



# Attorney General's Office

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Edward Williams

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By email only

4 December 2020

Dear Mr Williams,

## **Re: Internal Review of our response to your Freedom of Information request (FOI/197/20)**

I am writing in response to your request for an internal review into our handling of the Freedom of Information request you submitted to this office and dated 24 October 2020, which is copied in bold below:

**The Attorney General, in appropriate cases, can ask for representations from ministerial colleagues on the public interest in relation to a prosecution. This is known as a “Shawcross exercise”**

### **REQUEST**

**Provide the requests by AG/Law Officers for all ministerial representations made last in the last 10 years.**

**Provide the replies to these requests.**

On 9 November 2020 the AGO responded to confirm we held information falling within the scope of that request but that we had concluded it was exempt by virtue of 35(1)(b) of the Freedom of Information Act 2000 (FOIA) (ministerial communications) and section 31(1)(b) and (c) (disclosure of information that prejudices the prosecution of offenders and the administration of justice). Further the AGO concluded that disclosure tended against the public interest, both in its effect on free and frank ministerial discussions and the administration of justice. In doing so, the AGO confirmed the position communicated to you in its 25 November 2019 response to your request of 4 November 2019 in the same terms save the time period sought was 5 not 10 years. In 2019 you sought an internal review of that decision and on 18 December the decision was upheld, in these terms:

It is of vital importance that, when called upon by the Attorney General, Ministers are able to identify all of the information relevant to his consideration and that they are able to communicate it to him clearly. The Attorney and his Ministerial colleagues would be inhibited in the discharge of their respective duties if the information requested was to be disclosed to the public, which would prejudice the prosecution of offenders, the

administration of justice and the administration of government. While it is important for government to be transparent and accountable to the public, this is, in my view, outweighed by the clear and compelling public interest in withholding the information.

On 9 November 2020, you sought an internal review of the 2020 decision communicated to you on that same day, stating: "the public interest is served by knowing when govt is meddling in prosecutions".

I have conducted the internal review that you seek.

I have firstly considered section 14(2) of the FOIA and I uphold the response of 9 November 2020 which found that this provision was satisfied. Although the timeframe of your request has been broadened, it is otherwise identical, and I consider the timescale, and anything that might reasonably be expected to have happened during it, not to amount to a reasonable interval for the submission of a further request.

I would also emphasise the following in order to assist your understanding of our response. The exercise to which you have made reference is set out in paragraphs 56 to 58 of the Framework Agreement between the CPS and the Director of Public Prosecutions:

[https://www.cps.gov.uk/sites/default/files/documents/publications/Framework\\_agreement\\_between\\_the\\_Law\\_Officers\\_and\\_the\\_Director\\_of\\_Public\\_Prosecutions\\_CPS\\_.pdf](https://www.cps.gov.uk/sites/default/files/documents/publications/Framework_agreement_between_the_Law_Officers_and_the_Director_of_Public_Prosecutions_CPS_.pdf)

In relation to section 35(1)(b), disclosure in response to the questions you have asked would amount to the disclosure of ministerial communications. In respect of whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information, such disclosure would plainly undermine the process set out in the Framework Agreement: the Director of Public Prosecutions (or the Attorney General in a consent case), seeking to be informed by relevant public interest considerations, would not be able to seek nor receive them on a free and frank basis in circumstances where the Director (or Attorney) making the requests and those responding knew that as a matter of course that these communications would fall to be disclosed.

In relation to section 31(1)(b) and (c), this equally substantiates the case that prejudice would be caused to the prosecution of offenders and the administration of justice, because the effective seeking and receipt of representations would be inhibited by disclosure of that process. That would inhibit the proper assessment of the public interest in bringing a prosecution, which by definition has a deleterious effect on prosecutions and justice.

For the avoidance of doubt therefore I would also uphold the substantive conclusions reached in 2019 about the application of the exemptions provided for by sections 35(1)(b) and 31(1)(b) and (c) FOIA to the requests you have made.

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,

Tom Guest  
Head of Criminal Casework  
Attorney General's Office