

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 May 2023

Public Authority: Department for Business and Trade¹
Address: Old Admiralty Building
Admiralty Place
London
SW1A 2DY

Decision (including any steps ordered)

1. The complainant has submitted a request to the Department for International Trade (DIT) (now, Department for Business and Trade, DBT) seeking correspondence between Ben Houchen, (Tees Valley Mayor) and Lord Grimstone and details of meetings between them for the period March 2020 to November 2021. DIT confirmed that it held information falling within the scope of the request and disclosed some of this to the complainant but withheld the remainder on the basis of the following sections of FOIA: 27(1)(a), (c) and (d) (international relations), 29(1)(a) (economy), 36(2)(b)(i), (ii) and (c) (effective conduct of public affairs), 40(2) (personal data), 41(1) (information provided in confidence) and 43(2) (commercial interests).
2. The Commissioner's decision is that the withheld information is exempt from disclosure on the basis of the exemptions cited by DIT.

¹ The complainant's request was submitted to the Department for International Trade (DIT). However, as a result of machinery of government changes in February 2023 this department no longer exists and has been replaced with the Department for Business and Trade (DBT). The decision notice is therefore served on DBT.

3. The Commissioner does not require further steps.

Request and response

4. The complainant originally submitted a request to DIT on 29 November 2021 seeking correspondence between Ben Houchen, (Tees Valley Mayor) and Lord Grimstone, and details of any meetings between them, for the period 18 March 2020 to 29 November 2021.
5. DIT responded on 29 December 2021 and refused the request on the basis of section 12(1) (cost limit) of FOIA.
6. The complainant submitted the following refined request on 30 December 2021:

'I am happy to limit the scope of this request in the following manner.

With regards to the issue of non-email platforms used by Lord Grimstone's office, with the burden issues set out in your response, I am happy to limit the scope of this request in relation to Lord Grimstone's office to departmental email correspondence only.

Then please check only for Lord Grimstone himself his work email account, any private email account/s he uses for government business, as well as WhatsApp messages on any work or privately owned mobile device, as well as any texts, Signal messages, or any other messaging app on these devices, that constitute correspondence on governmental matters with Ben Houchen.

For the rest of the request, I am happy for a search of Lord Grimstone's diary for meetings to be limited to meetings whose titles/subjects include the word Houchen or Ben Houchen, or the Tees Valley Combined Authority. A simple text search should return a list of these meetings from an exported version of Lord Grimstone's diary, and this is unlikely to be excessively burdensome to extract. This should also significantly reduce the burden of retrieving documents related to these meetings.

-It seems highly unlikely that copying and pasting the titles of attachment documents from correspondence into a word document would be excessively burdensome to extract.

I am happy to omit the setting up and summarising correspondence requested, but please still provide a copy of any briefing notes prepared for Lord Grimstone ahead of these meetings.'

7. DIT responded on 7 April 2022. It provided calendar invitations for the meetings falling within the scope of the request as well as correspondence between Lord Grimstone's office and Ben Houchen, noting that parts of this had been redacted on the basis of section 40(2) (personal data) of FOIA. DIT explained that further information falling within the scope of the request was exempt from disclosure on the basis of the following sections of FOIA: 27(1)(a), (c) and (d) (international relations), 35(1)(a) (formulation or development of government policy), 43(2) (commercial interests) and 41(1) (information provided in confidence).
8. The complainant contacted DIT on 11 April 2022 and asked it to conduct an internal review of this refusal.
9. DIT informed the complainant of the outcome of the internal review on 30 September 2022. It provided the titles/subjects of the three meetings falling within the scope of the request and also clarified the nature of information that it held falling within the scope of the request. DIT also explained why it considered the exemptions previously cited, and section 29(1)(a) (economy) of FOIA, provided a basis to withhold the remaining information falling within the scope of the request.
10. During the course of the Commissioner's investigation, DBT partly amended its position regarding the information falling within the scope of the request and disclosed some additional information to the complainant on 5 April 2023. In summary, DBT released five documents in redacted form, released one document in full, withheld one document in full and concluded that one document previously in scope of the request was now out of scope. With regard to the redacted and withheld material, DBT explained that it was seeking to rely on the following exemptions contained at the following sections of FOIA: 27(1)(a), (c) and (d), 29(1)(a), 36(2)(b)(i), (ii) and (c) (effective conduct of public affairs), 40(2), 41(1) and 43(2). DBT confirmed that it was no longer seeking to rely on 35(1)(a).

