



Ministry of Justice

Mr Cross

Sent by email to: request-327366-4640c482@whatdotheyknow.com

Human Rights Policy
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Our Reference: FOI 105076

24 May 2016

Freedom of Information Request

Dear Mr Cross,

Thank you for your email of 01 May 2016, in which you asked for the following information from the Ministry of Justice (MoJ):

The ICO has issued guidance that creating lists using existing information is not creating new information.

"The FOIA and the EIR apply to information held by public authorities. They do not have to create new information to respond to requests. A public authority is not creating new information where:

• it presents information it holds in the form of a list or schedule; • compiling an answer to a request involves simple manual manipulation of information held in files; or, • it extracts information from an electronic database by searching it in the form of a query. "

https://ico.org.uk/media/for-organisations/documents/1159/information_from_original_sources.pdf

The information I am requesting relates to the objectives contained in the MOJ's single departmental plan as is clear from the text of the request itself. I consider that my original request was clear and specific and that the MOJ does not reasonably require more information to answer it. I am happy for the MOJ to begin its search with the files related to Bill of Rights policy work as I believe you are suggesting. I would however expect the MOJ to consider whether any other records could fall inside the scope of my original request.

Your request has been handled under the Freedom of Information Act 2000 (FOIA).

I can confirm that the department holds information that you have asked for, but unfortunately it is exempt from disclosure.

We are not obliged to provide information if it relates to the formulation of government policy. In this case, the information requested is exempt under section 35(a) of the Act as the requested information relates to the development of policy concerning the government's proposals for a Bill of Rights Reform of the UK's human rights framework involves careful consideration within government. Our proposals will be published for consultation in due course.

In line with the terms of the exemption in the Freedom of Information Act, we have also considered whether it would be in the public interest for us to provide you with the information, despite the exemption being applicable. In this case, we have concluded that the public interest favours withholding the information.

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 clear public interest in the processes leading to key decisions being as transparent as possible. Greater transparency generally makes government more accountable and increases trust.
- Disclosure would perform an educative function by allowing the public to find out more about how government policy is being formed in regard to the Bill of Rights, and it would also inform the public of the reasoning behind policy proposals

Public interest considerations favouring withholding the information

- Disclosure would involve only partial disclosure of policy. It is desirable that, proposals are published as a whole and in context and that it is accessible to all who might have an interest, at the same time, rather than someone having the chance to see it before others as a result of an FOI request.
- In order to best develop policy and provide advice to Ministers, officials need a safe space in which free and frank discussion can take place. The need for this safe space is considered at its highest during the live stages of a policy. Sharing views internally within the Department and across Government is important to ensure that all relevant considerations are taken into account in developing and implementing policy. Disclosure of the information concerned at a time when these views are still being considered would negatively impact the Department's ability to fully consider all options before the reforms are announced publicly.

We reached the view that, on balance, the public interest is better served by withholding this information under section 35(a) of the Act at this time.

You can also find more information by reading the full text of the Act, available at <http://www.legislation.gov.uk/ukpga/2000/36/section/35>

You can find out more about Section 35 and by reading the extract from the Act and some guidance points we consider when applying this exemption, attached at the end of this letter.

You have the right to appeal our decision if you think it is incorrect. Details can be found in the 'How to Appeal' section attached at the end of this letter.

Disclosure Log

You can also view information that the Ministry of Justice has disclosed in response to previous Freedom of Information requests. Responses are anonymised and published on our on-line disclosure log which can be found on the MoJ website: <https://www.gov.uk/government/organisations/ministry-of-justice/series/freedom-of-information-disclosure-log>

Yours sincerely

Miss Eneh

How to Appeal

Internal Review

If you are not satisfied with this response, you have the right to an internal review. The handling of your request will be looked at by someone who was not responsible for the original case, and they will make a decision as to whether we answered your request correctly.

If you would like to request a review, please write or send an email **within two months of the date of this letter** to the Data Access and Compliance Unit at the following address:

Data Access and Compliance Unit (10.34),
Information & Communications Directorate,
Ministry of Justice,
102 Petty France,
London
SW1H 9AJ

E-mail: data.access@justice.gsi.gov.uk

Information Commissioner's Office

If you remain dissatisfied after an internal review decision, you have the right to apply to the Information Commissioner's Office. The Commissioner is an independent regulator who has the power to direct us to respond to your request differently, if he considers that we have handled it incorrectly.

You can contact the Information Commissioner's Office at the following address:

Information Commissioner's Office,
Wycliffe House,
Water Lane,
Wilmslow,
Cheshire
SK9 5AF

Internet address: https://www.ico.org.uk/Global/contact_us

EXPLANATION OF FOIA - SECTION 35 – FORMULATION OF GOVERNMENT POLICY

We have provided below additional information about Section 35 of the Freedom of Information Act. We have included some extracts from the legislation, as well as some of the guidance we use when applying it. We hope you find this information useful.

The legislation

Section 1: Right of Access to information held by public authorities

- (1) Any person making a request for information to a public authority is entitled—
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.

Section 35: Formulation of government policy

(1) Information held by a government department or by the Welsh Assembly Government is exempt information if it relates to—

- (a) the formulation or development of government policy,
- (b) Ministerial communications,
- (c) the provision of advice by any of the Law Officers or any request for the provision of such advice, or
- (d) the operation of any Ministerial private office.

(2) Once a decision as to government policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded—

- (a) for the purposes of subsection (1)(a), as relating to the formulation or development of government policy, or
- (b) for the purposes of subsection (1)(b), as relating to Ministerial communications.

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

(4) In making any determination required by section 2(1)(b) or (2)(b) in relation to information which is exempt information by virtue of subsection (1)(a), regard shall be had to the particular public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to decision-taking.

(5) In this section—

“government policy” includes the policy of the Executive Committee of the Northern Ireland Assembly and the policy of the Welsh Assembly Government;

“the Law Officers” means the Attorney General, the Solicitor General, the Advocate General for Scotland, the Lord Advocate, the Solicitor General for Scotland, the Counsel General to the Welsh Assembly Government and the Attorney General for Northern Ireland;

“Ministerial communications” means any communications—

- (a) between Ministers of the Crown,
- (b) between Northern Ireland Ministers, including Northern Ireland junior Ministers, or
- (c) between members of the Welsh Assembly Government

and includes, in particular, proceedings of the Cabinet or of any committee of the Cabinet, proceedings of the Executive Committee of the Northern Ireland Assembly, and proceedings of the Cabinet or any committee of the Cabinet of the Welsh Assembly Government;

“Ministerial private office” means any part of a government department which provides personal administrative support to a Minister of the Crown, to a Northern Ireland Minister or a Northern Ireland junior Minister or any part of the administration of the Welsh Assembly Government providing personal administrative support to the members of the Welsh Assembly Government;

“Northern Ireland junior Minister” means a member of the Northern Ireland Assembly appointed as a junior Minister under section 19 of the M1Northern Ireland Act 19

Guidance

Section 35 is aimed at protecting the policy-making process in order to maintain the delivery of effective government. It only applies to government departments (including a Northern Ireland Government Department) and the Welsh Assembly Government.

Section 35 covers information that ‘relates to’:

- formulation or development of government policy
- ministerial communications
- provision of advice by any of the Law Officers
- the operation of ministerial private offices

Information ‘relating to’ one of the categories above will include the substantive information falling within the description, for example, information which describes a new government policy, or is contained in a ministerial communication. It will also include other information which is about that information.