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Northern Ireland Office

Freedom of Information Team

Stormont House

 Stormont Estate

 8 January 2016

Dear Mr Dudgeon

**REFERENCE: FOI – AP/16/1 – OUTCOME OF INTERNAL REVIEW**

Thank you for your email dated 6 January 2016, in which you asked for an internal review into the way the Department handled your request for information under reference: 15/247.

**I am now asking you to internally review this decision.**

**There is some urgency in the matter, as it may be overtaken by events, in this case, normal publication in a few months. However the discussion prior to then will be hampered and hindered as people will not know the details of the Northern Ireland Office's intention at the time of producing the draft I seek.**

**The particular reason why this issue is not one where, "the formulation or development of government policy" applies, is that copies of the draft Legacy Bill have been handed to private individuals within political parties. The apprised members of those parties are therefore at a considerable advantage to other citizens in that they are precisely aware of both the drift and detail of what the government intended, then, and may in the future.**

**Not only are they aware, but they have commentated upon it and argued against it. Indeed at least one newspaper has a copy of the Bill while everyone else remains in the dark as to the accuracy and fairness of comments made, with private knowledge, on the issue.**

**There is therefore no stronger case for the FOI Act to operate in the public interest, by enabling the release of the draft Bill (as at the date it was released to others).**

The purpose of an Internal Review is to assess how your Freedom of Information request was handled in the first instance and to determine whether the original decision given to you was correct.

In your original request of 3 December 2015, you asked:

**Could I have a copy of the draft Legacy Bill as issued to various political parties during the recent talks?**

In a letter of response dated 5 January 2016, the FOI team informed you that:

I can confirm that the NIO holds information falling within the scope of your request but is exempt by virtue of section 35 (1)(a) of FOIA. Section 35(1)(a) protects information relating to the formulation or development of government policy. The information sought in this case engages this exemption.

The exemption at section 35 (1)(a) is a qualified exemption so we have given due consideration to whether the public interest in disclosing the information outweighs the public interest in withholding the information.

In this case, we recognise that there is considerable interest in the issue of the legislation that is being prepared, with the intention of delivering the legacy bodies set out in the Stormont House Agreement. It was because of that public interest that we published a summary of the measures that was to be included in the Bill in September 2015. You can access that document here:

[https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/462888/Policy\_Paper\_\_Summary\_of\_Measures\_23\_Sept\_2015\_Final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/462888/Policy_Paper_-_Summary_of_Measures_23_Sept_2015_Final.pdf)

However, the draft Bill itself is still in development. Publishing any early draft of the Bill at this stage would undermine the continuing development of this policy. As a consequence, we consider that the public interest lies with withholding the information.

**Internal Review**

Analysis of the handling of your request was carried out by an independent official who was not involved in the handling of your original request. This official has reassessed your case and after careful consideration of the original response, and the further rationale provided as a result of your request for a review, has concluded that the initial response that was sent to you was compliantwith the requirements of the Freedom of Information Act. An explanation of the decision follows.

The response provided to you on 5 January informed you that the NIO was not able to provide you with the information requested on the basis of the section 35(1)(a) of the Freedom of Information Act exemption.

I have reassessed your case and after careful consideration I have concluded that the initial response was compliant with the requirements of the Freedom of Information Act. It is clear that your request is in relation to government policy which is still being developed. Your letter requesting an internal review also acknowledged this by recognising that publication of the draft Bill may take place in a few months. Section 35(1)(a) clearly applies in this instance - the draft Bill remains subject to negotiation and is still a policy under development.

Some of the information (the summary of the measures included in the draft bill) was, however, made available to you. I am content that the remainder of the detail of the information requested was not considered disclosable as, on balance, it was not in the public interest to do so.

Proper process has been followed and consideration of the public interest test has been given by a

qualified person.

You have the right to appeal the decision if you think it is incorrect. Details can be found in the ‘How to

Appeal’ section attached at the end of this letter.

Yours sincerely

**FREEDOM OF INFORMATION MANAGER**

**HOW TO APPEAL**

**Information Commissioner’s Office**

If you remain dissatisfied after an internal review decision, you have the right to apply to the Information

Commissioner’s Office. The Commissioner is an independent regulator who has the power to direct us to respond to your request differently, if he considers that we have handled it incorrectly.

You can contact the Information Commissioner’s Office at the following address:

Information Commissioner’s Office,

Wycliffe House,

Water Lane,

Wilmslow,

Cheshire

SK9 5AF

[www.ico.org.uk](http://www.ico.org.uk/)

If you wish to discuss this letter with us, please contact the Freedom of Information Team using the contact details provided at the top of the first page. Please remember to quote your reference in any correspondence.

Yours sincerely

**Freedom of Information Manager**