

CJ 58 - Record of Correspondence

2 September 2020 to 16 May 2022

2 September 2020

Correspondence Team
Cabinet Office
70 Whitehall
London
SW1A 2AS

Date: 02 09 2020

Dear Correspondence Team

Subject: Behavioural Insights Team

I understand the "*Behavioural Insights Team [BIT]*" is partly owned by the UK Cabinet Office. I am aware of the information available on their website at the link below regarding Covid-19

<https://www.bi.team/>

It would be helpful if you could arrange to provide me with the following information at your convenience.

A list of the Covid-19 advisory papers presented to date by BIT for consideration by UK Government to inform policy.

Thank you.

Yours sincerely

Wynne Jones

5 October 2020

Correspondence Team
Cabinet Office
70 Whitehall
London
SW1A 2AS

Date: 05 10 2020

Dear Correspondence Team

Subject: Behavioural Insights Team

I refer to my request for information dated 2 September, as set out below. As a month has now elapsed I write to enquire whether you are now in a position to provide the information, or an indication of the timeframe for your reply. Thank you.

Yours sincerely

Wynne Jones

28 October 2020

Correspondence Team
Cabinet Office
70 Whitehall
London
SW1A 2AS

Date: 28 10 2020

Dear Correspondence Team

Subject: Behavioural Insights Team


I refer to my request for information dated 2 September, and subsequent reminder dated 5 October. I have not, to date, received a reply.

To avoid further delay I would be grateful if you could arrange to process my request for information dated 2 September, as set out below, under the Freedom of Information Act 2000. I look forward to receiving the information at your earliest convenience or, alternatively, confirmation that you wish to claim an exemption under the Act. Thank you.

Yours sincerely

Wynne Jones

10 December 2020

 Cabinet Office

Room 401
70 Whitehall
London, SW1A 2AS

foi-team@cabinetoffice.gov.uk
www.cabinetoffice.gov.uk

Wynne Jones
By email: cj-editor@biggeesblog.cymru

FOI Reference: FOI2020/20785

10 December 2020

Dear Wynne Jones

We refer to your request where you asked:

"I understand the "Behavioural Insights Team [BIT]" is partly owned by the UK Cabinet Office. I am aware of the information available on their website at the link below regarding Covid-19

<https://www.bi.team/>

It would be helpful if you could arrange to provide me with the following information at your convenience.

A list of the Covid-19 advisory papers presented to date by BIT for consideration by UK Government to inform policy."

I am writing to advise you that following a search of our paper and electronic records, I have established that some of the information you requested is held by the Cabinet Office.

The information you have requested is exempt under section 35 of the Freedom of Information Act, which protects the formulation of policy and communications between Ministers. Disclosure would weaken Ministers' ability to discuss controversial and sensitive topics free from premature public scrutiny.

Section 35 is a qualified exemption and I have considered whether the balance of the public interest favours our release of this material. There is a general public interest in disclosure of information and I recognise that openness in government may increase public trust in and engagement with the government. I recognise that the decisions Ministers make may have a significant impact on the lives of citizens and there is a public interest in their deliberations being transparent. These public interests have to be weighed against a strong public interest that policy-making and its implementation are of the highest quality and informed by a full consideration of all the options. Ministers must be able to discuss policy freely and frankly, exchange views on available options and understand their possible implications. The candour of all involved would be affected by their assessment of whether the content of the discussions will be disclosed prematurely. If discussions were routinely made public there is a risk that Ministers may feel inhibited from being frank and candid with one another. As a result the quality of debate underlying collective decision making would decline, leading to worse informed and poorer decision making. Taking into account all the circumstances of this case, I have concluded that the balance of the public interest favours withholding this information.

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:

Eirian Walsh Atkins
Cabinet Office
70 Whitehall
London
SW1A 2AS

email: foi-team@cabinetoffice.gov.uk

You should note that the Cabinet Office 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 the Cabinet Office. The Information Commissioner can be contacted at:

The Information Commissioner's Office
Wycliffe House
Water Lane

10 December 2020

Eirian Walsh Atkins
Cabinet Office
70 Whitehall
London
SW1A 2AS

Date: 10 12 2020

Dear Eirian Walsh Atkins

Subject: FOI response - Ref: FOI2020/20785

I refer to my request for information under the F O I Act 2000 and the reply dated 10 December from your F O I team, as attached. The response is disappointing. I remain of the view that disclosure is in the public interest. I stress, I have not requested a copy of any advisory paper. I have simply requested a "*list*" of the subject headings. I would be grateful if you could now progress to the next stage: an **internal review** of your decision to withhold the information. The timeframe for internal review is not prescribed in statute. The Information Commissioner's Office [I C O] has previously advised that 20 working days is considered "reasonable". I would therefore hope to receive the outcome of your internal review within that timeframe or, alternatively, authorisation to progress to the third stage: a request for **external assessment** by I C O. Thank you.