Scope of the case

11. The complainant initially contacted the Commissioner on 18 July 2022 in order to complain about DIT's refusal of his request and its failure to complete the internal review. The Commissioner contacted DIT on 20 July 2022 and asked it to ensure that the internal review was completed within the next 10 working days. The complainant informed the Commissioner on 10 August 2022 that he had not received the internal review, at which point the Commissioner accepted this complaint for formal investigation.

12. Following the completion of the internal review (and prior to the Commissioner's commencement of his investigation of this complaint), the complainant contacted him on 4 October 2022 and explained that he was dissatisfied with the decision to withhold information falling within the scope of his request. Following DBT's disclosure of information in April 2023, the complainant confirmed that he wished to challenge the decision to withhold the remaining information falling within the scope of his request.
13. This decision notice therefore considers whether such information is exempt from disclosure on the basis of the exemptions now relied on by DBT.
14. For clarity, the information falling within the scope the request (and the exemptions applied to each) are as follows:
 - Document 1: 20 June 2021, Email Briefing: Upcoming Ben Houchen and Brookfield meetings (Pre 22/06 brief). Disclosed to complainant with redactions on the basis of sections 27, 29, 40, 41 and 43.
 - Document 2: 22 June 2021, Briefing: Preparing Minister Grimstone Introducing meeting with Ben Houchen and Anuj Ranjan. Disclosed to complainant with redactions on the basis of sections 27, 29, 40, 41 and 43.
 - Document 3: 26 October 2021, Email from Minister Grimstone personal to Official email forwarding Document 4. Disclosed to complainant with redactions on the basis of section 40.
 - Document 4: 26 October 2021, SABIC background information note written by Ben Houchen. Disclosed to complainant with redactions on the basis of sections 36 and 43.
 - Document 5: 29 October 2021, email from Tees Valley Combined Authority (TVCA) attaching letter from Ben Houchen to Mr Bruce Flatt. Disclosed to complainant with redactions on the basis of section 40.
 - Document 6: Undated Whatsapp exchange between Ben Houchen and Minister Grimstone. Withheld in full on the basis of sections 27, 29, 36, 43.

Reasons for decision

Section 29 – economy

15. DBT withheld some information on the basis of section 29(1)(a) of FOIA which states that:

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

(a) the economic interests of the United Kingdom or of any part of the United Kingdom'

16. In order for a prejudice based exemption, such as section 29, to be engaged the Commissioner believes that three criteria must be met:

17. Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption.

18. Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance.

19. Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., disclosure would be likely to result in prejudice or disclosure would result in prejudice. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.

DBT's position

20. In support of this position DBT argued that disclosure of the information withheld under section 29 would have a detrimental impact on both the UK and local economy, ie the economy of the TVCA. Parts of DBT's submissions to the Commissioner regarding this exemption refer to the content of the withheld information itself and therefore such details have not been included in this decision notice.

21. In support of this position, DBT argued that inward investment in the UK relies on positive and trusted relationships. In its view disclosure of candid and frank discussions relating to business interests of significant investment companies, may impact future investment flows to the UK and regional areas prejudicing the UK's economic interests.

22. In the context of this case, DBT explained that the information withheld on the basis of this exemption concerned exchanges and details of discussions with Brookfield, an asset management company with £463 billion in assets under management (as at November 2022). It manages money across a range of asset classes on behalf of the largest

institutional investors in the world, including many where DBT holds direct relationships.

