



Department  
for Work &  
Pensions

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[DWP Website](https://www.dwp.gov.uk)

Our Ref: FOI2021/23750

20 April 2021

Dear Claire Hall,

Thank you for your Freedom of Information (Fol) request received on 19 March. You wrote:

"I write to request a copy of the Department's submission to the Independent Review on Administrative Law. Please treat this as a new request. Although this information has been previously requested (ref: IR2021/08399), section 14(2) of FOIA is not engaged as the information has been confirmed as being held but has not previously been provided by the Department. Further, a reasonable interval has elapsed since my request of 18 November 2020 during which time the Review has concluded, the Panel's Report has been published and the Lord Chancellor has announced the Government's response to the Report. The Department must therefore consider the current request in the usual manner.

The Department's previous refusal of an internal review request in relation to IR2021/08399 stated (on 1 March 2021):

"You have noted that the Panel has now reported to the Ministry of Justice.

Considering the request at the present date, we consider that the requested information is exempt from disclosure because it relates to the formulation or development of government policy, section 35(1)(a) of the Freedom of Information Act 2000. This exemption protects the private space within which Ministers and their policy advisers can develop policies without the risk of premature disclosure.

We understand that the Lord Chancellor is actively considering the Panel's report and evidence that it has received.

## DWP Response

We can confirm that the Department holds the information you have requested but it is being withheld from release under the exemption at Section 36(2)(a)(i) of the Fol Act which states;

- (2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person [in this context, a Minister of the Crown], disclosure of the information under this Act

(a) would, or would be likely to prejudice,

(i) the maintenance of the convention of the collective responsibility of Ministers of the Crown.

We consider that the submission is exempt from disclosure under section 36(2)(a)(i) of the FOIA, because in the reasonable opinion of the DWP's qualified person, its release would be likely to prejudice the maintenance of the convention of the collective responsibility of Ministers. This exemption protects material relating to "the maintenance of the convention of the collective responsibility of Ministers of the Crown". The convention of collective responsibility of Ministers is a long standing convention and is a central feature of our constitution. It enables Ministers to express their own views freely and frankly, but once a decision is made they are all bound to uphold and promote the agreed proposals for reform.

Section 36 is a qualified exemption which means that the decision to disclose the requested material is subject to the public interest test. When assessing whether or not it was in the public interest to disclose the information to you, we took into account the following factors:

#### Public interest considerations favouring disclosure

- The issues that were under consideration by the IRAL Panel are of constitutional importance, and the evidence on which the Panel's Report was based which was presented to the Lord Chancellor and informed the present proposals for reform. There is therefore legitimate public interest in that evidence being released.
- Release of the evidence would increase transparency and understanding of the proposals.

#### Public interest considerations favouring withholding the information:

- The Panel must have a safe space in which to analyse and consider the evidence collected (including the submissions), away from the public gaze and to reach its conclusions. The damage that would likely be inflicted by premature release of evidence collected would impact on the Panel's deliberations and potentially their Report. It is not a credible use of the panel or government's time if they spend time and effort defending and debating publicly options which are still being considered.
- Premature release of evidence collected also has the potential to interfere and/or distract the Panel's process, by causing delay to the ultimate submission of their Report to Government.

On balance, we are satisfied that the public interest in maintaining the exemption outweighs the public interest in disclosure.

You should also be aware that the Ministry of Justice has now published a summary document of all Government submissions to the Independent Review of Administrative Law. A link is available to this [here](#).

If you have, any queries about this letter please contact us quoting the reference number above.

Yours sincerely,

DWP Central Freedom of Information Team  
Department for Work and Pensions

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## **Your right to complain under the Freedom of Information Act**

If you are not happy with this response you may request an internal review by e-mailing [freedom-of-information-request@dw.gov.uk](mailto:freedom-of-information-request@dw.gov.uk) or by writing to: DWP Central FoI Team, Caxton House, 6-12 Tothill Street, London, SW1H 9NA.

Any review request should be submitted within two months of the date of this letter.

If you are not content with the outcome of the internal review you may apply directly to the Information Commissioner's Office for a decision. Generally, the Commissioner cannot make a decision unless you have exhausted our own complaints procedure. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Website: [ICO Contact Information](#) or telephone 0303 123 1113 or 01625 545745