



Department
for Exiting the
European Union

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Mathias Schindler
Via: request-442339-1385999b@whatdotheyknow.com

Our ref: DEX001302

21 November 2018

Dear Mathias Schindler,

FREEDOM OF INFORMATION REQUEST REF: DEX001302 - INTERNAL REVIEW

Thank you for your email of 28 August 2018 requesting an internal review of your request made under the Freedom of Information Act 2000 ('the Act'), our reference: DEX001302. I have now carried out that internal review and have attached below my findings. I sincerely apologise for the time taken to complete the review and provide you with a substantive response. The Department for Exiting the European Union, (DExEU), aims to complete all requests for an internal review within a maximum of 40 working days, however, this is not always possible.

The Request

On 6 July 2018 You asked for the following information:

According to: <http://mollymep.org.uk/2017/10/30/government-list-50-secret-studies/>, 58 studies exist concerning a number of industries and sectors.

A) [CLARIFIED TO:] I would hence propose to narrow the scope of part A down to information that initiated the creation of the individual studies, such as a letter asking or proposing to write or commission a study.

B) In case these studies follow a common style guide, I am requesting these style guides as well as templates and formatting tools as well as any kind of artwork (in a broader sense) concerning these studies.

C) I am requesting the information the government holds concerning the selection process for these studies and any information whenever a sector or industry was discarded, merged, renamed or redefined within the study drafting process. [Where this is limited to the

information held by the most relevant individual in DExEU).

Our response stated that information relevant to your request was held for each part. However, this information was exempt; part A (sections 27, 35(1)(a) and 40), part B (sections 27 and 35(1)(a)), and part C section 35(1)(a).

Your internal request stated that the refusal of information was overly broad and you noted the handling of the request, taking into account the time taken to process the request.

I have now reviewed our response, and have considered the points made in your internal review request.

Handling

You originally requested information relating to the sectoral studies on 1st November 2017, our ref DEX000789. We issued a section 12 refusal notice on 23rd January 2018. We did acknowledge that this response was outside the stipulated time-frame and therefore, this response handling was in breach of section 10 of the Act.

Following on from the advice and assistance provided in our section 12 response, on 23rd January 2018 you responded with a clarified request, our ref DEX001032. We responded on 5th July 2018 with a section 14(1) refusal notice. In this response we acknowledged our failure to comply with section 10.

On 6th July 2018 you then submitted the clarified request as noted above, our ref DEX001302. On 6th August 2018 the request was extended to allow further time to consider the public interest test. The ICO accommodates a reasonable extension of time to consider the public interest test. However, DExEU does recognise that wherever possible, responses should be issued within a further 20 working days. I find the handling of your request, DEX001302 was in accordance with section 10 of the Act. However, I do consider the overall handling of the three requests to have been in breach of section 10 and I sincerely apologise for the inconvenience this caused.

Information Withheld

Section 40

Section 40(2) of the Act exempts personal information from disclosure if that information relates to someone other than the applicant, and if disclosure of that information would, amongst other things, contravene one of the data protection principles in schedule 1 of the Data Protection Act. It is an absolute exemption and the DExEU is not obliged to consider whether the public interest favours disclosing the information.

In this instance, the application of section 40 remains applicable to part A and therefore should be upheld.

With regards to the information withheld under sections 27(1)(a-d) and 35(1)(a), upon review I find the arguments for withholding the information remain pertinent.

Section 27

Section 27(1)(a-d) exempts information from release if to do so would, or would be likely to, prejudice: (a) relations between the UK and any other State; (b) relations between the UK and any international organisation or international court; (c) the interests of the UK abroad, or; (d) the promotion or protection by the UK of its interests abroad. I consider that disclosure would cause prejudice in this case.

The initial response explained that there was a public interest in understanding the Department's approach to the studies in particular as they had informed the UK's negotiating position. In addition to this, I do consider there to be a wider public interest in the public being informed of the Government's handling of the UK's withdrawal from the European Union.

Against this, however, it is vital that any information relevant to international relations, UK interests and the promotion and protection of said interests abroad, is protected. This is paramount as any premature disclosure of information relevant to your request would prejudice our EU relations and in turn prejudice the negotiations and final outcome. In this particular instance, disclosure of this information would outline our approach to the EU exit negotiations and our cross-whitehall coordination programme, which would incite undue public scrutiny and would therefore jeopardise our negotiating position and UK interests. Therefore, in all circumstances of the case, I do not consider the disclosure of information requested to be in the public interest, and where our international relations and UK interests are concerned, section 27 should be maintained.

Section 35

Section 35(1)(a) exempts information held by a government department if it relates to (1)(a) the formulation or development of government policy.

The response recognised the importance of transparency in Government which lends itself to greater trust and engagement with Government. DExEU also acknowledged that policy can have a significant impact on the lives of citizens and as such, there is a public interest in disclosure.

However, it is also necessary to consider the public interest weighted against disclosure. In this particular instance, the disclosure of information relevant to your request would indicate our guidance and framework to formulating and developing policy, including the commissioning and analysis process. I do not consider such a disclosure to be in the public interest, as this information continues to inform our negotiating position and preparations. Furthermore, disclosure of our process and approach to this specific policy development in relation to our exit from the EU would inevitably hinder the Government's ability to candidly consider all policy options and to achieve the best policy outcomes for the UK and its citizens. On balance, the public interest in the maintenance of section 35(1)(a) to withhold the information outweighs the public interest in disclosure.

Conclusion

While the application of these exemptions and the subsequent public interest arguments, may appear overly broad in our original response, upon consideration of the wider implications of disclosure, we find all the information in scope to be relevant to the policy

making process and consequently to our negotiations. Therefore, in all circumstances of the case, the public interest favours withholding this information.

This response ends the complaints process provided by the Department. If you are not content with the outcome of your internal review, you may 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

E Pattinson
IR Case Handler
DExEU FOI Team