23. More specifically, in the context of this request, Brookfield is the ultimate business owner of PD Ports, whose main operation is at Teesport.
24. DBT argued that disclosure of this information could harm its relationship with Brookfield and its Limited Partners resulting in less and less frank engagement with HMG and therefore, the potential for reduced engagement with HMG investment priorities, and a significant loss to DBT's ability to deliver inward investment for the UK and provide business intelligence in policy making. DBT noted that Brookfield is required to deploy its capital on behalf of its investors and if disclosure is made in this case, it would be likely to impact negatively further investment in the UK. DBT argued that if this were the case, investment would then benefit other governments and societies rather than the UK.
25. More broadly, DBT argued that should there be a loss of trust between the government and Brookfield, such a situation would be likely to become public and this would send a message to other investors and potential investors that candid and frank discussions in relation to their business interests, including commercially sensitive information, could be revealed by prematurely by the government and outside of the UK's well respected financial reporting regulation framework. DBT argued that this would pose a real and significant risk of prejudice to the UK's economic interests.
26. Furthermore, DBT argued that while governments across the world seek to deliver on their net zero commitments, business intelligence is critical for the delivery of new regulation and new funding mechanisms. It explained that HMG works closely with all institutional investors to understand their views and opinions on changing and new regulatory frameworks. DBT argued that should this access be lost to HMG, there is a risk that critical information to support the net zero transition would be shared instead with other governments with serious detriment to the UK economy. DBT explained that it currently works closely with Brookfield on understanding private sector insights and this disclosure may risk access to their advice and opinions which are of great value to HMG.
27. DBT explained that Brookfield has raised \$15 billion in a decarbonisation transition fund Brookfield Global Transition Fund (BGTF). It is the world's largest dedicated energy transition fund. The UK will be seeking to attract inward investment from this strategically important fund and will be in competition for capital with other EU and non-EU states over the coming three to five years. The UK would not want to jeopardise access

to this investment as well as the many other funds which Brookfield manages.

28. DBT explained that on a more direct, local level, this could have a more pointed economic impact on TVCA and the local economy in Teesside. Moreover, DBT strongly considered that disclosure in this case would affect existing and potential investment in, and therefore, the Northern Powerhouse agenda.
29. In support of its position, DBT drew the Commissioner's attention to a previous decision notice where he accepted that section 29(1)(a) applied:

'The company must be able to engage freely and frankly with Government on a variety of issues in order to maintain and expand its investments in the UK economy. Otherwise, it is not unreasonable to assume it could conclude that some of its business interests are better served elsewhere and consequently reduce its presence in the UK market.'²

The Commissioner's position

30. In terms of the first criterion set out above, the Commissioner accepts that the type of harm that DBT believes would be likely to occur if the information was disclosed is applicable to the interests protected by section 29(1)(a) of FOIA.
31. With regards to the second and third criteria, the Commissioner accepts that disclosure of the information withheld on the basis of this exemption would present a real risk of undermining trust between the UK government and Brookfield. The information in question contains details of discussions with Brookfield, along with other information regarding Brookfield's investments, that it would clearly not wish to be disclosed given that they relate to significant and commercially sensitive matters. The Commissioner accepts that given the content of this information, and the level at which it was provided, Brookfield would have a reasonable expectation that such information would not be disclosed.
32. Furthermore, the Commissioner accepts that this loss of trust would pose a significant and material risk of prejudice to the UK's economy. DBT's submissions above demonstrate the significant investments that Brookfield has, and could potentially make, in the UK economy. The

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Commissioner accepts the rationale of DBT's argument that if the government is not able to engage freely with significant investors such as Brookfield then, such investors may well conclude that some of their business interests are better served elsewhere and reduce, or not renew, its UK commitments.

33. More broadly, the Commissioner also accepts the disclosure of the information withheld on the basis of this exemption would alert other such investors that candid discussions and information which they share with the UK government could be disclosed. As a result, the Commissioner accepts that disclosure poses a wider risk to the UK economy, beyond simply the impact of actions that Brookfield may take as result of disclosure.

