



Molly Scott Cato
MEP for South West England and Gibraltar
European Parliament
Rue Wiertz
Brussels

22nd May 2018

Dear Ms Denham,

On 7th December 2017, I was joint claimant on an application for Judicial Review to the High Court (detailed outline of this in annex 2). I was seeking disclosure by the Secretary of State for Exiting the European Union and Her Majesty's Treasury of (1) up-to-date studies focussing on 58 sectors of the economy and the likely impacts of Brexit and (2) the most up-to-date version of a report prepared by HM Treasury comparing the predicted economic detriment of Brexit with the predicted economic benefits of alternative free trade agreements.

I took this course of action because of rejections to previous written requests and then excessive delays in the responses from Government Departments to my Freedom of Information (FOI) requests to release the sectoral study information, and because of the urgent need for my constituents, and businesses, to have as much information as possible to make future planning decisions. I felt the need to escalate my request; legal advice suggested a judicial review seeking the information requested under common law was an appropriate way forward.

On 6th March 2018 there was an oral hearing on the application for a Judicial Review. In turning down the application for judicial review, Justice Supperstone relied upon information about expedition of the FOI process provided by ICO in an 'Application to Intervene' dated 18th January 2018. He refused permission for a Judicial Review stating that "In my judgment there is a suitable alternative remedy in this case" referring to an expedited FOI process.

I am therefore writing to you to continue to pursue this 'alternative remedy' route which is FOI (please see annex 1 for details and progression of the FOIs previously submitted). Two of the FOIs I submitted to the Department for Exiting the European Union (DExEU) and Department of Health (now Department of Health and Social Care DHSC) have now undergone internal review, and in both cases the decision to withhold the information was upheld. My staff, who submitted the FOIs on my behalf, have received nothing further from Defra since their last correspondence advising that they needed additional time to consider the request on 29th November 2017.

You will be aware that on 21st December the House of Commons Exiting the European Union Committee published summaries of [39 sectoral studies](#) that had been provided to them by DExEU. However, these were not the 'impact studies' that when questioned on 25th October David Davis had replied were in 'excruciating detail', and information has been redacted.

On March 8th 2018 a [cross Whitehall briefing](#) was made available on the Select Committee's website. It was also available under restricted conditions without redactions in a reading room in the House of Commons for MPs and, most recently, MEPs to read. I have visited the reading room and read the briefing in its entirety.

However, as an economist, I find that the complete absence of any detail or information about the assumptions behind the modelling renders the information in the cross Whitehall briefing impervious to analytical scrutiny. In order to use the information, or indeed to have confidence in it,

it is necessary to know what modelling has been used and how. Ideally peer-reviewable work should be made openly available or the information is little more than useless. I reiterate that this is essential for constituents and businesses in the region I represent, without this it is impossible for them to plan effectively for the coming years.

As an example, I point you to the likely regional impacts of Brexit on page 23 in the report. The South West region that I have been elected to represent has a likely impact of a change in GDP of -2 to -5%, and yet, farming, which makes up a substantial contribution to the economy of the region is likely to be very negatively impacted by Brexit, particularly a no-deal Brexit that then relies on WTO rules. Indeed, the analysis on page 9 suggests non-tariff barrier impacts of between 8% and 17% for agriculture. As a representative of the farmers and food-sector workers of the South West I need to know the assumptions behind this modelling so that I can assess whether this hypothesised impact is reasonable and then best support the farmers and food producers.

In conclusion, I feel that the process by which a summarised version of this vital information about the impact of Brexit has emerged into the public realm has hindered the public debate and diminished the authority of your office. To support a fully democratic debate on such a vital issue we require full disclosure of authoritative information that shows the assumptions and workings behind such figures. Instead we have had concealment, dissembling, release of partial information and leaks. We have also seen leading politicians - including government ministers - deliberately undermining this objective information. This has left the public and democratic representatives unclear about the evidence against which they can form judgements about Brexit.

I would be grateful if you could address the following questions:

Do you believe that the Brexit impact studies should be available in their entirety as the public debates the process of leaving the European Union?

Do you consider that the process by which a summary of the information they contained has reached the public domain poses a challenge to the existing information regime?

Are you prepared to act as suggested by Justice Supperstone and expedite the many Freedom of Information requests relating to the Brexit impact studies submitted by myself and others?

I would also be grateful if you could find time to meet me to discuss this issue further.

Yours sincerely



Molly Scott Cato MEP

Annex 1 Summary and progress of FOI request submissions

DExEU FOI request

31/08/17 Initial request submitted to DExEU: “Please will you send me the Brexit impact analysis of the 50 sectors of the economy that was conducted by DexEU, as referenced in the letter from Minister of State David Jones to Molly Scott Cato MEP on 23rd May 2017.”

