

19 October 2023

IC-257107-B8V2

Request

"We are looking into the Data Protection (Fundamental Rights and Freedoms) (Amendment) Regulations 2023 statutory instrument (<https://www.gov.uk/government/publications/the-data-protection-fundamental-rights-and-freedoms-amendment-regulations-2023>). The explanatory memorandum states that the government consulted with the ICO on this. Are you able to provide your advice to the government on this statutory instrument, please?"

Your request, received on 12 September 2023, has been handled under the Freedom of Information Act 2000 (the FOIA). We apologise for the late response.

Response

I can confirm that we hold information in scope of your request.

In line with Article 36(4) of the UK GDPR, the Department for Science, Innovation and Technology (DSIT) consulted with us on the development of the statutory instrument (SI) referenced in your request.

We provided advice to DSIT which falls in scope of your request. However, we are withholding it under section 36 of the FOIA.

Section 36(2)(c) provides that –

"Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."

Section 36 is not an absolute exemption, and we must consider the prejudice or harm which may be caused by disclosure. We also have to carry out a public interest test to weigh up the factors in favour of disclosure and those against.

We find that disclosure would inhibit the free and frank exchange of views between parties in relation to future A36(4) consultations. This in turn would harm our ability to influence the development of legislation in the future.

The matter is still considered to be open and ongoing at this stage because the SI is yet to be subject to parliamentary scrutiny. The sifting committees in both Houses of Parliament are considering whether the SI should be subject to affirmative or negative resolution procedure.

There is a strong public interest in transparency in respect of A36(4) consultations and in making our views and advice on proposed SIs known. This would lead to wider scrutiny of SIs, which is in the public interest.

However, there is also a strong public interest in maintaining our relationship with DSIT and other external stakeholders. While we note that there is a legal requirement on DSIT to consult with us on the development of legislation, disclosure of information at this stage would reduce the level of candour in future consultations. Stakeholders should feel able to consult with us freely and frankly without fear of exchanges being made public while the matter is still ongoing. This would in turn would enable us to provide the most effective, accurate and informed advice possible.

For the reasons given above, the Qualified Person has approved the use of the Section 36 exemption to the information concerned as the weight in maintaining the exemption outweighs that of disclosure.

This concludes our response to your request.

FOI review procedure

If you are dissatisfied and wish to request a review of our decision or make a complaint about how your request has been handled you should write to the Information Access Team at the address below or e-mail icoaccessinformation@ico.org.uk.

Your request for internal review should be submitted to us within 40 working days of receipt by you of this response. Any such request received after this time will only be considered at the discretion of the

Commissioner.

If having exhausted the review process you are not content that your request or review has been dealt with correctly, you have a further right of appeal to this office in our capacity as the statutory complaint handler under the legislation.

To make such an application, please write to our Customer Contact Team at the address given or visit our website if you wish to make a complaint under the FOIA.

Your information

Please note that our [Privacy notice](#) explains what we do with the personal data you provide to us and what your rights are. This includes entries regarding the specific purpose and legal basis for the ICO processing information that people that have provided us with, such as an [information requester](#).

The length of time we keep information is laid out in our retention schedule, which can be found [here](#).

Yours sincerely



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