34. Section 29(1)(a) is therefore engaged.

Public interest test

35. The exemption is however subject to the public interest test set out in section 2(2)(b) FOIA. The Commissioner has therefore considered whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

Public interest arguments in favour of disclosing the information

36. DBT acknowledged that there is a public interest in disclosure of information, and it recognised that openness in government activity at a national and a local level may increase public trust in and engagement with all levels of government. It also acknowledged that there is a public interest in understanding the UK's approach to furthering international inward investment.

37. The complainant noted in the documents disclosed to him in response to this request that reference is made to the UAE. He argued that there was a clear public interest in transparency around investments deals with autocratic powers. In support of this position he argued that there were inherent risks in accepting investment from authoritarian, non-rule of law countries. He noted that as had been seen in the ongoing Russo-Ukrainian war, these governments may decide to engage in major internal and external human rights abuses, activities that stand in clear contrast to British values.

38. The complainant argued that accepting investments from such countries risks damaging both the reputation of the UK, and UK institutions that are exposed to such investments, and can raise the costs for the British government in engaging in sanctions policies in response. With regard to the UAE, he noted that this has a Freedom House rating of 17, among

the lowest in the list, and has been accused of widespread human rights abuses. The complainant explained that it was his understanding that China had also been involved in investments in the Tees Valley area and may have been the subject of discussion, has an equally low rating, and has been accused of crimes against humanity in relation to its activities in Xinjiang.

39. The complainant acknowledged that whilst there may be a case for accepting investment, this must be seen to be subject to the highest degrees of transparency and scrutiny, to ensure these considerations have been fully taken into account, and that the public interest still lies in promoting ties with these countries despite the reputational and political risk inherent in these transactions.
40. In the complainant's view this will clearly outweigh the commercial interests of the autocratic investing countries, the officials' policy safe space, and the interests in information being withheld for the purposes of international relations with such autocratic nations. It is also the case that any failure to take these issues properly into account should be on the public record.

Public interest arguments in favour of maintaining the exemption

41. DBT argued that there was a strong public interest in ensuring that the economic interests of the UK be protected so the Government can effectively attract new investment and secure jobs and growth. It noted that potential investors place a high priority on trusted relationships, for those in the company, at all levels, to be able to share sensitive information and have open discussions. Therefore maintaining trust is a major factor in being able to engage at an early stage of corporate decision making and being able to influence and win new investments. DBT argued that the release of the withheld information would be likely to have a broader chilling effect on Government's ability to engage both asset managers and asset owners in future and would prejudice the UK's economic interests. Therefore, it concluded that the balance of the public interest lies in withholding this information.

Balance of the public interest factors

42. The Commissioner accepts that there is a public interest in the disclosure of information which would provide an insight into the government's discussions with, and considerations about, international investors. Disclosure of the information withheld on the basis of this exemption would provide a direct insight into relations with Brookfield, and more specifically, into the nature of its investment in the Tees Valley. As a result the Commissioner accepts that there is a clear public interest in the disclosure of the information. However, in the

Commissioner's view the extent to which this would address the points made by the complainant is arguably limited.

43. In contrast, the Commissioner is satisfied that disclosure of the specific information represents a real risk both to the economy of the Tees Valley and to the wider UK. In his view it is clearly against the public interest to undermine the UK's trust with such a significant investor such as Brookfield. Moreover, in the Commissioner's view the risk of disclosure to the economy from the potential reluctance of other investors to engage with the government in the future adds further weight to the public interest in maintaining the exemption.
44. In light of the above, the Commissioner has concluded that the balance of the public interest favours maintaining the exemption contained at section 29(1)(a).

Section 27 – international relations

45. DBT withheld some information on the basis of sections 27(1)(a), (c) and (d) of FOIA. These state that information is exempt if its disclosure would, or would be likely to, prejudice:

'(a) relations between the United Kingdom and any other State...