26/09/17 Request declined by DExEU

06/10/17 Internal review request submitted to DExEU

11/10/17 Internal review request acknowledged by DExEU

24/11/17 Notification of additional time needed to consider internal review request by DExEU: “aiming to respond as soon as possible”

27/02/18 Internal review response from DExEU: “Although I find that the three limb prejudice test (referenced in the link below) was insufficiently explained with regards to sections 27 and 29, I uphold the use of the 1 exemptions applied in the original response (sections 27, 29 and 35 of the Act) as reasonable in the circumstances of the case. However, this omission should be corrected and as such I have included below the prejudice tests for withholding the information related to sections 27 and 29”

Department of Health FOI request

31/08/17 Initial request submitted to DoH: “I am writing to request that you provide me with a copy of the document that analyses the impact of Brexit upon the National Health Service, that was subject to a leak in April.

Please can you also tell me whether this report was commissioned by the Department of Health or the Department for Exiting the EU?”

28/09/17 Notification of additional time needed to consider request by DoH

26/10/17 Request declined by DoH

05/12/17 Internal review request submitted to DoH

13/12/17 Internal review request acknowledged and transferred to a different member of staff, by DoH: “Your internal review request was previously allocated to a colleague but due to staffing issues has been escalated to me to complete. I will aim to do so within 20 working days.”

23/03/18 Internal Review response from DoH: “After careful consideration I have concluded that the response you received to your FOI request was compliant with the requirements of the FOIA”

Defra FOI request

31/08/17 Initial request submitted to Defra: “Please will you send me any studies or reports that have been produced by Defra, or its arms-length bodies, on the impacts on the UK’s farming and agriculture sectors of the UK leaving the European Union.”

29/09/17 Request for further clarification on what information is requested, by Defra

04/10/17 More defined request submitted to Defra:

“Please can I request a list of any ‘detailed analysis or investigation’ (ie something that is collated in the form of a summary document, report or powerpoint presentation, rather than meeting notes or emails) into impacts on the UK of leaving the EU carried out by, or commissioned by, Defra in the areas of:

- Impacts on the agricultural sector through the loss of Common Agricultural Policy payments,
- Impacts on Defra through not having to administer CAP payments
- Impacts on farmers through the loss of single market membership level access to the EU market
- Impacts on farmers’ incomes through international competition from cheaper meat and cereals
- Assessments of changes to farmland useage from loss of ‘green’ CAP payments
- Impacts on food prices and production through changes in access to seasonal labour
- Estimates of the cost to government to directly replace CAP payments.
- Changes that Defra would need to make to administer subsidies to farmers to replace CAP payments (e.g. recruitment of staff, structural changes, IT system changes, regional offices, monitoring and analysis)
- Impacts on the farming and agricultural sectors through the loss of CAP payments and their non-replacement by central government
- Impacts on the farming and agricultural sectors if imports to the UK from the EU were substantially reduced
- Analysis of the likely changes to farming practices in each of the nations that make up the UK post Brexit assuming we do not stay in the single market/customs union

Ideally, the kind of response I am looking for is broadly along the lines of:

Report on impact of loss of CAP payments to farmers	Date produced
Presentation summarising likely changes to land usage from loss of green CAP payments	Date produced

Or similar.”

01/11/17 Notification of additional time needed to consider request, by Defra

29/11/17 Notification of additional time needed to consider request, by Defra: “In this case, we regret that we must extend the time limit for responding by a further 20 working days. We hope to let you have a response by 3 January, and will keep you informed of any further delay.”

Annex 2: Timeline of my written requests and key events

In April 2017 a document was leaked showing secret government studies identified the impact Brexit would have on the NHS. I immediately [wrote to the Secretary of State](#) for leaving the European Union, David Davis, asking that this document and any similar studies carried out by the government into the impacts of Brexit be made available to support transparent decision-making and to provide people with the information so desperately needed in planning for departure from the EU. While this request was turned down [I received confirmation that the government had analysed more than 50 sectors of the economy](#). A second written request again [failed to elicit the information](#) that I believed needed to be made available to the public and businesses to aid in their decision-making.

I followed up these letters with [three freedom of information requests to DExEU, Defra and the Department for Health](#), again requesting that the information gathered by government be made freely available. (A summary of these FOI requests and their progress is shown in annex 1).

In September and October 2017 the issue attracted significant media attention with various Labour MPs calling for the publication of the studies. In his [25th October 2017 appearance before the Select Committee for Exiting the European Union](#), the Rt Hon. David Davis MP confirmed in response to a question about the impact assessments which he described as being in “excruciating detail”, that neither the Cabinet nor the Prime Minister had read the reports in full, but instead had only read their summaries.

On [7th November 2017 in a written statement to the House](#) following the 1st November 2017 Opposition day motion, David Davis stated “it is not the case that 58 sectoral impact assessments exist” and “there has been some misunderstanding about what this sectoral analysis actually is. It is not a series of 58 impact assessments.”

On 21st December 2017, 39 sectoral studies were released in redacted format

On 8th March 2018 an EU Exit Analysis cross-Whitehall briefing was published in redacted format.