Yours sincerely

Wynne Jones

17 January 2021

Eirian Walsh Atkins
Cabinet Office
70 Whitehall
London
SW1A 2AS

Date: 17 01 2021

Dear Eirian Walsh Atkins

Subject: C J 58: FOI response - Ref: FOI2020/20785
Internal Review Ref: IR2020/21282

I refer to my request for **internal review** dated 10 December 2020 and your prompt acknowledgement 11 December under reference IR2020/21282. As 20 working days has now elapsed I would appreciate an update on progress. Thank you.

Yours sincerely

Wynne Jones

15 February 2022

Eirian Walsh Atkins
Cabinet Office
70 Whitehall
London
SW1A 2AS

Date: 15 02 2021

Dear Eirian Walsh Atkins

Subject: C J 58: FOI response - Ref: FOI2020/20785
Internal Review Ref: IR2020/21282

I refer to my request for **internal review** dated 10 December 2020, and reminder letter dated 17 January 2021. I write to enquire whether you are now in a position to convey to me the outcome of your review. Thank you.

Yours sincerely

Wynne Jones

19 February 2021

 Cabinet Office	Room 401 70 Whitehall London, SW1A 2AS	foi-team@cabinetoffice.gov.uk www.cabinetoffice.gov.uk
Wynne Jones Via: cj-editor@biggeesblog.cymru		Our ref: IR2020/21282 19 February 2021
Dear Wynne Jones		
Cabinet Office Internal Review Reference: IR2020/21282 (Original Case Reference: FOI2020/20785)		
REVIEW OF REQUEST UNDER THE FREEDOM OF INFORMATION ACT 2000		
Thank you for your email of 10 December 2020. You asked for an internal review of our response to your request for information of 2 September 2020. In your request you asked for a list of all the COVID-19 advisory papers presented to the government by the Behavioural Insights Team		
I have carefully reviewed the handling of your request and I consider that the exemptions at section 35 of the Freedom of Information Act were properly applied. I believe that the balance of the public interest was fully considered for the reasons set out in our letter of 10 December 2020. I have therefore concluded that I should uphold the decision given in our letter.		
In your request for an internal review you reiterated that you only were requesting a list of the subject heading not the papers themselves. I have reviewed the information in scope and I have decided the subject headings of the papers are detailed enough to justify our decision to withhold the information under section 35 in order to protect the process of policy formulation. Not only are the individual subject headings descriptive enough to give clear indication of the content and conclusions but when taken together in a list can be used to identify the policy planning process. Section 35 is a qualified exemption and I recognise that there is a general public interest in promoting openness and trust in the government and its response to the COVID-19 pandemic however these interests have to be balanced against the public interest in protecting the policy formulation process and the ability of the government to receive free and frank advice. Therefore I have decided to uphold the conclusion of the public interest test and withhold this information.		
If you are unhappy with the handling of your request for information 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		

19 February 2021

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

Date: 19 02 2021

Dear Information Commissioner

Subject: C J 58: Request for external assessment by I C O - Information requested from Cabinet Office

I write to advise you that information requested from U K Government Cabinet Office has been withheld and internal review process exhausted. Relevant correspondence is attached and listed below.

- 10 December 2020. Reply from Cabinet Office F O I team. Information withheld for the reasons stated.
- 10 December 2020. My request for internal review.
- 17 January 2021. My request for progress update as 20 days had elapsed.
- 15 February 2021. My reminder to Cabinet Office F O I team.
- 19 February 2021. Outcome of internal review by Cabinet Office F O I team.

I remain of the view that it is unreasonable to withhold the information requested for the reasons stated. I would therefore be grateful if you could arrange to undertake an external assessment and advise me on the outcome at your convenience. If you require additional information you are welcome to contact me at any time. Thank you.