...(c) the interests of the United Kingdom abroad,

or (d) the promotion or protection by the United Kingdom of its interests abroad'

46. In support of this position DBT argued that disclosure of the information withheld on the basis of these exemptions would have a detrimental impact on the UK's relationship with the specific states in question thereby prejudicing the UK's ability to deliver domestic objectives reliant on internationally mobile investment. DBT argued that the ability to engage with government on a trusted basis and through maintained relations is valuable to enable and promote the interests of the UK. In DBT's view disclosing information about the states via FOI would damage this trust and these relationships, further negatively impacting on the ability of HMG to deliver on the government's objectives and investment priorities.
47. DBT provided the Commissioner with submissions which reference the content of the withheld information. Given the nature of these submissions the Commissioner has not included them in this notice.
48. In terms of the first criterion set out above, the Commissioner accepts that the type of harm that DBT believes would be likely to occur if the

information was disclosed is applicable to the interests protected by the parts of section 27(1) which it has cited.

49. With regards to the second and third criteria, having viewed the withheld information the Commissioner is satisfied that disclosure of this information under FOIA would, as DBT has argued, have a detrimental affect on the UK's relations with the specific states in question. The Commissioner cannot elaborate on his reasoning for reaching this finding without referring to the content of the information itself. However, the Commissioner would note that he accepts that for the UK to maintain effective relations with other states it needs to share the trust and confidence of those states and that disclosure of the information in this case would clearly impact on this. In turn, as a result of this the Commissioner accepts that disclosure of the withheld information would also be likely to prejudice the UK's ability to protect and promote its interests via effective relations with the states in question.
50. Sections 27(1)(a), (c) and (d) are therefore engaged.

Public interest test

51. The exemption is also subject to the public interest test set out in section 2(2)(b) FOIA.

Public interest in favour of disclosing the information

52. DBT recognised that the disclosure of the information may offer further understanding into its role in attracting inward investment into the UK and how this activity is undertaken. DBT argued that noting this public interest, it had endeavoured to release what it can, redacting only specifics of the material in question.

Public interest in favour of maintaining the exemption

53. DBT argued that it would be clearly against the public interest to undermine the UK's relations with the states in question as it would impact on the UK's ability to protect and promote UK interests. DBT explained that in its view disclosure of the information withheld on the basis of this exemption would not inform public knowledge about matters of public interest but rather is related to the processes and discussions at DBT which support inward investment.

Balance of the public interest

54. The Commissioner accepts that there is a public interest in the disclosure of information which would provide an insight on the UK's relations with other states in the context of attracting international

investment. In the Commissioner's view disclosure of the withheld information would go some way to meeting this aim in the context of the particular investments which are discussed in the withheld information. In the Commissioner's view the public interest in disclosure should not be dismissed lightly.

55. However, the Commissioner accepts that there is a considerable and weighty public interest in ensuring that the UK maintains effective international relations. In the context of this request, the Commissioner accepts that disclosure of the withheld information would have a direct, and detrimental, impact on the UK's relations with the states in question and in his view such an outcome would be firmly against the public interest not only in the context of the international investment opportunities but potentially more broadly.
56. In light of the above, the Commissioner has concluded that the balance of the public interest favours maintaining the exemptions contained at sections 27(1)(a), (c) and (d).

Section 43 – commercial interests

57. DBT withheld some information on the basis of section 43(2) of FOIA. This states that information is exempt from disclosure if it would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). DBT noted that there was a significant crossover between the information withheld on the basis of section 43(2) and the information also withheld on the basis of sections 29(1)(a) and 41(1).
58. In light of this for the purposes of this notice the Commissioner has only considered DBT's application of section 43(2) to material which section 29(1)(a) has not also been applied (given that the Commissioner has already concluded that DBT are entitled to rely on that exemption). This equates to small parts of documents 2, 4 and 6.
59. DBT argued that disclosure of the information withheld on the basis of this exemption would be likely to harm the commercial interests of the TVCA and the interests of a number of other private companies. With regard to the latter, DBT explained that this primarily concerned Brookfield, and by extension their limited partners and investors. DBT argued that disclosure of the specific information that had been withheld would result in commercial prejudice as it would reveal information about their investment interests that is not otherwise accessible or in the public domain. In support of this position DBT provided the Commissioner with further detailed submissions, which made specific reference to content of the withheld information, to support its application of section 43(2). In relation to TVCA, DBT argued that

release of sensitive commercial information relating to investors and companies that invest in Teesside would harm the Tees Valley economy and impact its ability to attract new investment and deliver its strategic economic plan. DBT also referred to the content of the specific information that was being withheld to further explain to the Commissioner why disclosure of the information would be likely to harm TVCA's commercial interests.

60. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the DBT does relate to the interests which the exemption contained at section 43(2) is designed to protect.
61. With regard to the second and third criteria, having reviewed the withheld information, it is clear that it contains information about the private companies' current, and potential business operations and investments, information which is not in the public domain. The Commissioner is satisfied that disclosure of the information represents a real and significant risk of prejudicing the commercial interests of the companies in question. The Commissioner cannot elaborate on why he has reached this finding without referring to the content of the withheld information itself. The Commissioner is also persuaded that based on the content of the withheld information, there is a real risk that disclosure of the withheld information would be likely to harm TVCA's commercial interests, and in particular, its ability to attract new investment to the region.
62. Section 43(2) is therefore engaged.

Public interest test

63. The exemption is also however subject to the public interest test set out in section 2(2)(b) FOIA.

Public interest in favour of disclosing the withheld information

64. DBT acknowledged that releasing the information might provide the public with a better understanding of the UK's approach to attracting inward investment and the roles and responsibilities of the elected mayors in delivering positive economic outcomes for their regions. DBT recognised there is a public interest in the disclosure of information about the relationship between DBT Ministers and the support they provide to elected Metro Mayors which may inform public debate on the levelling up programme of activity.
65. DBT also explained that it recognised that there is a general public interest in the disclosure of information, as greater transparency makes the Government more accountable, this can include the interactions

between government, local government and private companies. In noting the public interest, DBT has further disclosed information, but where necessary withheld information to protect specific sensitivities in the documents.

Public interest in maintaining the exemption

66. DBT argued that there is a strong public interest in ensuring that the commercial interests of external businesses or other organisations are not damaged or undermined by disclosure of information which is not common knowledge, and which could adversely impact on future business, sales and reputations and importantly beneficial investment into the UK and its regions. Furthermore, it argued that by releasing such information the confidence businesses or other organisations have in DBT may be damaged, making them reluctant to provide it with commercially sensitive information in the future. DBT argued that it is vital that private companies and public authorities are able to share sensitive commercial information with DBT in confidence to enable the department to support investment in the UK. DBT argued that there is a strong public interest in ensuring that trusted relationships are maintained with major financial investors.
67. In addition, DBT argued there was a clear public interest in ensuring TVCA can achieve its growth plans.

Balance of the public interest

68. The Commissioner considers there to be clear public interest in ensuring that the commercial interests of private companies are not harmed and that fairness of competition is not undermined. Disclosure of the information in question would therefore be against the public interest as it would be likely to harm the particular companies referred to in the withheld information. He also accepts that it would be against the public interest to undermine the commercial interests of TVCA.
69. Therefore, whilst disclosure of the information withheld on the basis of section 43(2) would provide some insight into the positions of investors in the region, and the relations between them and TVCA and central government, in the Commissioner's view there is a greater public interest in maintaining the exemption.

Section 36 – effective conduct of public affairs

70. DBT withheld some information on the basis of sections 36(2)(b)(i), (ii) and (c) contained in document 4 and all the information contained in document 6.

71. Sections 36(2)(b)(i), (ii) and 36(2)(c) of FOIA state that:

'(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—

(b) would, or would be likely to, inhibit-

(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely to otherwise prejudice, the effective conduct of public affairs.'

72. In determining whether sections 36(2)(b)(i), (ii) and (c) are engaged the Commissioner must determine whether the qualified person's opinion was a reasonable one. 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, for example, whether the request concerns an important ongoing issue on which there needs to be a free and frank exchange of views or provision of advice.
- The qualified person's knowledge of, or involvement in, the issue.

