



Ministry of JUSTICE

Ministry of Justice
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Ian Gunn
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Ref: FOI 68108

17 December 2010

Dear Mr Gunn

Subject: Your request for information under the Freedom of Information Act 2000

Thank you for your letter of 19 November in which you asked for the following information from the Ministry of Justice in relation to the discount rate for personal injury damages.

“When did the Lord Chancellor last review the discount rate under Section 1 of the Damages Act 1996, and what evidence was placed before him? I also request information about the evidence placed before the Lord Chancellor during his current review of the discount rate.”

Your request has been passed to me because I have responsibility for answering requests which relate to policy in this area and has been handled under the Freedom of Information Act 2000 (FOIA).

I can confirm that information falling within the scope of the request is held.

I can advise that the information is exempt from disclosure due to the following sections of FOIA:

1. Section 35 - formation and development of government policy
2. Section 43(2) - commercial interests
3. Section 42 - legal professional privilege
4. Section 21 – Information accessible to the applicant by other means

Section 35

The Ministry of Justice is satisfied that the information withheld, which are submissions and correspondence between officials, engages the exemption under section 35 of the Act, and in particular, subsections (1)(a). The exemption in section 35 of the Act is designed to protect the way in which Ministers communicate with each other, and conduct the business of government. In the case of the current review, the issue is still live and is being developed, and no decision has yet been taken.

It is clear that there is a public interest argument in releasing information for transparency in government decision making reasons. However, the disclosure of the information could have a "chilling effect" on policy formulation which would inhibit the free and frank exchange of views in respect of all policy options regarding the discount rate. There is a public interest in ensuring that Departments can conduct rigorous and candid assessment of their policies, without there being premature disclosure, which might close off future discussion. I am satisfied that the public interest in this case favours nondisclosure of the information.

Section 43

Section 43 exempts information whose disclosure would be likely to prejudice the commercial interests of any person (including the department which holds it).

In this case disclosure of the withheld information would prejudice the commercial interests of insurers. The information withheld is commercially sensitive information, as the disclosure of the information could have the effect of leading to an updating of expectations, possibly incorrectly, as to the level of exposure insurance firms may face from changes in the discount rate which will affect the level of lump sum awards calculated on the basis of the discount rate.

Section 42

The legal professional privilege exemption is class based. Therefore, for the exemption to apply, it is not necessary to demonstrate that any 'prejudice' may occur to the professional legal adviser /client relationship, if information is disclosed. Rather, it is assumed that the disclosure of even quite trivial information might undermine the relationship of the lawyer and client.

This exemption relates to the openness of public authorities about the quality of their decision making, which includes ensuring that decisions have been made on the basis of good quality policy and legal advice.

There is a strong public interest in ensuring that a government department is able to act free from external pressure in deciding what sort of legal advice it obtains, at what stage, from whom, and in particular whether it should seek advice from the Law Officers. There is inbuilt into the exemption itself a strong public interest that such advice will not be disclosed unless there are strong countervailing arguments that make it necessary. This factor, the strong countervailing reason, is absent in this case. The public interest in maintaining LPP is substantial, and we maintain that this is the case here.

Section 21(1)

There is information held on the Data Management Office's website which is reasonably accessible to the public. The absolute exemption under section 21(1) applies to the information.

As part of our obligations under the FOIA, the Ministry of Justice has an independent review process. If you are dissatisfied with this decision, you may write to request an internal review. The internal review will be carried out by someone who did not make the original decision, and they will re-assess how the Department handled the original request.

If you wish to request an internal review, please write or send an email to the Data Access and Compliance Unit within two months of the date of this letter, at the following address:

Data Access and Compliance Unit

Information Directorate
Ministry of Justice
3th Floor,
Post point 6.24
102 Petty France
London
SW1H 9AJ

e-mail: data.access@justice.gsi.gov.uk

If you remain dissatisfied after an internal review decision, you have the right to apply to the Information Commissioner's Office under Section 50 of the FOIA. You can contact the Information Commissioner's Office at the following address:

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

Internet: https://www.ico.gov.uk/Global/contact_us.aspx

Yours sincerely,

Tony Jeeves