Yours sincerely

Wynne Jones

25 February 2022

Dear Mr Wynne Jones,

I write with regard to your complaint to the ICO of 19 February 2021 about the Cabinet Office response to your information request of 2 September 2020, and further to your email to the ICO yesterday.

Unfortunately, due to the challenging national circumstances the allocation process for complaints received by the ICO in 2020 was (and continues to be) subject to significant delays which are longer than usual. The Commissioner recognises and appreciates that this is understandably frustrating and your patience in the interim period has been much appreciated.

I can confirm that your complaint has been assigned to me for investigation and that I am the Senior Case Officer dealing with the matter.

The Commissioner notes that on 2 September 2020 you made the following request to the Cabinet Office for information under the FOIA for:

'I understand the "Behavioural Insights Team [BIT]" is partly owned by the UK Cabinet Office. I am aware of the information available on their website at the link below regarding Covid-19*

<https://www.bi.team/>

It would be helpful if you could arrange to provide me with the following information at your convenience.

A list of the Covid-19 advisory papers presented to date by BIT for consideration by UK Government to inform policy'.

The Cabinet Office provided a substantive response to the request on 10 December 2020.

The Cabinet Office advised that they held *'some'* of the information requested and that this was exempt from disclosure under Section 35(1)(a)(formulation or development of government policy) of the FOIA 2000.

The response did not state which Government policy/policies the information related to but advised that, *'disclosure would weaken Ministers' ability to discuss controversial and sensitive topics free from premature public scrutiny'*.

In respect of the public interest the Cabinet Office stated that there is a *'general'* public interest in disclosure of information and they recognised that openness in government may increase public trust in and engagement with government. The Cabinet Office recognised that the decisions Ministers make may have a significant impact on the lives of citizens and there is a public interest in their deliberations being transparent.

However, the Cabinet Office stated that these public interests have to be weighed against a strong public interest that policy-making and its implementation are of the highest quality and informed by a full consideration of all the options. The Cabinet Office stated that Ministers must be able to discuss policy freely and frankly, exchange views on available options and understand their possible implications.

The Cabinet Office contended that *'the candour of all involved would be affected by their assessment of whether the content of whether the content of the discussions will be disclosed prematurely'*.

They added that, *'if discussions were routinely made public there is a risk that Ministers may feel inhibited from being frank and candid with one another'*. This would result, the Cabinet Office contended, in a decline in the quality of debate underlying collective decision making, leading to worse informed and poorer decision making.

Taking into account all the circumstances of the case, the Cabinet Office concluded that the balance of the public interest favoured withholding the information requested.

You requested an internal review of the Cabinet Office decision on 10 December 2020. You advised that you found the response to your request disappointing and you remained of the view that disclosure of the requested information was in the public interest. You stressed that you had not requested a copy of any advisory paper, but had simply requested a *'list'* of the subject headings.

The Cabinet Office acknowledged receipt of the request for an internal review on 11 December 2020.

Having not received the internal review within 20 working days, you wrote to the Cabinet Office on 17 January 2021 requesting an update in respect of the same. You sent a further chaser email to the Cabinet Office on 15 February 2021.

The Cabinet Office provided you with their internal review on 19 February 2021.

The review found that Section 35(1)(a) had been properly applied to the request and that the balance of the public interest test had been fully considered for the reasons set out in the substantive response to the request.

In response to your point that you were only seeking a list of the advisory papers and not the papers themselves, the Cabinet Office advised that *'the subject headings of the papers are detailed enough to justify our decision to withhold the information under Section 35 in order to protect the process of policy formulation'*.

The Cabinet Office explained that, *'not only are the individual subject headings descriptive enough to give clear indication of the content and conclusions but when taken together in a list can be used to identify the policy planning process'*.

The review recognised that *'there is a general public interest in promoting openness and trust in the government and its response to the COVID-19 pandemic, however, these interests have to be balanced against the public interest in protecting the policy formulation process and the ability of the government to receive free and frank advice'*.

In your subsequent complaint to the ICO you stated that you are of the view that it is unreasonable for the Cabinet Office to withhold the requested information.

I can confirm that the Commissioner is currently awaiting sight of the withheld information and detailed submissions from the Cabinet Office supporting their application of Section 35(1)(a) to withhold the information which you requested.

Once the Commissioner has obtained this necessary information, and has had an opportunity to consider the same, I will provide you with the Commissioner's independent and informed assessment of the Cabinet Office response to your request. At time of writing, this is likely to be around mid to late April 2022 at the earliest.

