



Department for
Business, Energy
& Industrial Strategy

Department for Business, Energy &
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FOI2019/19795

10 October 2019

Dear Mr M Smith,

Thank you for your email of 26 September where you requested the following information:

Please provide me with copies of information relating to the processing of my Freedom of Information request of 4 October 2018 under your reference FOI2019/12255, and the associated internal review under your reference IR2019/17776.

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

- know whether we hold the information you require
- 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 holds information in scope of your request. Please see email chain starting on page 3 of this response.

Some of the information has been withheld under Section 40(2) of the Freedom of Information Act which provides an absolute exemption for personal data which then falls to be dealt with under the Data Protection Act 2018. Personal data of third parties 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 General Data Protection Regulation (GDPR). We consider that to disclose the names of a third party within some of the documents would contravene of one or more of those data protection principles. 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 names would not be lawful, fair and transparent and none of the conditions of Article 6(1) of GDPR are met.

Some of the information relating to the processing of your Freedom of Information request under reference FOI2019/12255, and the associated internal review under reference IR2019/17776, is not being released as it relates to the formulation of policy regarding the decision to change the Early May Bank Holiday to mark the 75th anniversary of VE Day in 2020.

Section 35(1)(a) of the Act exempts information from being released if it relates to the formulation or development of government policy.

The use of section 35(1)(a) is subject to a public interest test, there is a strong public interest in ensuring that Ministers and officials are able to discuss policy options fully and frankly and for the space in which such discussions take place to be protected. If the information requested were made public, we believe the nature of such frank discussion and debates on key public policy issues would be inhibited, and the Department would be prevented from taking decisions based on the fullest understanding of the issues involved.

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 Unit:

Information Rights Unit
Department for Business, Energy and Industrial Strategy
1 Victoria Street
London
SW1H 0ET
Email: FOI.Requests@beis.gov.uk

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. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Yours sincerely,

The Department for Business, Energy and Industrial Strategy

Hi [REDACTED]

The relevant standard lines are below. I would advise that, whichever lines you consider to use, you strengthen them by amending the lines to bring them in to context of this particular request. This will show to the requester that their request has been given due consideration and generic lines have not just been used.

S35(1)(a) formulation of government policy

Section 35(1)(a) exempts information from being released if it relates to the formulation or development of government policy. The information you have requested relates to the formulation and development of policy regarding [name of policy or policy area].

The use of section 35(1)(a) is subject to a public interest test. We understand there is a public interest in information about *[policy area of request. Arguments will be stronger if you can explain that the policy is still being developed and that release would adversely affect the progression of this policy]*, Disclosure could provide better insight into the policy and the reasoning behind it. Decisions that Ministers make may have a significant impact on the lives of citizens and there is a public interest in deliberations on this topic being transparent.

However, against this there is a strong public interest in ensuring that Ministers and officials are able to discuss policy options fully and frankly and for the space in which such discussions take place to be protected. If this information were made public, we believe the nature of such frank discussion and debates on key public policy issues would be inhibited, and the Department would be prevented from taking decisions based on the fullest understanding of the issues involved.

[If information is from, or involves discussions with, third parties]

As part of the formulation of this policy it is essential that officials are able to communicate with external parties with relevant knowledge and experience. It is essential that third parties feel they can provide Government with candid views without fear that that information will be made public, particularly when those views relate to sensitive and ongoing issues. This communication must include the ability to receive information on a confidential basis or the frankness of the information will inevitably be diminished. Release would lead to significantly less considered and effective policy in this important area.

We therefore take the view that there is a significant public interest in withholding the information requested. It is essential that a safe space to debate live policy issues away from external interference and distraction is preserved. We take the view that, on balance, the public interest is better served by withholding this information.

Other example

This is a qualified exemption and requires us to carry out a public interest test to consider whether the balance of interest lies in releasing or withholding the information. We have paid particular regard to the arguments in favour of disclosure, including that disclosure may be of benefit because:

- greater transparency makes government more accountable to the electorate and increases trust;
- the desirability of citizens being confident that decisions are taken on the basis of the best available information;
- knowledge that the arguments relating to a debate will be released will in fact improve the quality of those arguments. Far from inhibiting the frank provision of advice, there might be circumstances where the prospect of disclosure would enhance the quality of advice.

However, whilst acknowledging these benefits we consider that, on this occasion, the arguments for upholding the exemption and withholding the information outweigh those in favour of disclosure. In particular, consideration of the following factors has led us to the conclusion that the public interest requires the exemption in s35(1)(a) to be upheld because:

- Ministers and officials need space in which to develop their thinking and explore different options in communications and discussions. We are continuing to use the information at issue here to inform the development of our ongoing policy;
- Ministers and officials need to be able to think through all the implications of different options. In particular, they need to be able to undertake rigorous and candid assessments of the risks to particular programmes and projects;
- Good government depends on good decision making and this needs to be based on the best advice available and a full consideration of all the options - there may be a deterrent effect on external experts or stakeholders who might be reluctant to provide advice because it might be disclosed.

Once your Deputy Director has approved the response, please return to me with your completed FOI Cover Sheet by **03 July (earlier is acceptable)**.

If you have any queries or require any further advice please do not hesitate to contact me.

I look forward to hearing from you soon.

Kind Regards

[Redacted]

Section 40



Department for
Business, Energy
& Industrial Strategy

[Redacted]
Freedom of Information Adviser

[Redacted]
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