exemptions relied on are qualified exemptions, to which the public interest balancing test contained in section 2(2)(b) of FOIA applies. That is, exemptions which apply if “in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information” (section 2(2)(b)) of FOIA).

In all the circumstances of the case, I consider that the public interest in maintaining the exemptions I have referred to above outweighs the public interest in disclosing the information.

I recognise that it is in the public interest that society should, as far as possible, be able to understand and debate the decision taken to use lethal force in Syria against the Islamic State in Iraq and the Levant (ISIL) in the circumstances set out in the Prime Minister’s statement to Parliament of 7 September 2015, and the legal basis for it. There is a public interest in demonstrating to the public that the government sought and received appropriate professional legal advice, and that this military action took place in accordance with the rule of law.

However, the public interest in maintaining legal professional privilege, and in particular in maintaining the confidentiality of legal advice provided by the Law Officers, is of particular importance in this case. There is a strong public interest in the Prime Minister, Secretary of State for Defence and government more broadly being able to seek legal advice in confidence. The particular importance of maintaining the confidentiality of advice given by the Law Officers is reflected in the convention, observed by successive governments, that their advice should not be disclosed outside government.

The advice given by the Attorney represents the definitive legal position of the government and has a special status in terms of the requirement for the Cabinet to have regard to it in coming to a decision. Where the Attorney has advised, that advice forms an essential part of the collective Cabinet decision-making process and therefore must be treated in the same way as other material subject to Cabinet confidentiality.

In this case, with the consent of the Attorney General, the Prime Minister disclosed to Parliament in the statement he gave on 7 September 2015 the fact that the Attorney General’s advice had been sought and given, in recognition of the interest in enabling the public to understand that appropriate professional legal advice was taken before this military action took place. But the long-standing Law Officers’ convention has been observed, and the legal advice has not been disclosed.

This strong public interest in government being able to seek legal advice in confidence is heightened in the context of matters of the importance and sensitivity of those in issue here - engaging matters of intelligence, defence, national security and foreign relations - in respect of which it is exceptionally important that the government should be able to ask its most senior legal adviser for full and careful advice, with confidence that it will remain confidential.

Recognising the strength of the public interests in disclosure of this information, I am nevertheless of the view that those interests are substantially and clearly outweighed by the public interests in maintaining the qualified exemptions I have cited above.

If you have any queries about this letter, please contact the FOI team. Please remember to quote the reference number above in any future communications.

If you are unhappy with the service you have received in relation to your request or wish to request an internal review, you should write to:

Helen Ewen  
Cabinet Office  
70 Whitehall  
London  
SW1A 2AS

email: [foi-team@cabinetoffice.gov.uk](mailto:foi-team@cabinetoffice.gov.uk)

You should note that the Cabinet Office will not normally accept an application for internal review if it is received more than two months after the date that the reply was issued.

If you are not content with the outcome of your internal review, you may apply directly to the Information Commissioner for a decision. Generally, the Commissioner cannot make a decision unless you have exhausted the complaints procedure provided by Cabinet Office. The Information Commissioner can be contacted at:

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Helen Ewen', written in a cursive style.

**FOI Team**  
**Cabinet Office**