



Department for Business, Energy & Industrial Strategy

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Our ref: FOI2017/08251

31 May 2018

Dear Ginny Rous,

INTERNAL REVIEW OF FREEDOM OF INFORMATION REQUEST – FOI2017 / 08251

Thank you for your email of 18 December requesting an internal review of the response the department provided to your information request.

On 10 March 2017, you requested the following information:

Please could you provide me with all emails between the Business Environment Directorate and

- 1- the Financial Reporting Council*
- 2- auditors PWC, Deloitte, KPMG, Ernst & Young*

Time Period: January 2013 - July 2013.

Subject matter: audit reform

In response to a request from BEIS on 22 March 2017, you then kindly provided the following clarification:

Forgive me for not specifying: my request was aimed primarily at discussions of audit reform within the institutions of the European Union.

The Department provided a substantive response to your request on 28 November. This confirmed that information in scope of your request was held. Some information was then provided and some withheld under sections 27(1), 35(1)(a), 41(1), 42(1) and 40(2) of the Freedom of Information Act 2000 ("the Act"). Details of information already in the public domain was also provided despite the fact that it fell under section 21.

You then submitted a requested for an internal review, as follows:

Please perform an internal review.

There is broad concern about the lobbying power of Big 4 audit firms in relation to the Accounting Directive. Baroness Sharon Bowles, former head of the committee which oversaw the Directive at EU level, wrote about these concerns just today: <https://www.ipe.com/news/regulation/former-mep-adds-voice-to-criticism-of-accounting-watchdog/10022339.article>

There is also concern about the capture of the FRC by these same firms. In addition to Baroness Bowles' comments in the IPE Article above, please see the Times article of November 1st which also cites a concerning conflict of interest between the FRC and BEIS: <https://www.thetimes.co.uk/article/conflicts-of-interest-begin-at-home-for-accountancy-regulator-3rmf68lj3>

Investors have also complained about the lack of accountability of the FRC: <https://www.sarasinandpartners.com/docs/default-source/esg/position-paper---investors-require-a-robustly-independent-audit-regulator-oct-2017.pdf?sfvrsn=4>

Where FRC is having a key role in the policymaking process it is important that there is transparency over this.

Internal Review

In compliance with the Act, I have conducted an internal review of the original response. In performing this review, I have considered whether the original response to your request was correct.

I have concluded that the original response to your request was correct in not disclosing the material identified that was within scope of your request and withheld in accordance with sections 27(1), 35(1)(a), 41(1), 42(1) and 40(2) of the Act. The reasons for this were set out in the original response letter that was sent to you. The following comments are intended to provide further explanation of the decision to withhold the information pursuant to these sections in the Act in addition to that provided in the original response letter.

The process of negotiation in Working Groups of the Council of the European Union is conducted by officials on behalf of the Government. Unlike the parallel proceedings of the European Parliament this is intentionally not a public procedure but is conducted in private so that Member State and European Commission representatives may exchange frank views in the expectation that they will be treated in confidence. The points made in these discussions are often the subject of legal advice and consideration between officials within Government Departments and, where necessary, Departmental partner organisations. This process is preparatory to a public debate by the Council of Ministers from the Member States.

It is important for the UK to respect the confidentiality of the process of negotiation through working groups and attaches' meetings. In particular, it is important to respect the confidential nature of views expressed and proposals made by other Member States' representatives and comments the UK representatives might have made on those views or proposals, as well as to respect the confidentiality of legal advice that contributed to the development of those views.

In addition, in order to ensure the quality and soundness of the arguments expressed by UK representatives during the process of negotiation of the EU Audit Directive and Regulation, BEIS also made sure that the negotiations were the subject of discussion with key stakeholders. This included the Financial Reporting Council as a BEIS partner organisation and a body that could reasonably be expected to comment helpfully given its experience of the practical implementation of the previous EU audit regulatory framework, and the possibility that it might have a continuing role. Also, to a more limited extent, representatives of audit firms and of other

groups, such as investors and corporate preparers of accounts, contributed through meetings convened by the FRC.

The views expressed in these discussions were almost always of substance to discussions between Member States that were of significance diplomatically to the negotiation of the EU Audit Reform proposals. In any case, as the views expressed were by their nature preliminary and preparatory, and expressed in the reasonable expectation of confidence, I do not consider that the balance of public interest weighs in favour of disclosure. The expectation of confidence between the FRC and BIS was explicitly provided for in the Memorandum of Understanding agreed between BIS and the FRC, which was in place throughout the period covered by your request. The Memorandum is available at the following weblink:

<https://www.frc.org.uk/about-the-frc/procedures-and-policies/memorandum-of-understanding/memorandum-of-understanding-between-the-frc-and-th>

Finally I have taken account of the continued significance of the information held in relation to policy making by BEIS both on audit regulation and on possible developments with the UK's departure from the European Union. It is important for the work of this Department that there is preserved a safe space to debate policy issues that are live and ongoing, before we are in position to present that policy externally.

I have also considered carefully the arguments you have set out in your letter in favour of the public interest in disclosure. The FRC's public accountability is for its practical fulfilment of its functions. This is through its ongoing work with BEIS and BEIS Ministers; its reporting to parliament annually in its report and accounts; through its appearances before Committees of each House; and through its regular meetings with its stakeholders. Its practical experience of the operation of the audit regulatory framework, as fed back to BEIS, was of value to officials in considering the most appropriate approach to negotiation. But the FRC's input was that of a consultee. There are sound reasons set out above why those views should have been communicated and considered in private in this instance and it would not be appropriate subsequently to undermine that approach by disclosing the consideration given, especially given its legally sensitive and preliminary nature and the effect such disclosure could have on future consultation and legal consideration.

Should you wish to consider the Government's statements as to the progress of the negotiation, regular updates were provided to the European Scrutiny Committees of each House, which reported these in published committee reports and public debates were also conducted in each House by those Committees.

As the Director assigned to conduct this internal review, I have reviewed the documents covered by your request and given due consideration to the balance of the public interest in the disclosure of the information that was previously withheld. It is my conclusion that the public interest arguments were given proper weight in the initial consideration of your request, and that the decision to withhold information was made correctly.

Appeals procedure

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,

Debbie Gillatt, Director, Business Frameworks Directorate