



HM Treasury

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By email: Constantine.Partasides@threecrownsllp.com

Ref: FOI2017/18588

Dear Sir or Madam

Thank you for your letter of 12 October 2017 asking, on behalf of Molly Scott Cato MEP and The Good Law Project Limited, for information in exercise of the Secretary of State's common law powers.

Your client made the following request for information:

"This request is concerned with two categories of document.

The first is a set of sectoral studies setting out predictions prepared by the Department for exiting the EU as to the likely impact of Brexit.....

Secondly, we understand that HM Treasury has produced a report that compares the predicted detriment of Brexit with the predicted economic benefits of alternative free trade agreements....

Please disclose to us:

- (i) the most up to date versions of all the (approximately) 57 sectoral studies;*
- (ii) the most up to date version of the HM Treasury report."*

You have asked us not to consider this request under the Freedom of Information Act 2000 (the Act). However, as a government department subject to that Act, we must consider any request for information that fulfils the s.8 criteria under the Act. We have therefore responded on this basis. We consider that this reply satisfies any entitlement that may arise at common law and/or any rights that may arise under Article 10 of the European Convention on Human Rights and the Human Rights Act 1998, as referred to by your request.

We note that you state that your clients are minded to challenge any refusal before the Courts by way of judicial review. However, any judicial review would be a clear attempt to circumvent the statutory appeal route – with the safeguards, balances and time limits it provides – established by Parliament. The Courts have recognised at the highest level that route as not merely constituting an adequate alternative remedy, but in fact as having numerous advantages over judicial review: see, for example, *BBC v Sugar* [2009] UKHL 9, [2009] 1 WLR 430. Alleged urgency cannot warrant its circumvention. In these

circumstances, and in accordance with well-established case-law, any attempt at judicial review would be wholly misconceived.

Part (i) of your request: sectoral studies

I can confirm that HM Treasury does hold information within the scope of this part of your request.

We consider that the information that we have identified engages the following exemptions under the Act: section 27(1)(b) (relationship with any international organisation); section 27(1)(c) (the interests of the UK abroad); section 27(1)(d) (the promotion or protection by the UK of its interests abroad); section 29(1)(a) (the economic interests of the UK or any part of it); section 29(1)(b) (the financial interests of any administration in the UK); and at section 35(1)(a) (development of government policy) under the Act. Section 27 and section 29 are engaged, as we consider that disclosure would or would be likely to prejudice international relations and the economy. Section 35(1)(a) is engaged because the information in scope relates to the formulation and development of government policy. These are all qualified exemptions and we are required to balance the public interest between disclosure and non-disclosure.

In relation to the release of this information, we recognise that there is an inherent public interest in transparency and accountability of public authorities. We also recognise the broad public interest in furthering public understanding of the issues with which public authorities deal, including relating to the UK's decision to leave the EU. There is a clear public interest in the work of government departments being transparent and open to scrutiny to increase diligence.

Balanced against this, with regard to section 35, is the public interest in protecting the government's ability to discuss and develop policies and reach well-formed conclusions. The Information Commissioner, Tribunals and Courts have recognised that effective policy development needs a degree of freedom to enable the process to work effectively and we consider that there is a strong public interest in protecting information where release would be likely to have a detrimental impact on the ongoing formulation/development of policy.

There is a similarly strong public interest in protecting against encroachment on the ability of ministers and/or officials to formulate and develop policy options freely and frankly. In this case, there is an additional, very weighty, public interest in safeguarding the safe space for policy development in preparing for and participating in exit negotiations, and allowing for that advice to be freely given and received. This is particularly so given that negotiations are continuing. There could be a chilling effect on the ability of the government to efficiently form policy if decision makers and their advisers knew that the discussions and advice would be revealed, particularly whilst the wider exit process is ongoing. In our view, these public interests clearly outweigh the public interest in disclosure.

In relation to section 27, we consider that disclosing the information held, which relates to the United Kingdom's negotiations with the European Union, would or would be likely to prejudice these negotiations and undermine the UK's ability to protect and promote its interests abroad. Release of this information at such a sensitive time would be detrimental to the Government's negotiating position. These interests, again, substantially outweigh those in favour of disclosure set out above.

The public interest balance under section 29 also falls against disclosure. This is because release of the information would be detrimental to the government's ability to protect the economic and financial interests of the UK. The adverse impact on the negotiations process that would be likely to result from release of the information would have wide-ranging repercussions not just on the government's ability to develop effective policies but also on its ability to manage the economy and protect national and international interests.

We therefore consider that the public interest lies decisively in favour of withholding this information.

Part (ii) of your request: HM Treasury report

The Treasury neither confirms nor denies that it holds the report requested. This is because the duty in section 1(1)(a) of the Act does not apply, by virtue of section 27(4), section 29(2) and section 35(3). Section 27 of the Act concerns the relations between the United Kingdom and any other State, and/or relations between the United Kingdom and any international organisation; Section 29 of the Act concerns the economic interests of the United Kingdom; and Section 35 of the Act concerns information relating to the formulation of government policy. However, this should not be taken as conclusive evidence that the information you requested does or does not exist.

In applying these exemptions, we are required to consider whether, in all the circumstances of the case, the public interest in neither confirming nor denying outweighs the public interest in disclosing whether the Treasury holds the information you have requested.

We recognise the public interest in understanding, in a broad sense, whether the government holds information on particular policy options. Balanced against this, it is essential to maintain a safe space in which the conduct of government business is not undermined and to enable the policy development process to work effectively. We consider that to confirm or deny whether or not we hold the requested information would constrain the policy-making process, undermine the negotiations process and would be likely to have a detrimental impact upon the government's ability to maintain a stable economic environment. This would not be in the public interest.

In this we consider that the wider public interest lies in neither confirming nor denying that information is held.

Yours sincerely

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Information Rights Unit

Your right to complain under the Freedom of Information Act 2000

If you are not happy with this reply, you may request a review by writing to HM Treasury, Information Rights Unit, 3/Red, 1 Horse Guards Road, London SW1A 2HQ or by emailing us at the address below. Any review request must be made within 2 months of the date of this letter.

Email: foirequests@hmtreasury.gsi.gov.uk

It would assist our review if you set out which aspects of the reply concern you and why you are dissatisfied.

If you are not content with the outcome of the review, you may apply directly to the Information Commissioner for a decision. Generally, the Commissioner will not make a decision unless you have exhausted the complaints procedure provided by HM Treasury.

The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.