Mr Simon Bezant
request-1043101-
0de74e18@whatdotheyknow.com>

Department for Science, Innovation and Technology
100 Parliament Street
London
SW1A 2BQ

www.gov.uk/dsit

Our Ref: FOI2023/23927
31st January 2024

Dear Mr Bezant,

Thank you for your email of 1st November where you requested the following information:

“Your department recently announced a consultation on ‘UK-related domain names powers’ (1).

I note the consultation proposes to enact sections 19-21 of the Digital Economy act from 2010 (2)

Please provide ALL correspondence regarding this consultation between your department and the .uk registry Nominet UK (03203859) prior to 20th July 2023.

Please include all emails (corporate and personal email) and all notes, minutes, ministerial briefings.”

Your request has been processed in line with the Freedom of Information Act 2000

Under the Freedom of Information Act 2000 (‘the Act’), you have the right to:

- Know whether we hold the information you require.
- Be provided with that information (subject to any exemptions under the Act which may apply).

I can confirm that the Department for Science, Innovation and Technology (DSIT), holds some information in scope of your request. We have carefully considered your request and we have decided to withhold readouts of meetings between DSIT officials and Nominet in relation to the Digital Economy Act (DEA 2010) on the 27th of February 2023, 25th of April 2023, 11th of May 2023, and the 19th of July 2023 under section 35(1)(a) of the Act, as disclosure would prejudice the development of government policy.
We also consider internal briefings for the above meetings between DSIT officials and Nominet in relation to the DEA 2010 that were held on the 27th of February 2023, 25th of April 2023, and 19th of July 2023 exempt from release under section 35(1)(a) of the Act, as disclosure would also prejudice the development of Government policy. Please note that the document with the UK registries views on His Majesty’s Government (HMG) draft list of unfair/misuses and dispute procedures dated 11th of May 2023, is also exempt from release under Section 35(1)(a) of the Act, as disclosure would prejudice the development of government policy.

Please find e-mails between DSIT and Nominet in relation to the DEA 2010 Consultation from the 6th of February to the 20th of July 2023 set out in Annex A. Please note that on this occasion, we have also decided to withhold some of this information for the reasons outlined below.

**Section 40**

We consider some information to be exempt from release under Section 40(2) of the Act. We are withholding information that includes the names of representatives of organisations and governments as this is personal data that may identify a third-party individual. Section 40(2) is engaged because of the condition at section 40(3A) (a), which concerns the personal data of third parties. The Department has obligations under data protection legislation and in law generally to protect personal data. This exempts personal data from release if disclosure would contravene any of the data protection principles in Article 5(1) of the UK General Data Protection Regulation and section 34(1) of the Data Protection Act 2018. Release would breach the first data protection principle since it would be unlawful and unfair to disclose the information. As section 40 is an absolute exemption, the department is not required to carry out a public interest test.

**Section 35**

We consider some information to be exempt from release under section 35(1)(a) of the Act. This provides that information can be withheld if it relates to the formulation or development of government policy.

Section 35 is a ‘qualified’ exemption, and the department is obliged to consider the public interest arguments for withholding or releasing the information we hold. We have concluded that the public interest lies in favour of withholding the information as the information as it includes discussions held with Nominet, which concerns the formulation of an ongoing government policy. The policy in question relates to the commencement of the DEA 2010 powers in relation to internet domain registries. The factors we have considered in relation to the public interest test are set out in Annex B.

**Section 27**

We consider some information to be exempt from release under section 27(1) of the Act. This prevents the disclosure of information relating to international free trade agreements as the disclosure of such information would be likely to prejudice the UK’s interests.

In this instance, the department has identified harm to relations between the United Kingdom and any other State (s27(1)(a)), and harm to relations between the United Kingdom and any international organisation (s27(1)(b)) if the information were to be disclosed. As section 27 is a qualified exemption, a public interest test has been carried out. The factors we have considered in relation to the public interest test are set out in Annex C.
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 and should be addressed to the FOI Team. It would be helpful if you can tell us why you are dissatisfied with the response to your request so we may address this during the internal review.

FOI Team
Department for Science, Innovation and Technology
100 Parliament Street
London
SW1A 2BQ
Email: foi@dsit.gov.uk

Please remember to quote the reference number above in any future communications.