73. 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.

74. With regard to the process of seeking this opinion, DBT sought the opinion of the Minister of State for International Trade on 14 February

2023 with regard to whether sections 36(2)(b)(i), (ii) and (c) of FOIA were engaged. The qualified person was provided with a rationale as to why the exemptions could apply and copies of the withheld information. The qualified person provided their opinion, also on 14 February 2023, that the exemptions were engaged. Whilst the rationale as to why the exemptions apply is contained in the recommendation to the qualified person, to which the latter's opinion simply agreed, the Commissioner is satisfied that this is an appropriate process to follow (and is in line with the approach taken by other central government departments).

75. As is clear from these dates, DBT sought to apply section 36 after it had initially refused and conducted an internal review in relation to this request. However, under FOIA public authorities are entitled to rely on exemptions to withhold information that are only claimed after the initial refusal of the request, including section 36.
76. Turning to the substance of the opinion, with regard to sections 36(2)(b)(i) and (ii) the qualified person's opinion was that disclosure of information covered by these exemptions would cause harm by inhibiting the free and frank provision of advice and exchange of views between DBT Ministers and Ben Houchen and there is a risk that it could affect the candid way other Metro Mayors engage with DBT in future. Furthermore, disclosure would also be likely to inhibit individuals from freely volunteering information, advice and opinions due to the anticipation of future premature disclosure and the potential criticism of early views or speculative assessments. Individuals would not be able to comment freely if they knew or suspected the information was going to be made public. Disclosure of this information may set a precedent for the publication of these exchanges and advice in future and would negatively affect the freedom in which future communication would be undertaken.
77. With regard section 36(2)(c), the qualified person's opinion was that discussions and communications with external parties rely on their own safe space within which issues can be discussed openly and frankly. Disclosure of the information would have a prejudicial effect on these relationships, specifically between Metro Mayors and central government. Such parties must be able to work effectively together in the interests of the UK people.
78. Having considered the content of the withheld information, the Commissioner is satisfied that it was reasonable for the qualified person to come to the opinion that disclosure of the information would be likely to prejudice the provision of advice and/or the free and frank exchange of views for the purposes of deliberation. Furthermore, the Commissioner accepts that it was reasonable for the qualified person to conclude that disclosure of such information would be likely to have the

a negative impact on the effectiveness of relations between central government and Metro Mayors in devolved administrations. Sections 36(2)(b)(i), (ii) and (c) are therefore engaged.

Public interest test

79. 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 exemption cited outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosure

80. DBT acknowledged that there is a significant public interest in understanding the relationship held between the Minister for Investment and Metro Mayor/s and how these offices engage with one another. There is a public interest in transparency to allow public scrutiny of the way Government engages with and support the agendas of combined authorities' economic plans. There is a public interest in accountability so as to allow the public to determine whether decisions made are of public benefit.

Public interest arguments in favour of maintaining the exemptions

81. DBT argued that disclosure of information withheld on the basis of these exemptions may set a precedent for the publication of these exchanges and advice in future and would negatively affect the freedom in which future communication would be undertaken. Ultimately it would be likely as a result to affect the quality of decision making and thus the extent to which the UK and local regions benefit or not from potential investment. DBT argued that it was therefore in the public interest to ensure an environment is maintained in support of the free and frank exchanges of information and advice between Metro Mayors and government departments.

82. In terms of section 36(2)(c), DBT argued that devolution has fundamentally changed the constitutional arrangements of the UK. While the UK government and the devolved administrations are separate political entities with different accountabilities, it is critical that engagement and relationships between central government and Metro Mayors are maintained and effective. It argued that there was a clear public interest in ensuring this is maintained. Mayors hold significant powers and alongside the UK government offices must be able to work together in the interests of UK people by being able to freely express opinions and advice to departmental ministers.

