

Department for Digital, Culture, Media & Sport
By email to: foi@dcms.gov.uk

8 March 2023

Dear FOI Team,

Freedom of Information Act 2000 (FOIA)
Your references: FOI2022/15677 and IR2023/01191
Our reference: IC-219991-T8C5

This complaint has been accepted as eligible for formal consideration. Investigation of this complaint will, in all likelihood, look at **section 36(2)(c)** With allocation to an investigating case officer forthcoming, please take the below action.

Action

To best assist the case officer in reaching a swift decision we ask that you now do the following:

- Provide your full and final reasoning as to why your handling of this request was compliant with FOIA. You do not need to repeat any arguments made already in your initial response or internal review. Your response should be informed by recent [decision notices](#) and our [guidance on FOIA](#).
- If your position on the request has now changed you should explain this clearly and confirm that you have contacted the requester to explain this change in position. If previously withheld information can now be disclosed, you should proceed with this disclosure immediately.

Information Rights Unit
Department for Culture, Media and Sport

Via email only to foi@dcms.gov.uk

3 May 2023

Our ref: IC-219991-T8C5
Your ref: FOI2022/15677 & IR2023/01191

Dear Sir/Madam

Freedom of Information Act 2000 (FOIA)

You should now reconsider the way DCMS has handled this request and respond as detailed below.

What you need to do now

This is your opportunity to finalise your position. With this in mind, you should revisit the request. After looking at our guidance, and in light of the passage of time, you may decide to reverse or amend your position. If you do, please notify the complainant and me within the timeframe specified at the end of this letter. This may enable us to close this case informally without the need for a decision notice.

Section 36

As you will be aware, section 36 is a prejudiced based exemption which works in a slightly different way to the other prejudiced based exemptions contained within FOIA. Section 36 can only be engaged if in the reasonable opinion of the qualified person disclosure would, or would be likely to, result in any of the effects set out in section 36(2) of FOIA.

In order for the ICO to determine whether section 36 was correctly applied please provide a copy of the submissions given to the qualified person in order for them reach their opinion and a copy of the opinion which was subsequently provided. If either the submissions or opinion were not written down please describe the nature of the submissions and the opinion itself.

Furthermore, if in providing such documents, the following is not clear, please provide a response to the following questions:

- When was this opinion sought and when was it given?
- What information did the qualified person have access to when giving this opinion?
- For example, did the qualified person have access to the information itself or just a summary of the information that had been withheld?
- Was the qualified person provided with any submissions supporting a recommendation that the exemption was engaged?
- Similarly, was the qualified person in fact provided with any contrary arguments supporting the position that the exemption was not engaged?

Furthermore, please explain outline any further public interest arguments, beyond those out in the responses provided to [REDACTED] to support DCMS' position that the public interest favoured maintaining the exemption contained at 36(2)(c).

In particular, it would be useful to understand why DCMS sought to withhold the request information in its entirety when in response to previous requests correspondence between DCMS and Nominet had been disclosed with redactions.

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Freedom of Information Team
Department for Culture, Media and Sport

Via email only to foi@dcms.gov.uk

29 September 2023

Our ref: IC-219991-T8C5
Your ref: ICO2023/07280

Dear ██████████

3. Clarification of the application of section 36

All of the emails contained in withheld information labelled as 'Nominet email 2' were disclosed by DCMS in response to ██████████ request which was the subject of ICO case IC-165170-X2F6 (with section 40 redactions applied to the names and contact details). Such emails were contained in the chain provided to the ICO, during the course of the investigation, entitled 'DCMS-Nominet rescheduled catch up'.

The only exception to this is the email contained in 'Nominet email 2' sent on 4 March 2022.¹ I therefore presume that this is the only email within this chain that DCMS is actually seeking to withhold under section 36. Please advise if this is not the case.