



Department
for Exiting the
European Union

Freedom of Information Team
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Chris Hodgkins
Via: chrishodgkins3@gmail.com

Our ref: DEX000968

24 April 2018

Dear Chris Hodgkins,

I refer to your request, where you asked:

I would be grateful if you could let me know if and impact analysis on the arts in the UK leaving the European Union has been commissioned, the date it was commissioned and the date it was published. I would also be grateful for a copy of the analysis or an opportunity to read the analysis

We have interpreted impact analysis here to be the wide mix of qualitative and quantitative analysis contained in a range of documents, developed at different times since the referendum. Our analysis is constantly evolving and being updated based on our discussions with industry and our negotiations with the EU.

Please note that we have taken “the Arts” to be defined as anything in the Creative Industries, including: Advertising and marketing; Architecture; Crafts; Design: product, graphic and fashion design; Film, TV, video, radio and photography; IT, software and computer services; Museums, galleries and libraries; Music, performing and visual arts and; Publishing.

I can confirm that the Department for Exiting the EU (DExEU) holds information in the scope of your request.

- The commissioning date is exempt from release under sections 27 and 35 of the Freedom of Information Act 2000 (the “Act”).
- These documents are not published and therefore do not have a publication date.
- The information in scope is exempt under sections 27, 29, 35, 40 of the Act.

Further information on the exemptions and public interest tests can be found below.

Public Interest Test

Some of the exemptions in the FOI Act, referred to as ‘qualified exemptions’, are subject to a public interest test (PIT). This test is used to balance the public interest in disclosure

against the public interest in favour of withholding the information. We must carry out a PIT where we are considering using any of the qualified exemptions in response to a request for information.

The 'public interest' is not the same as what interests the public. In carrying out a PIT we consider the greater good or benefit to the community as a whole if the information is released or not. The 'right to know' must be balanced against the need to enable effective government and to serve the best interests of the public.

The FOI Act is 'applicant blind'. This means that we cannot, and do not, ask about the motives of anyone who asks for information. In providing a response to one person, we are expressing a willingness to provide the same response to anyone, including those who might represent a threat to the UK.

Section 27(1)(a-d)

Some of the information you have requested is exempt under section 27(1)(a-d) of the Act, which 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.

Public Interest Test

Section 27 is a qualified exemption and I have considered whether the balance of the public interest favours releasing or withholding this material. DExEU recognises there is a general public interest in openness in public affairs to ensure that the public are able to scrutinise the manner in which public authorities reach important decisions. In this case, we appreciate the public interest in understanding the Government's approach to our exit from the EU and the work that is going on with regards to specific analysis.

Opposing this, we have taken into account that there is a substantial public interest in the Government being able to properly evaluate their approach to foreign policy and in doing so, being able to successfully pursue our national interests abroad. We find that the information relates to the UK's international relations, and more specifically to our policy development on our exit from the EU. In releasing this information, prejudice would occur to our international relations with respect to our ongoing negotiations with the EU. We do not find it to be in the public interest to disclose information which would be likely to not only prejudice the UK's relationship with the EU or its Member States, but also to prejudice the promotion or protection by the UK of its interests in the context of these negotiations. There is a strong public interest in the protection of any information which may give insight to/undermine the UK's negotiations with the EU or their final outcome, or adversely affect the UK's national interests.

Taking into account all the circumstances of this case, I have concluded that the public interest favours withholding the information we hold within the scope of your request.

Section 29(1)(a-b)

Some of the information requested is exempt from disclosure under section 29(1)(a) and (b) of the Act, which exempts information if it would, or would be likely to, prejudice:

- (a) the economic interests of the UK or any part of the UK, or;
- (b) the financial interests of any administration in the UK.