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. Complaints can be made to the Information Commissioner via their website at: https://ico.org.uk/make-a-complaint/official-information-concerns-report/official-information-concern/.

Yours sincerely,

Department for Science, Innovation and Technology
Annex B - Public interest test in relation to section 35(1)(a)

Section 35 - The formulation or development of government policy

Section 35 provides an exemption to the release of information where the information is required to enable ministers and officials to engage, confidentially, in full and frank discussion of policy and other administrative matters. Information is within the scope of the section 35 exemption if it “relates to” any of the types of information listed below:

- the formulation or development of government policy
- Ministerial communications
- the request for, or provision of, advice by any law officer
- the operation of any ministerial private office.

The sensitivity of the information is likely to diminish with the passage of time, so that the age of the information, or timing of the request may be relevant in determining whether to apply the exemption or where the public interest may lie. Section 35 is a qualified exemption, and we are obliged to consider the public interest test. More information on this exemption can be found here: [Freedom of Information Act 2000 (legislation.gov.uk)](https://www.legislation.gov.uk)

Factors for disclosure

- Public interest in the disclosure of information to ensure transparency and visibility of public bodies being held to account regarding decisions made and use of funds.
- Providing the public with information to help their understanding of decisions which affect them.
- The general interest in transparency, which can support the public to understand how government policy is formulated.
- Disclosure may serve to widen the base of stakeholder and public engagement which may in turn assist in the development and scrutiny of policy formulation.

Factors against disclosure

- The degree to which the public interest in openness has already been met by the disclosure of information on the same subject through parliamentary scrutiny. Avenues currently exist via the Parliamentary Questions and Urgent Questions to answer any questions, which are also published on Hansard for public view.
- The public interest in maintaining a “safe space” in which Nominet and officials can develop their thinking and explore different options in communications and discussions. We are continuing to use the information in question to inform the ongoing development of government policy.
- The removal of this safe space could lead to a “chilling effect” where both the Department and third parties (Nominet and external stakeholders) may be less willing to engage in the exploration of new policy ideas. This then creates the risk of an adverse public reaction, especially from registrants of .uk domains, should the powers not be implemented fairly and proportionately.
Summary

After considering these factors, we have concluded that it is not in the public interest to disclose all of the requested information. In making this assessment, we have given due weight to the importance of maintaining a safe space for government to develop its policy work in discussions held with Nominet regarding the DEA 2010 powers in relation to internet domain registries. This includes the need to ensure that the government can freely access the input and advice it needs from Nominet and stakeholders without the restrictions or limitations that might be created from disclosure of the requested materials. The notes and briefs in question are currently being used to develop regulations which will set out the policies that domain registries in scope of the powers should adhere to, to avoid the threshold being met that could trigger the potential exercise of the powers. The Regulations will include a list of misuses and unfair uses of domain names that registries in scope must take action to mitigate and deal with. They also cover the registry’s arrangements for dealing with complaints in connection with the domain names in scope.

This assessment also takes into consideration the ongoing nature of policy development in this space. It is clear that the government is at the start of a longer-term process of policy development with Nominet and will continue to require space and time to develop the Regulations.

We therefore conclude that the balance of the public interest lies in maintaining the exemption and withholding the information.
Annex C - Public interest test in relation to section 27(1)(a) and (1)(b)

Section 27 – International Relations

The following public interest test considers the arguments for and against the disclosure of organisations and countries that the UK has international Free Trade Agreements (FTA’s) with.

The applicable interest relates to the UK’s relationships with international states and organisations, engaging section 27(1)(a) and (b), respectively.

We accept that disclosure of this information would lead to greater transparency and accountability to the public.

However, it is evident that a prejudice of interests would likely occur if we disclosed this information. Disclosure of information relating to the status of specific FTA’s that were under negotiation at the time of the request would be likely to damage relationships between the UK and international states and organisations, which would generate adverse outcomes. This would make future policy development more challenging, negatively affecting the UK government and the UK’s interests as a whole. This would not be in the public interest.

We therefore conclude that the balance of the public interest lies in maintaining the exemption and withholding the information.