Should you have any questions or queries in the meantime, please feel free to contact me on my direct dial number below or via my email address.

Many thanks.

Kind regards

Thomas Thwaites
 Senior Case Officer
 Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire
 SK9 5AF

12 May 2022

Dear Mr Jones,

We write further to the above information request about which the Information Commissioner has been in contact with us.

In its response to you of 10 December 2020 and 19 February 2021, the Cabinet Office determined that the information you sought was exempt from disclosure under section 35(1)(a) of the Act on the grounds that it related to the formulation or development of government policy.

Having given this matter renewed consideration, the Cabinet Office has determined that section 35(1)(a) of the Act no longer applies to the information within the scope of your request. That information is accordingly disclosed to you and is attached to this email.

With kind regards,

FOI Team
 Cabinet Office

Name of paper	Date
Testing the efficacy of coronavirus messaging - Experiment: Willingness to stay at home with symptoms of coronavirus depending on coronavirus test availability	18 March 2020
Testing the efficacy of coronavirus messaging - BIT Experiment: Communicating social distancing (Posters)	21-22 March 2020
Testing the efficacy of coronavirus messaging - BIT Experiment: Communicating social distancing (vignettes)	22 March 2020
Increasing adherence to the UK government's social distancing guidelines	23 March 2020
Testing the efficacy of coronavirus messaging - Experiment: Understanding of UK lockdown and intended compliance	29-30 March 2020
International examples & what could work in the UK	31 March 2020
Why the UK general public should use facemasks	31 March 2020
Testing the efficacy of coronavirus messaging - CO: Compliance with UK lockdown measures	2 April 2020
Easing Lockdown: what a more nuanced system might look like	3 April 2020
Impact of measures - compliance	13 April 2020
Testing the efficacy of coronavirus messaging - Framing of antibody tests	23 April 2020
Willingness to resume key activities post-lockdown	4 May 2020
Considerations for any reduction in physical distance guidance	18 June 2020
Maximising behavioural compliance after lockdown	7 July 2020
Smart NPIs: rapid experimentation to increase impact, improve design and cost effectiveness	10 July 2020

How to evaluate a financial support intervention	29 July 2020
COVID-19: Enforcement and Compliance	31 July 2020
Simple messages to communicate key COVID protective behaviours	31 July 2020
People don't understand the social distancing guidance: results from an online experiment	21 August 2020

13 May 2022

Freedom of Information Team
Cabinet Office
70 Whitehall
London
SW1A 2AS

My Ref: CJ 58
Your Ref: FOI2020 / 20785
Date: 13 May 2022
cc: Information Commissioner - Ref: IC-89493-Z9Y4

Dear Team Members

Subject: Request for information dated 2 September 2020

Thank you for your letter dated 12 May 2022.

I am pleased to note that - following intervention by the Information Commissioner's Office - the Cabinet Office has determined that section 35 [1] [a] of the FOI Act 2000 no longer applies to a list of Covid 19 advisory papers presented by the "*Behavioural Insights Team*" for consideration by UK Government to inform policy.

I acknowledge receipt of a schedule listing the subject headings of advisory papers dated 18 March 2020 to 21 August 2020.

This adequately deals with my original request dated 2 September 2020. I am grateful to the ICO for their external assessment. You will appreciate that it has taken considerable time to process my request through your internal review process and external assessment by ICO.

Accordingly - as section 35 [1] [a] of the Act no longer applies - I would be grateful if you could arrange to also provide me with an updated schedule from 21 August 2020 to 1 May 2022. I appreciate that this will now be processed as a separate request for information and therefore subject to a further 20 working day target date for response. I would be grateful if you could acknowledge receipt of my request and provide a reference number for record purpose. If you require further clarification you are welcome to contact me at any time.

I note that you have copied in the ICO on your letter. I have therefore, likewise, copied in their office on my reply. Thank you.

Yours sincerely

Wynne Jones

16 May 2022

Our ref: FOI2022/08488

Dear Wynne Jones,

Thank you for your request for information which was received on 12th May. Your request is being handled under the terms of the Freedom of Information Act 2000 ('the Act').

The Act requires that a response must be given promptly, and in any event within 20 working days. We will therefore aim to reply at the latest by 13th June.

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

Yours sincerely,

Freedom of Information Team
Cabinet Office