

Robert Sharp
request-737791-b9579b94@whatdotheyknow.com

data.access@justice.gov.uk

19 April 2021

Dear Mr Sharp,

Freedom of Information Act (FOIA) Request – 210318012

Thank you for your request dated 18 March 2021 in which you asked for the following information from the Ministry of Justice (MoJ):

“On page 188 of the report, the committee lists the government departments/agencies/bodies who responded to the call for submissions:

GOV001 Arun District Council
GOV002 Attorney General's Office
GOV003 Crown Prosecution Service
GOV004 Department for Business, Energy and Industrial Strategy
GOV005 Department for Digital, Culture, Media and Sport
GOV006 Department for Education
GOV007 Department for Environment, Food and Rural Affairs
GOV008 Department of Health and Social Care
GOV009 Department for Infrastructure Planning Group
GOV010 Department for International Trade
GOV011 Department for Transport
GOV012 Department for Work and Pensions
GOV013 Foreign, Commonwealth and Development Office
GOV014 HM Treasury
GOV015 Home Office
GOV016 Leicestershire CC
GOV017 Local authorities (Islington Council, North Norfolk District Council Eastlaw, Three Rivers District Council)
GOV018 Maidstone, Swale and Tunbridge Wells councils
GOV019 Medway Council
GOV020 Ministry of Defence
GOV021 Ministry of Housing, Communities and Local Government
GOV022 NHS Resolution
GOV023 No. 10 Downing Street
GOV024 Ofsted
GOV025 Planning Inspectorate
GOV026 Scottish Government
GOV027 Serious Fraud Office
GOV028 Welsh Government

Please supply these submissions.

If this information is exempt under s.21 of the Freedom of Information Act 2000 ("the Act"), please indicate where online I might be able to view and download the submissions.

If this information is exempt under s.22 of the Act, please indicate the date on which it is to be published, and where.

A previous (albeit broader) request of this nature made on 2 February (your reference 210202022) and was refused under section 35 (1)(a) of the FOIA because it related to the formulation or development of government policy. In the Ministry's response to me on 2nd March 2021, the factors that weigh against disclosure were helpfully set out:

"The Government must have a safe space in which to consider the relevant material, develop policy options and reach decisions away from external interference and distraction." ... "Policy formulation is ongoing at the moment and this process could be damaged by the premature release of the requested information." ... "Its release would lead to comment and speculation about the substance of policy that was still under development and time would be wasted responding to such comment and speculation." ... "This, in turn, would potentially cause delay to the overall process, setting back the Government's work towards publishing its response to the IRAL report.

Now the report has been published and the committee has been wound up, these considerations no longer apply. This means that the s.35 exemption no longer applies either."

Your request has been handled under the FOIA.

I can confirm that the MoJ holds the information that you have requested. However, part of the information is exempt from disclosure under section 21 of the FOIA, because it is reasonably accessible to you. Further, some of the information is exempt from disclosure under section 36(2)(a) of the FOIA, because its release would prejudice the maintenance of the convention of the collective responsibility of Ministers of the Crown.

Submissions GOV001, GOV003, GOV009, GOV016, GOV017, GOV018, GOV019, GOV022, GOV024, GOV025, GOV026, GOV027, and GOV028 are exempt from disclosure under section 21, because they can be accessed via the following link: <https://consult.justice.gov.uk/judicial-review-reform/judicial-review-proposals-for-reform/>

It may be worth clarifying that the Department for Infrastructure Planning Group, submission GOV009, is part of the Northern Ireland Executive.

In relation to the 15 remaining submissions you have requested, a summary of these submissions has been released. The information contained in that summary is therefore exempt from disclosure under section 21, because it can be accessed via the following link: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/976219/summary-of-government-submissions-to-the-IRAL.pdf

The remaining information from those submissions is exempt from disclosure under section 36(2)(a) of the FOIA, because it would prejudice the maintenance of the convention of the collective responsibility of Ministers of the Crown.

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

- There is a public interest in the release of information where this leads to a better understanding of how Government conducts its business. This can help to inform public debate and to increase public confidence that decisions are properly made.

- The potential reform of administrative law is a subject of constitutional importance and there is legitimate public interest in the evidence submitted to the IRAL.
- Release of the information sought would increase transparency.

Public interest considerations favouring withholding the information

- Collective responsibility is a constitutionally important convention which underpins the system of Cabinet government. The collective responsibility exemption is therefore accorded a particularly high level of importance by the Information Commissioner's Office (ICO) given its constitutional nature.
- The principle requires that Ministers should be able to express their views frankly in the expectation that they can consider a wide range of views and options freely in private while maintaining collective responsibility when decisions have been reached.
- The provision of a wide range of options and views must be allowed to occur in a safe space, without the risk of disclosure, otherwise the range of options will be restricted, and quality of submissions and discussion will be poorer.

On balance, I consider the public interest favours withholding the information at this time.

Appeal Rights

If you are not satisfied with this response you have the right to request an internal review by responding in writing to one of the addresses below within two months of the date of this response.

data.access@justice.gov.uk

Disclosure Team, Ministry of Justice

You do have the right to ask the Information Commissioner's Office (ICO) to investigate any aspect of your complaint. However, please note that the ICO is likely to expect internal complaints procedures to have been exhausted before beginning their investigation.

Yours sincerely

Judicial Review Reform team