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Amanda Hart  
Via: request-672291-218e8eac@whatdotheyknow.com

Our ref: IR2020/10941

6 October 2020

## **FREEDOM OF INFORMATION REQUEST REF: IR2020/10941 - INTERNAL REVIEW**

We refer to your email of 10 August 2020 in which you requested an Internal Review. Your request for an Internal Review was prompted by the Cabinet Office's response of the same date to your request for information (reference FOI2020/08557) under the Freedom of Information Act 2000 ('the Act').

This letter constitutes the outcome of the Internal Review. My findings are below.

### **The request**

On 24 June 2020, we received your request for information. You wrote:

*'If it exists, please kindly provide a copy of the review of the country's readiness for a Covid-19 second wave that was given to the Prime Minister since the Covid-19 outbreak.'*

### **The response**

On 10 August 2020, the Cabinet Office responded to you. It informed you that information within the scope of your request was held but that it was exempt from disclosure under section 35(1)(a) of the Act, being information relating to the formulation or development of government policy.

### **Request for an Internal Review**

On 10 August 2020 you requested an Internal Review. You wrote:

*'We respectfully reject your claim that the information requested is exempt because it contains 'formulation of policy' - but even if it did you could redact any 'discussions' about such things. We still require the information requested. Furthermore the Freedom of Information Act does not contain any specific censorship clauses to prevent the release of material deemed 'too controversial and sensitive for public ears'. We shall allow 20 working days for the information, unless you specify that our request is complicated and requires 40 working days to fulfil, before passing it onto the Information Commissioner. While we would accept the redacted report (as indicated) there is a possibility that the Information Commissioner may require it to be released in full should the matter be passed to them.'*

### **Outcome of the Internal Review**

I have concluded that the Cabinet Office:

- correctly exempted from disclosure the information within the scope of your request under section 35(1)(a) of the Act; and

- can also rely upon section 35(1)(b) of the Act to exempt information within the scope of your request.

## **Section 35 of the Act**

### *Section 35(1)(a) of the Act*

I consider that the Cabinet Office was correct to determine that the information within the scope of your request is exempt from disclosure under section 35(1)(a) of the Act.

Section 35(1)(a) of the Act exempts from disclosure information which relates to the formulation or development of government policy.

The information within the scope of the request concerns the possibility of a further wave of COVID-19 in the UK. It therefore relates to the formulation or development of the Government's policy towards the handling of the COVID-19 pandemic.

The Cabinet Office considered the public interest factors both in favour of, and against, disclosure of this information.

It referred to the general public interest in favour of disclosure and how openness in government may increase public trust and engagement with the Government.

However, it also referred to the strong public interest in policy making and its implementation being of the highest quality and informed by a full consideration of options. It said that Ministers must be able to discuss policy freely and frankly and exchange views on the available options and be able to understand their possible implications. This, it said, would be undermined if details of discussions were routinely made public, which would lead to a decline in the quality of debate and poorer decision making.

These were reasonable factors to take into account in weighing up the public interest and I consider that the Cabinet Office reached the correct conclusion in determining that the public interest was in favour of the information not being disclosed.

To this I would add that there is a specific public interest in Ministers and officials being able to freely discuss policy relating to the COVID-19 pandemic in particular in view of the threat it poses to public health.

I therefore consider that the Cabinet Office correctly determined that the information within the scope of your request should be exempt from disclosure under section 35(1)(a) of the Act.

### *Section 35(1)(b) of the Act*

I have also concluded that information within the scope of your request is exempt from disclosure under section 35(1)(b) of the Act on the grounds that it relates to Ministerial communications. Under section 35(5) of the Act, 'Ministerial communications' includes proceedings of the Cabinet or of any committee of the Cabinet.

The public interest factors in favour of disclosure in relation to this exemption are the same as those which are relevant to section 35(1)(a) of the Act.

They are, in my opinion, outweighed by the public interest factors in favour of withholding the information from disclosure.

I have referred above to the strong public interest that the policy making process is one of the highest quality that is informed by a full consideration of options.

This is true of Ministerial communications, which must be free and frank in nature. I consider that if Ministerial communications were routinely disclosed to the public it would inhibit Ministers from being frank and candid in their deliberations. The quality of debate that underlies collective decision-making would be undermined, leading to worse-informed and poorer decision-making. I note that the consequences of such an outcome in relation to decision-making on the subject of the COVID-19 pandemic would be particularly negative.

I am therefore satisfied that the public interest is in favour of withholding the information you have requested from disclosure in relation to section 35(1)(b) of the Act.

### **Matters raised in your request for an Internal Review**

In your request for an Internal Review of 10 August 2020 you stated that you rejected the claim that the information within the scope of your request was exempt because it contained the formulation of policy. You stated that the Cabinet Office could redact any 'discussions' about this.

The information within the scope of your request plainly relates to the formulation or development of the Government's policy towards the COVID-19 pandemic. Furthermore, as the Information Commissioner notes in her guidance on section 35 of the Act, the term 'relates to' can be interpreted very broadly. The Commissioner observes that the information does not itself have to be created as part of the policy development. Any significant link between the information and the policy development is enough.<sup>1</sup> The section can therefore be applied to information which directly concerns the policy development and that which relates to it.

We note your view that you still require the information. While we acknowledge that, we refer you to the public interest factors above in which I have determined that the public interest factors in favour of withholding the information are stronger than those factors (including your requirements) in favour of disclosure.

You have also noted that:

*'the Freedom of Information Act does not contain any specific censorship clauses to prevent the release of material deemed 'too controversial and sensitive for public ears'.'*

The Act, as passed by Parliament, contains *exemptions* on disclosure of information held by public authorities. Some exemptions, such as section 35 in respect of government policy, concern particular classes of information. Other exemptions are based upon the harm that may arise from disclosure. These provisions do not constitute censorship. While you are correct in noting that there are no exemptions for information which is 'too controversial and sensitive for public ears', the information you have requested, as has been explained above, is exempt on

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1200/government-policy-foi-section-35-guidance.pdf>

the basis that it relates to the development or formulation of the Government's policy on COVID-19 and relates to Ministerial communications.

### **The Information Commissioner**

This response ends the complaints process provided by the Cabinet Office. If you are not content with the outcome of your internal review, you may apply directly to the Information Commissioner. The Information Commissioner can be contacted at:

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

Yours sincerely

Eirian Walsh Atkins  
Head of FOI and Transparency  
Cabinet Office