

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 September 2023

Public Authority: Department for Science, Innovation & Technology

Address: 100 Parliament Street
Westminster

Decision (including any steps ordered)

1. The complainant has requested information from the Department for Science, Innovation & Technology ('DSIT') regarding its Counter Disinformation Unit ('CDU'). DSIT refused the request, citing section 36(2)(c) (Prejudice to effective conduct of public affairs) of FOIA.
2. The Commissioner's decision is that section 36(2)(c) is engaged, however the balance of the public interest is in favour of disclosing the requested information..
3. The Commissioner requires DSIT to take the following steps to ensure compliance with the legislation:-
 - Provide the complainant with a copy of the information which it has withheld on the basis of section 36(2)(c) of FOIA.
4. DSIT must take these steps within 35 calendar days of the date of the decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. On 2 March 2023, the complainant made the following request for information to DSIT:

"I am writing to request the following information from the department, about the counter disinformation unit:-

- The budget for the most recent full reporting year for the Counter Disinformation Unit
- The staffing numbers for the most recent full reporting year for the Counter Disinformation Unit
- How many pieces of social media content the DCMS Counter Disinformation Unit recommended be removed by social media companies in 2022.

I would like all documents sent electronically please."

6. DSIT responded to the complainant on 5 April 2023, stating that it was applying section 36(2)(c) of FOIA as a basis for refusing to disclose the requested information.
7. The complainant requested an internal review on 5 April 2023. DSIT provided an internal review response on 26 April 2023. The reviewer upheld the original decision.

Reasons for decision

Section 36 – Prejudice to the effective conduct of public affairs

8. Section 36 of FOIA states that information is exempt where, in the reasonable opinion of a qualified person, disclosure would, or would be likely to, prejudice the effective conduct of public affairs.
9. DSIT has applied section 36(2)(c) to withhold the requested information in its entirety.
10. The Commissioner's guidance on section 36¹ states that information may be exempt under sections 36(2)(c) if its disclosure would, or would be likely to, cause prejudice to the effective conduct of public affairs otherwise than the prejudice outlined in sections 36(2)(b)(i) and (ii).

¹ <https://ico.org.uk/media/for-organisations/documents/2260075/prejudice-to-the-effective-conduct-of-public-affairs-section-36-v31.pdf>

11. In determining whether this section is engaged the Commissioner must determine whether the qualified person's opinion was a reasonable one.
12. In doing so the Commissioner has considered all of the relevant factors including:
 - Whether the prejudice relates to the specific subsection of section 36(2) that is being claimed. If the prejudice or inhibition envisaged is not related to the specific subsection the opinion is unlikely to be reasonable.
 - The nature of the information and the timing of the request
 - The qualified person's knowledge of, or involvement in, the issue.
13. Further, in determining whether the opinion is a reasonable one, the Commissioner takes the approach that if the opinion is in accordance with reason and not irrational or absurd – in short, if it is an opinion that a reasonable person could hold – then it is reasonable. This is not the same as saying that it is the only reasonable opinion that could be held on the subject. The qualified person's opinion is not rendered unreasonable simply because other people may have come to a different (and equally reasonable) conclusion. It is only not reasonable if it is an opinion that no reasonable person in the qualified person's position could hold. The qualified person's opinion does not have to be the most reasonable opinion that could be held; it only has to be a reasonable opinion.
14. With regard to the process of seeking this opinion, DSIT sought the opinion of the Minister for Technology and the Digital Economy on 27 March 2023 with regard to whether section 36(2)(c) of FOIA was engaged. Qualified persons are described in section 36(5) of FOIA with section 36(5)(a) stating that 'qualified person' means 'in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown'. The Commissioner is therefore satisfied that the Minister for was an appropriate qualified person.
15. The qualified person was provided with a rationale as to why the exemptions could apply and a copy of the requested information. The qualified person provided their opinion that the exemption was engaged on 30 March 2023.
16. The rationale provided to the qualified person stated that disclosing the information would provide insights into the size and scale of the CDU's

monitoring and analysis functions which would be of use to malign actors, who could exploit this information to overwhelm the CDU's capabilities. It also stated that disclosing the number of referrals regarding social media content would likely impact upon the CDU's trusted relationship with social media platforms. The qualified person confirmed that they agreed with the decision not to disclose the requested information on this basis.