Public Interest Test

Section 29 is a qualified exemption and we have considered whether the public interest favours releasing or withholding this information. DExEU recognises there is a general public interest in openness in public affairs to ensure that the public are able to scrutinise the manner in which public authorities reach important decisions. We also recognise that transparency increases public understanding and public engagement in Government. There is also a public interest in releasing information which would reassure the public that the Government's economic analysis of our exit from the EU is well informed.

Opposing this, there is a strong public interest in avoiding the disclosure of any information which would prejudice the economic interests of the UK. DExEU's mix of qualitative and quantitative analysis is ongoing and we find that the premature release of just a part of this broad range of information will not provide a complete assessment of the economic impact of our exit from the EU. Information held which relates to the economy, if released, would be likely to prejudice or damage the UK's negotiations with the EU or adversely affect the UK's national interests (also closely related to section 27 above), and therefore that in releasing the information, we would cause detriment to the economic interests of the UK and financial interests of the UK administrations. Causing harm to the Government's negotiating position would inherently be likely to cause harm to the economic or financial interests of the UK or UK administrations, which we do not find to be in the public interest.

Taking into consideration all the circumstances of this case, I have concluded the public interest favours withholding the information under this exemption.

Section 35(1)(a)

The information requested is exempt under section 35(1)(a) of the Act, which exempts information held by a government department if it relates to (1)(a) the formulation or development of government policy.

Public Interest Test

Section 35 is a qualified exemption and I have considered whether the public interest in exempting the information in scope outweighs the public interest in releasing the information. DExEU recognises that there is a general public interest in disclosure of information and we recognise that openness in Government may increase public trust in and engagement with the Government. We also recognise that policy formulation and/or development is in the public interest as policy can have significant impact on the lives of citizens and there is therefore public interest in the transparency of any deliberations.

Against this, there is a strong public interest in policy making associated with our exit from the EU being of the highest quality and being fully informed by a consideration of all options. It is important that policy officials can exchange views on available options and openly discuss and understand potential implications, especially on live issues. In releasing information in scope, we may undermine the effective formulation or development of policies which may play a key part in our negotiation strategy regarding our exit from the EU, or create unintended consequences which could potentially jeopardise policy formulation or development for the future. Releasing the information could also lead to inferences being made of the policy development process, notably where dates are concerned; we also find that this would have a negative impact on the safe space necessary for policy formulation. Similar arguments have been noted in the ICO's decision notice FS50699676, where the Commissioner agreed that the public interest was more weighted in favour of protecting this safe space, namely here to ensure that policy

formulation and development around our exit from the EU is of the highest quality.

I have determined that in all circumstances of the case, public interest favours withholding the information we hold within the scope of your request over releasing.

Section 40

Some of the information you have requested, relating to names and details of officials, is being withheld because it is exempt under section 40(2) of the Act, which 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. In this case, I believe disclosure would contravene the first data protection principle, which provides that personal data must be processed fairly and lawfully. Section 40(2) is an absolute exemption and the DExEU is not obliged to consider whether the public interest favours disclosing the information.

Further Information

Outside of the Act, on 21st December the reports given to the Exiting the European Union Select Committee, of which there are 39 covering 58 sectors, were made available at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/exiting-the-european-union-committee/publications/>

If you have any queries about this letter, please contact the FOI team. Please remember to quote the reference number above in any future communications.

If you are unhappy with the service you have received in relation to your request or wish to request an internal review, you should write to foi@dex.eu.gov.uk or:

Freedom of Information Team (internal review)
Department for Exiting the European Union
9 Downing Street
SW1A 2AG

You should note that DExEU will not normally accept an application for internal review if it is received more than two months after the date that the reply was issued.

If you are not content with the outcome of your internal review, you may apply directly to the Information Commissioner for a decision. Generally, the Commissioner cannot make a decision unless you have exhausted the complaints procedure provided by DExEU. The Information Commissioner can be contacted at:

The Information Commissioner's Office
Wilmslow
Cheshire
SK9 5AF

Yours sincerely,

Freedom of Information Team, DExEU.