83. Furthermore, DBT acknowledged that the exemption engages the process inhibited in the effective conduct of public affairs, not the content. However, whilst these conversations and information were shared in 2021, Ben Houchen remains the Metro Mayor of TVCA and a relationship continues to exist between him and DBT Ministers as they work closely together on a range of projects. DBT emphasised that good relationships and the ability to effectively realise the ambitions of combined authorities rely on the ability of parties to engage freely and frankly. A chilling of this relationship could impact the ability of the parties to effectively deliver in the interests of the region and the UK. The region is currently focused on delivering its Strategic Economic Plan and DBT is in place to continue to support high value and high impact investment into the region.

Balance of the public interest arguments

84. 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.
85. Having considered the content of the information withheld on the basis of these exemptions, in particular the information contained in document 6, ie the WhatsApp exchange, the Commissioner accepts that this clearly represents a free and frank exchange of views and information. In the Commissioner's opinion it is very clear that disclosure of such information would impact on the candour of such discussions in the future and moreover would, if disclosed at the time of the request, have impacted significantly on the safe space needed to effectively consider the issues in question. As a result, in the Commissioner's view significant weight should be given to the public interest in maintaining the exemptions contained at sections 36(2)(b)(i) and (ii). Furthermore, as a result, the Commissioner also accepts that disclosure of the information would be likely to have a significant impact on the effectiveness of relations between government departments and Metro Mayors if this information was disclosed. The Commissioner accepts that this would have a direct and negative impact on relations between ministers and the TVCA mayor, but also risks undermining future relations and communications channels between central government and other similarly devolved administrations. The Commissioner accepts that such an outcome would be firmly against the public interest.

86. With regard to the public interest in disclosure, disclosure of the information in question would provide direct and informative insight into relations between the TCVA Mayor and DBT ministers. As previously suggested the Commissioner accepts that the public interest in understanding this relationship should not be underestimated.
87. However, given the significant harm that the Commissioner accepts would be likely to result if information was disclosed both in terms of the free and frank flow of information, and more broadly to relations between devolved authorities and central government, the Commissioner has concluded that the public interest favours maintaining the exemptions.

Section 40 – personal data

88. DBT has argued that the names of junior officials contained in the withheld information are exempt from disclosure on the basis of section 40(2) of FOIA. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
89. In this case the relevant condition is contained in section 40(3A)(a).³ This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
90. It is common practice for a public authority to argue that the names of junior officials are exempt from disclosure under FOIA on the basis of section 40(2) as disclosure would contravene the principles set out in Article 5 of the GDPR. Furthermore, unless there are very case specific circumstances, the Commissioner accepts that the names of the junior officials are exempt from disclosure on the basis of section 40(2) of FOIA. This is in line with the approach taken in the Commissioner's section 40 guidance.⁴ Therefore, in this case the Commissioner adopts the reasoning set out in these previous decision notices which found that

³ As amended by Schedule 19 Paragraph 58(3) DPA.

⁴ https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf see page 12

the names of junior officials were exempt from disclosure on the basis of section 40(2) of FOIA.⁵

91. The Commissioner has not considered DBT's reliance on section 41(1) as he is satisfied that the information withheld on the basis of that exemption is exempt from disclosure on the basis of one, or more, of the other exemptions already considered in this notice.

Other matters

92. FOIA does not impose a statutory time within which internal reviews must be completed, albeit that the section 45 Code of Practice⁶ explains that such reviews should be completed within a reasonable timeframe. The Commissioner expects that most internal reviews should be completed within 20 working days, and even for more complicated requests, reviews should be completed within a total of 40 working days.⁷
93. In this case DIT took over five months to complete the internal review and therefore failed to meet the timescales set out in the Commissioner's guidance.

⁵ IC-114449-B7P7 - <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022310/ic-114449-b7p7.pdf> Paragraphs 49-71 and IC-110922-T9R1 <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022447/ic-110922-t9r1.pdf> paragraphs 39-62.

⁶ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

⁷ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#internal>

Right of appeal

94. 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

95. 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.
96. 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

Jonathan Slee
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Information Commissioner's Office
Wycliffe House
Water Lane
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SK9 5AF