17. Although the rationale provided to the qualified person appears brief, the Commissioner is satisfied that it, together with a copy of the requested information, was sufficient for the qualified person to form a reasonable opinion. With regard to section 36(2)(c), the Commissioner accepts that the CDU has a specific remit and, as outlined, the opinion of the qualified person that disclosing this information would provide insights into the CDU's capabilities, potentially enabling malign actions such as spreading harmful disinformation, also that disclosure of the requested information relating to social media content would impact upon relationships as outlined above, is reasonable.
18. The Commissioner accepts that enabling malign actions and impacting upon a trusted relationship can be correctly seen as 'otherwise' causing prejudice to the effective conduct of public affairs. Section 36(2)(c) is therefore engaged.

Public interest test

19. Section 36 is a qualified exemption and in line with the requirements of section 2 of FOIA the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemptions cited outweigh the public interest in disclosing the information.

Public interest arguments in favour of disclosure

20. DSIT recognises that there is a general interest in government transparency, and that information on content the department has flagged would provide an insight into the department's processes in tackling mis- and disinformation. It recognises that this greater transparency makes the government more accountable to the electorate and increases trust.
21. The complainant has noted that there is significant parliamentary interest in the activities of CDU and its funding, which was raised in Prime Minister's Questions on 8 February 2023. They have also noted that CDU's activities have been the focus of several Written Parliamentary Questions by both Labour and Conservative MPs. It is the complainant's view that this parliamentary interest means that the public interest in disclosure of the requested information is high.

22. The complainant further argued that disclosure of how often the CDU has flagged up content to social media platforms would be of significantly high public interest as it would increase public understanding of how government officials flag such content, which can lead to its removal, and how this sits alongside the Article 10 right to freedom of expression.

Public interest arguments in favour of maintaining the exemption

23. DSIT considers that there is a greater public interest in maintaining the effective conduct of public affairs. It is of the view that disclosure of the requested information could be prejudicial to the work of the Counter Disinformation Unit (CDU) as outlined in paragraphs 16 and 17 above.
24. It also considers that its relationships with social media platforms are of great importance in the work to combat disinformation, and it is therefore not in the public interest that these relationships are undermined.

Balance of the public interest test

25. In considering complaints regarding section 36, where the Commissioner finds that the qualified person's opinion was reasonable, he will consider the weight of that opinion in applying the public interest test. This means that the Commissioner accepts that a reasonable opinion has been expressed that prejudice or inhibition would, or would be likely to, occur, but he will go on to consider the severity, extent and frequency of that prejudice or inhibition in forming his own assessment of whether the public interest test dictates disclosure.
26. As explained above, the Commissioner's role is limited to considering the balance of the public interest at the point the request was submitted, or at the latest by the time of statutory compliance, ie 20 working days after the request.
27. The Commissioner has considered the likelihood of malign actors extracting insights from disclosure of the requested information which could aid them in the spreading of harmful disinformation. He is of the view that extracting such detailed insights on the basis of staffing and resourcing numbers would be difficult, given the lack of other context such as details on the actual operations of the CDU.
28. With regard to the part of the complainant's request which relates to removal of content from social media platforms, DSIT has referred to its 'trusted relationship' with such platforms and stated that this would be likely to be impacted by disclosure of the number of referrals of social media content. It has only stated that such impact is 'likely' but has not

gone into any detail about this impact, how it would be caused and any potential repercussions from this.

29. Given that DSIT has failed to outline how any substantial, or even more than remotely possible, prejudice to the effective conduct of public affairs could result from the disclosure of this specific requested information, the Commissioner is limited in the weight he can accord to the public interest arguments in favour of maintaining the exemption. He accepts that the level of parliamentary interest in the CDU's activities would indicate a high level of public interest and has accorded significant weight to this, to add to the already significant weight accorded to the public interest in transparency and accountability of government departments. Therefore, the Commissioner in all the circumstances of the case, considers that the balance of public interest tips in favour of disclosure of the requested information.

Right of appeal

22. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Deirdre Collins
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