



**Policy and Information Unit
Public Prosecution Service
Belfast Chambers
93 Chichester Street
Belfast BT1 3JR**

FOI 3003-18/19

Via email: [REDACTED]

08 February 2019

Dear [REDACTED]

I refer to your email dated 10 January 2019 in which you asked for information regarding submissions to the Department of Justice on our day one delivery planning exercise and no deal scenario plans.

Your request has been dealt with under the terms of the Freedom of Information Act 2000.

Freedom of Information Act 2000

The Freedom of Information Act 2000 creates rights of access for any person making a request for information to a public authority. The rights of access are twofold. First, to be informed by the public authority if it holds information of the description specified in the request, and if that is the case, secondly, to be provided with that information. These rights are subject to important limitations, which are designed to achieve a proper balance between the right to know and considerations of law and policy in the broader public interest.

You had asked for the following:

Please provide all submissions to the Department of Justice on your day one delivery planning exercise and no deal scenario plans.

I can confirm that the PPS holds information which falls within the scope of your request. However, I have identified that the exemptions in sections 27 (International Relations), 28 (Relations within the United Kingdom), 31 (Law Enforcement) and 35 (Formulation of Government policy) of the Freedom of Information Act apply to the information requested.

Please note that reliance on sections 27, 28, 31 and 35 requires that a public interest balancing test be carried out to determine whether to withhold or release the requested information.

These are examined in turn:

Section 27 International Relations.

(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice —

- (a) relations between the United Kingdom and any other State,
- (b) relations between the United Kingdom and any international organisation or international court,
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad.

Section 27 Considerations in favour of disclosure:

To publish the information requested may further the understanding and debate regarding planning for the various scenarios for exiting from the European Union.

Section 27 Considerations in favour of maintaining the exemption:

Publication may affect the UK's wider policy and interests in this area and prejudice its ability to promote the UK's interests abroad.

As plans and negotiations are sensitive and at a critical stage, the timing of the release of information could prejudice ongoing negotiations and cause harm to future arrangements.

Disclosure of this information might prejudice the outcome of future arrangements and might result in damage to the relations between the UK and the European Union.

After careful consideration, and after taking into account all the relevant circumstances, we have decided that the public interest in withholding the information requested outweighs the public interest in disclosure.

Section 28 Information may prejudice relations between UK administrations

28(1) Information is exempt information if its disclosure under this Act would, or would likely to, prejudice relations between any administration in the United Kingdom or any other such administration.

Section 28 Considerations in favour of disclosure:

There is public interest in the planning and preparations for the various exit scenarios from the European Union. To publish the information requested may further increase the understanding of the various factors shaping preparations and negotiations.

Section 28 Considerations in favour of maintaining the exemption:

Publishing information exchanged between criminal justice partners may risk planning and policy development and damage relations between administrations if there is not the free space in which information can be exchanged.

In weighing up the considerations, the risk to relationships between criminal justice partners and administrations outweighs the public interest.

Section 31 – Law Enforcement:

31(1) & (2) - Exemption Law Enforcement

31(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

(c) the administration of justice

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)

31(2) The purpose referred to are -

(a) the purpose of ascertaining whether any person has failed to comply with the law.

In discharging its function, PPS is responsible for, and has the authority to take prosecutorial decisions based on the evidential and public interest test.

Section 31 Considerations in favour of disclosure:

To publish the information requested may serve to increase the accountability and transparency of the PPS in relation to the performance of its statutory function.

Section 31 Considerations in favour of maintaining the exemption:

Disclosure of the requested information could prejudice the ability of PPS in the future to effectively discharge its prosecutorial and decision-making function.

To publish the information may adversely affect the relationship and co-operation between the criminal justice partners if they are not free to engage in the exchange of information to inform future plans.

After careful consideration, and after taking into account all the relevant circumstances, we have decided that the public interest in withholding the information requested outweighs the public interest in disclosure.

Section 35 - Formulation of government policy, etc.

(1) Information held by a government department is exempt information if it relates to —

(a) the formulation or development of government policy.

Section 35 Considerations in favour of disclosure:

To publish the information requested may serve to increase the accountability and transparency of the PPS and criminal justice partners in relation to planning and policy development.

Section 35 Considerations in favour of maintaining the exemption:

There are particular sensitivities in regard to EU exit policy making in general and it is a significant fact that policy development is a 'live' issue. Disclosure could cause officials involved to be less candid in the information they exchange which is likely to prejudice ongoing planning and policy formulation.

As policy making is ongoing, it is imperative that officials can debate live policy issues away from external interference and distraction. Release of information is likely to cause a 'chilling effect' on free and frank discussions which could diminish the quality of decision making, and hence the effectiveness of policy and procedures.

There is a risk that publication of information on planning and scenario exercises may create unnecessary concerns as certain situations and scenarios may never arise.

The formulation and development of government policy on this subject must be of the highest quality. It is vital that there is a safe space within which facts are analysed and policy is developed and formulated.

After careful consideration, and after taking into account all the relevant circumstances, we have decided that the public interest in withholding the information requested outweighs the public interest in disclosure.

If you are dissatisfied in any way with the handling of your request, you have the right to request a review in accordance with our review procedure. You should do this as soon as possible or in any case within two months of the date of this response and you can do so by writing to the Head of Policy and Information, Public Prosecution Service, Belfast Chambers, 93 Chichester Street, BELFAST, BT1 3JR or alternatively by sending an e-mail to info@ppsni.gov.uk. You should state clearly the grounds on which you are requesting the review.

Alternatively, you may wish 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

Cheshire

SK9 5AF

Yours sincerely,

A handwritten signature in black ink, appearing to be 'One' or similar, with a long horizontal stroke extending to the right.

PPS FOI Section