

From the Director of HR and Corporate Services

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Our Refs: **FOI 2012 – 0074**
 FOI 2012 – 0083
 IR 2012 – 0010

Date: **3 December 2012**

Dear Mr Brown,

FREEDOM OF INFORMATION ACT 2000 (FOIA) – REQUEST FOR INTERNAL REVIEW

In your email of 10 July 2012 you asked for an internal review into the handling of your FOI requests of 21 May and 23 May 2012. I am sorry for the delay in replying to your email.

I am now writing to let you know the outcome of my review. I should explain at the outset that my role in carrying out such a review is in line with the FOIA's section 45 Code of Practice.

I have fully examined the processes surrounding the handling of your FOI requests, and note that given the similarity of the requests one combined response was issued on 2 July 2012. However, I also note that the Department did exceed the statutory 20 working day response limit. OFMDFM was therefore in breach of section 10(1) of the FOIA, and I apologise on behalf of the Department for this.

The response informed you that the information you requested was being withheld under the terms of the exemption in section 36 (2) (c) of the FOIA. Section 36 (2) (c) of the FOIA states:

'(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act –

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.'

In reviewing the application of section 36, I have considered the guidance issued by the Information Commissioner :

(http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/section_36_prejudice_to_effective_conduct_of_public_affairs.ashx).

For the exemption to be engaged two factors must apply: (i) the qualified person is required to give an opinion that the prejudice would, or would be likely to, occur and (ii) that opinion must be reasonable. I am content that the opinion of the appropriate 'qualified person' was provided, and note that the more exacting term of 'would prejudice' formed part of this opinion. I am also content that the opinion can be described as 'reasonable', using the same plain interpretation of the word adopted by the Information Commissioner in his guidance note. Therefore, in my view, Section 36 was correctly engaged.

As section 36 is a qualified exemption, I have considered the public interest test arguments put forward by the Department. I note that considerable weight was placed on the fact that the release of information relating to unanswered Assembly questions under FOI would circumvent conventional Assembly practices and, ultimately, undermine the proceedings of the Assembly as a whole. The strength of this argument, aligned with the fact that the qualified person decided that disclosure would be prejudicial to the conduct of public affairs (as opposed to 'would be likely' to be prejudicial), convinces me that the balance of the public interest is clearly in favour of maintaining the exemption. It is my view that it would be inappropriate to disclose information requested under Assembly procedures through the FOIA route. Indeed, Assembly Questions which have been tabled during the mandate of this Assembly (2011-15) remain 'live' for the duration of the mandate, so any questions posed will not 'fall' as a consequence of the Assembly's recesses.

I therefore uphold the original decision taken in this case.

FOI request ref: FOI 2012 - 0083

It has been brought to my attention that you have re-submitted some of the questions you posed previously in a separate email of 10 July 2012, and wish to have them viewed as a new request (ref: FOI 2012 – 0083). Therefore, I have taken the opportunity to examine their content and note that, in the main, they are re-worded versions of some of the unanswered Assembly Questions that you submitted before. You should note that section 14(2) of the FOIA states:

*'Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or **substantially similar request** [emphasis added] from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.'*

Whilst the Department can therefore treat the questions in your email of 10 July 2012 as repeated requests, I am taking the opportunity to point out that the principal governing the use of section 36 and the public interest arguments apply to the information you have requested. With a view to avoiding unnecessary bureaucracy, I have to tell you that the Department does not intend to respond to this request or any future requests that follow the same theme.

If you are dissatisfied with my findings, you have the right to appeal 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,

Alan Maitland

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