



Department for
Business, Energy
& Industrial Strategy

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Ms Eleanor Shaikh

Our ref : FOI2020/37449

12 January 2021

Dear Ms Shaikh,

Thank you for your letter of 19 November 2020 where you requested the following information:

“On 21st March 2019, Post Office Limited issued an application to recuse Mr Justice Fraser, the High Court Judge presiding over the Group Litigation.

Please can you disclose communications between the Department for BEIS, UKGI and POL in which you were informed of this course of action?

On 9th April 2019, Post Office Limited delivered an appeal against the Judge’s refusal to recuse himself?

Please can you disclose communications between the Department for BEIS, UKGI and POL in which you were informed of this course of action?”

Under the Freedom of Information Act 2000 (“the Act”), you have the right to:

- Know whether we hold the information you require; and
- Be provided with that information (subject to any exemptions under the Act which may apply).

I can confirm that the Department for Business, Energy and Industrial Strategy (“BEIS”) does hold correspondence covered by the request and is disclosing the

information with redactions. BEIS located two items of correspondence in scope of this request and these are enclosed as Annex A and Annex B.

In relation to the redactions of both pieces of correspondence, BEIS considers that Section 40(2) is engaged and disclosure of personal information of some individuals and their personal information would contravene the General Data Protection Regulation ("GDPR") data protection principles. Information should not be disclosed if it would contravene any of the data protection principles. Section 40(2) provides an absolute exemption for personal data which falls to be dealt with under the Data Protection Act 2018 ("DPA").

Under the DPA, personal data of staff can only be disclosed in accordance with the data protection principles. In particular, the first data protection principle requires that disclosure must be lawful, fair and transparent and must comply with one of the conditions in Article 6(1) of the GDPR. The definition of personal information to which Section 40 applies is wide and can include references to identifiable individuals. Our view is that the release of the information would not be lawful, fair and transparent and none of the conditions of Article 6(1) of GDPR are met.

In relation to the redactions on Annex B specifically, BEIS considers that Section 41 is engaged and as such the communication has been redacted due to our duty to provide a degree of assurance to BEIS' partners, including Post Office Limited ("POL") that information shared in confidence will continue to be respected.

BEIS are satisfied that disclosure of the requested information would constitute an actionable breach of confidence and therefore Section 41(1) is engaged. Section 41 is an absolute exemption and does not require a public interest test. However, we have considered whether there is a general public interest for releasing the information strong enough to override maintaining the duty of confidence. Examples of this would be if the information revealed iniquity or fraud or disclosure was necessary to protect public safety. However, none of these factors are present in the withheld information. We have also considered the general public interest in making information available as it helps transparency and accountability. However, in this case, we do not consider that there are any public interest arguments strong enough to convince us to set aside the duty of confidence. We have therefore concluded to maintain the duty of confidence and withhold the information.

The redacted information in Annex B is also withheld under section 42 of the Act. This exempts information in respect of which a claim of legal professional privilege could be maintained in legal proceedings. The information covered by this request is subject to legal professional privilege (specifically to legal litigation privilege).

Section 42 is a qualified exemption and therefore subject to the public interest test. BEIS has considered the general public interest in the disclosure of information as greater transparency makes the Government more accountable to the electorate, increases trust and also enables the public contribution to policy making to become more effective. However, disclosure of such information could be prejudicial to Government's operations, and without open and candid legal advice, the ability of BEIS and Ministers to assess the legal implications of possible courses of actions to defend decisions from legal challenge would be compromised. Having considered the public interest test, it has been decided that the public

interest favours withholding the relevant information which falls into scope of the request.

The redacted information on pages 1, 2 and 3 in Annex B has been withheld on the grounds that it falls outside the scope of this request.

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 & Records Unit. It would be helpful if you can tell us why you are dissatisfied with the response to your request so we may address this during the internal review.

Information Rights & Records Unit
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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. Complaints can be made to the Information Commissioner via their website at <https://ico.org.uk/make-a-complaint/official-information-concerns-report/official-information-concern/>.

Yours sincerely,

Department for Business, Energy and Industrial Strategy