

Thursday 29 August 2019

Emailed to: request-594220-0a96a72d@whatdotheyknow.com

Dear Mr Hai

Freedom of Information Request

Thank you for your email received on 1st August 2019. I have been asked to respond to your request which we are processing as a request for information held under the Freedom of Information Act 2000 ('FOIA'). You have asked:

1. *Can you tell me what no deal planning has been done by the Harbour and provide me with the documents in regards to Brexit?*
2. *Can you tell me have there been any changes with the election of Boris Johnson.*

S1(1) of the FOIA requires that when we receive a request for information, the first task we have to complete is to determine whether we hold the requested information. Whilst the Port of Belfast is a gateway for trade to and from Great Britain, the EU and non EU locations, the Harbour itself is not involved in trading. Furthermore, we anticipate that Brexit (in any form be that with a deal or a no deal Brexit) may not be a material issue for the Harbour, on the basis that the majority of cargo throughput is directly to and from Great Britain, with a significant proportion of the remainder being outside the EU.

We do not hold any information which relates to the second part of your request.

In respect of the first part of your request, I have identified some relevant documentation which can be categorised as an assessment of potential Brexit risks to the operating business of Belfast Harbour. However I have taken the view that S43 (2) of the FOIA is engaged and that this information should be withheld. S43 (2) states that information is exempt if its disclosure would or would be likely to prejudice the commercial interests of any person, including the public authority holding it. This is a qualified exemption and is subject to the public interest test. When deciding if S43 (2) was engaged I considered three criteria namely:

- The actual harm that would or would be likely to occur if the withheld information was disclosed and whether this harm relates to commercial interests;
- The causal relationship between the potential disclosure of the information being withheld and the prejudice with the exemption is designed to protect; and
- The level of likelihood of prejudice and in particular whether there is a real and significant risk of the prejudice occurring.

I concluded that to disclose information, at this time of uncertainty, relating to our no deal Brexit planning could cause harm to our commercial interests. I consider this information to be commercially sensitive as it relates to our assessment of the potential risks of a no deal Brexit and the impact this could have on current discussions, negotiations and projects within the Harbour business. We negotiate with a range of customers who use the Harbour and focused on developing the amount of seaborne trade we handle in Northern Ireland as well as continuing to contribute to economic development in Northern Ireland. As a result, I am in no doubt that actual harm would be caused to our commercial interests if documents relating to our planning for a potential no deal Brexit were released at this time. Some of the risks I have identified, for example in relation to our ability to negotiate business, are particularly sensitive from a commercial perspective and to disclose the information at this time would cause prejudice to the risk the exemption is designed to protect. As the UK prepared to exit the EU, we must continue to do business and to publish documentation identifying risks which may never arise, could damage our commercial interests. I have therefore concluded that the risk of harm is real, not merely hypothetical.

I next considered the public interest. Belfast Harbour is committed to transparency and accountability. We understand that there is a general public interest in demonstrating the action that we have taken to plan for the risk of a no deal Brexit. However there is also a public interest in the Harbour being able to do business with its trading partners, without those partners being made aware of any potential risks or vulnerabilities created by the uncertainty of a no deal Brexit. There is also a risk that to disclose information about plans in place which may never be required, is contrary to the public interest as it could be easily misinterpreted. I therefore concluded that the public interest in disclosure of the withheld information is outweighed by the public interest in maintaining the exemption.

I have also considered whether S36 (2) (b) is engaged on this occasion. S36 (2) (b) provides an exemption if disclosure would or would be likely to inhibit the free and frank provision of advice or exchange of views within a public authority. It is not currently certain whether there will be a no deal Brexit and those within the Harbour require a safe space to discuss how best to plan for the future. The concern is that if these discussions had to be published there would be a chilling effect in so far as people would be deterred from expressing their views on a range of possible outcomes, if they knew that these views were to be published. The issues surrounding Brexit are still very much live and if we were compelled to disclose details of discussions to date, I am in no doubt that this would have a significant detrimental effect on the quality of all future discussions.

I then went on to apply the public interest test. As outlined above, Belfast Harbour is committed to transparency and accountability. We understand that there is a general public interest in demonstrating the action that we have taken to plan for the risk of a no deal Brexit. However there is also a public interest in those involved in planning for Brexit to be able to debate live issues free from public scrutiny in a safe space, until more certainty is achieved about Brexit. There is also a risk that to disclose information about plans at this point in time, is contrary to the public interest as it could deter the free and frank exchange of views during further planning meetings. I therefore concluded that the public interest in disclosure of the withheld information is outweighed by the public interest in maintaining the exemption.

After careful consideration, I have concluded that at this point in time, we are not in a position to release the information held which falls within the scope of your request. 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. 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:
The Information Commissioner's Office- Northern Ireland, 3rd Floor, 14 Cromac Place, Belfast BT7 2JB.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'MBullick', with a stylized, cursive script.

Maurice Bullick
Director of Finance & Compliance