

Private and Confidential

9 December 2016

Dear

FOI Request 14 November 2016

I write further to my email of 14 November acknowledging receipt of your Freedom of Information Act ("FOIA") request.

The Request

Your request is as follows:

1. All emails held by Estyn or the data sets that I have sent to you which you hold, including correspondence with [REDACTED]; and
2. Minutes or recorded outcomes of any meetings held to discuss those emails or data sets.

Estyn's response

Under FOIA, Estyn is required to:

1. Confirm or deny whether it holds the information of the description specified in the request; and
2. Communicate the information to the applicant.

I can confirm that Estyn holds the information set out in part 1 of the request and will provide you with the documentation you are seeking. However, in relation to part 2 of your request, Estyn does not hold any minutes of meetings or recorded outcomes of any meetings held to discuss the emails and data sets it received from you.

Whilst Estyn does hold internal email correspondence where your emails and data sets are discussed, Estyn considers that such email correspondence is exempt from release under section 36(2)(b) (i) and (ii) and section 40(2).

Section 36(2)(b) – Prejudice to the effective Conduct of Public Affairs

Section 36 (2) (b) provides that information is exempt if, in the reasonable opinion of a qualified person, disclosure of the information 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.

In accordance with the qualified person's opinion and public interest test enclosed, Estyn is relying on s.36(2) (b) (i) and (ii).

If the email correspondence was released into the public domain individuals would or would be likely to be inhibited from providing advice to other members of the Estyn team in relation to certain issues and would be reluctant to have a free and frank exchange of views to deliberate what course of action Estyn wishes to take. It is essential that Estyn employees have a safe space to freely air their views and judgements openly and to challenge and debate the views of others in order to decide on a course of action. Providing the email correspondence would have a chilling effect and would inhibit the free and frank exchange of views and the free and frank provision of advice.

Estyn considers that the public interest in maintaining this exemption and withholding the emails exceeds the public interest in disclosing the emails. The chilling effect concern would, or would be likely to, result in employees being concerned about expressing their opinions and views internally and would therefore impact on Estyn's ability to consider issues fully before deciding on an outcome. This would impair the decision making process of Estyn, which would not be in the public interest and would be detrimental to the public functions of Estyn.

Section 40(2) – Personal Information

The internal emails concerned contain the personal data of Estyn employees. The employees would have an expectation of privacy in relation to the content of the emails and views expressed by them. As such we consider it to be unfair and a breach of the first data protection principle to release these emails.

If you are not satisfied with the decision Estyn has taken regarding your request for Information, you are entitled to request that we review the matter. Your request for a review should be addressed to the Feedback and Complaints Manager, and received no later than 20 working days after the date of this communication. If you are still not satisfied, you also have a right to complain to the information Commissioner, who can be contacted at:


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

Tel: 01625 545745

Fax: 01624 524510

Email: enquiries@ico.gsi.gov.uk

Yours sincerely



Robert Gairey
FOI case officer

Freedom of Information Act 2000 (FOIA)

**Request for Information relating to:
Internal email correspondence to discuss emails and data sets received
from [REDACTED]**

**Record of Public Interest Test relating to Conduct of Public Affairs
Exemption (section 36)**

Background

1. As part of the internal review of this case, I consider that the exemption contained in section 36 (2) (b) (i) and/or (ii) FOIA applies to the documents. This exemption applies to information which, in the reasonable opinion of a qualified person, disclosure 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.
2. As the exemption contained in section 36 of the Act is not one of the 'absolute' exemptions specified in the Act, it was necessary to apply the public interest test in respect of the information which is considered to consist of exempt information under section 36 of the Act. It is only where, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information, that there is no requirement to disclose the information.
3. This note has been prepared to record the public interest test carried out in respect of this request in the context of the particular circumstances of the request and the exemption being relied upon. While the following sections of this note contains a list of the public interest arguments in favour of disclosing the information and the public interest arguments in favour of maintaining the exemption, the relevant weight to be attached to each of those factors in order to determine where the balance of public

interest lies was a matter for me to determine as the reviewing officer in this case.

Public interest arguments in favour of disclosure

- Greater openness and transparency of Estyn's decision making process;
- Greater accountability in relation to decisions made by Estyn.
- It is in the public interest to be able to fully understand the reasons for public authorities' decisions and to present a full picture to the public.

Public interest arguments in favour of maintaining the exemption

- There is likelihood that Estyn employees would be likely to be inhibited from providing free and frank advice or from having a free and frank exchange of views for the purposes of deliberation.
- Releasing the information requested into the public domain would have the effect of restricting Estyn's ability to freely provide advice and discussions on the various issues it faces and in turn, this would restrict and suppress Estyn's freedom of expression.
- Future communications and documents would be carefully formulated and phrased and 'toned down', i.e. did not contain anything which could attract criticism or could cause controversy. This would lead to less candid and robust discussions, hard choices being avoided and would hamper decision making to the detriment of Estyn and the wider public in general.
- Releasing the information requested into the public domain would also have the effect of Individuals who are asked for advice being reluctant to do so or would in all likelihood confine their advice to obvious or safe options rather than exploring all options. This would produce a chilling effect.

- Individuals might also be reluctant to put their advice or their views in writing for fear of this being released into the public domain, relying instead on verbal communication which would be open to misinterpretation or forgotten over time.
- This would inhibit Estyn from arriving at robust, measured and fully considered outcomes and would impair the decision making process of Estyn, would be detrimental to the public functions of Estyn and would not be in the public interest.

Conclusions

4. I recognise the public interest that exists in providing the public with a better understanding of Estyn's decision making process and how Estyn decided on a particular course of action. However, in my view, the need to prevent employees from being inhibited from providing candid advice and exchanging free and frank views on matters to enable Estyn to decide on a course of action, tips the balance in favour of maintaining this exemption and refusing to disclose the information in question. It is essential that employees are able given a safe space to freely air their views, provide opinions and openly challenge and express matters they consider relevant without fearing that these will be released into the public domain.
5. Therefore, having objectively considered the public interest arguments both in favour and against disclosing the information in question and the relevant weight which should be attached to each of them, I have come to the view that the public interest in maintaining the exemption outweighs the public interest in disclosing the particular information in question.
6. Accordingly, I do not support the disclosure of the information which has been identified as exempt information under section 36 of FOIA.

Robert Gairey
Reviewing Officer
9 December 2016