



**28/07/2020**

**Lee Wilkinson**

(By email only: [request-633431-2f2e215e@whatdotheyknow.com](mailto:request-633431-2f2e215e@whatdotheyknow.com))

Dear **Lee Wilkinson**

Cabinet Office Internal Review Reference: IR2020/09095

(Original Case Reference: FOI329728)

## REVIEW OF REQUEST UNDER THE FREEDOM OF INFORMATION ACT 2000

Thank you for your email of 3 July 2020. You asked for an internal review of our response of 10 June to your request for information of 16 February 2020. In your request, which was embedded in your request for an internal review of an earlier request ref FOI329251, you asked for information relating to the handling of that request (FOI329251). The 'meta request' was dealt with as FOI329728.

Firstly, I would like to address the point you made in your internal review request regarding the qualified person's opinion, as this has a bearing on the outcome of my internal review. In FOI responses where we are relying on section 36, we would normally include wording to the effect that a Cabinet Office Minister, as the qualified person, has given their opinion that the exemption applies.

The reason this was missing from our reply to you is that at the time we had not had the opportunity to seek the qualified person's opinion. We should have done so, and I apologise that it was not, and for any confusion this may have caused.

The Information Commissioner's guidance on section 36 (paragraph 16) says that section 36 can still be engaged if the qualified person gives their reasonable opinion by the completion of the internal review.

We have now sought the opinion of the qualified person, who is the Minister for the Constitution, and she has given her reasonable opinion that the exemptions at sections 36(2)(b)(i) and (ii) of the Act are engaged.

I consider that at the time of our response to you we were incorrect to cite section 36 without having the qualified person's reasonable opinion. This opinion has now been given and I can therefore confirm that sections 36(2)(b)(i) and (ii) apply to the information held.

As you will see from paragraph 68 of the Information Commissioner's section 36 guidance, the qualified person is not required to conduct the public interest test, and the test can be carried out by officials. I have conducted a fresh public interest test, as follows:

Factors in favour of disclosure are that there is a public interest generally in ensuring that requests made under the Act are properly considered and that the reason for the response is recorded and justified. I recognise that the requester is interested in the handling of their own request, but beyond this individual interest I see little wider public interest in or benefit from disclosure.

Factors in favour of withholding the information are that disclosure would be likely to jeopardise the effective handling of FOI requests and internal reviews in future, particularly in the provision of frank advice and opinions. The recipients of that advice (sometimes Ministers but more often officials) need to be able to think through all the implications of responding to an FOI request in a certain way. Officials may be more reticent in providing frank advice or recording opinions if they thought this would be disclosed. This would be detrimental to the process of due diligence, the provision of quality advice, and sound decision-making.

I have concluded that, in all the circumstances of this case, the public interest favours maintaining the exemptions at sections 36(2)(b)(i) and (ii).

If you are unhappy with the handling of your request for information 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

A handwritten signature in black ink, appearing to read 'Eirian Walsh Atkins', with a horizontal line drawn through the middle of the letters.

Eirian Walsh Atkins