



[REDACTED]

03 April 2023

Dear [REDACTED]

Freedom of Information request: FOI2023/00015

Thank you for your Freedom of Information request received on the 18 January in which you requested the following:

Your request:

Received via Twitter

Dear @UKRI_News

In this article from last April, you stated that your assessment of the data protection considerations of sharing individuals' information with @researchfish would be "concluded shortly."

Please can I have a copy?

Additional request received 15/02/23:

Please can you add the internal communications about my FOI request to date detailing the discussion that led to such a conclusion (the consideration of exemptions 36 and 42), and the dates that these communications were made, to the FOI request

Our response

I can confirm that UK Research and Innovation (UKRI) holds some information relevant to your request. Please see the information below.

As referenced in your request, we stated on our website on 19 April 2022 that we would undertake an [assessment of the data protection considerations](#) following the concerns raised about tweets posted by Researchfish, which is owned by Interfolio.

I can confirm that "a copy" of the assessment is not held. The assessment of the data protection considerations was discussed in two meetings, both held in late April 2022, in which data protection and legal advice were sought and deliberated regarding these issues. There is therefore no document that could be considered a "Data Protection Assessment" that captured these discussions in detail, so the information is not held in the format you have requested it.

However, a summary of the discussions was reported to our CEO in the form of a submission report. In the interests of transparency, we are happy to share with you an extract from this document which confirms the outcome from this assessment, which is as follows:

"Transparency, proportionality and lawfulness need to be considered when responding to the potentially threatening or abusive comments. While the processing of personal data for the purposes in question goes beyond the purposes stated in the contract between UKRI and Interfolio, the UKRI Privacy Notice states that we may collect and process personal data from members of our research and innovation communities to "operate our complaints policy (research conduct)"

“UKRI acted with sufficient transparency and clarity on the lawful basis for processing when it contacted funding recipients in response to the comments made on Twitter, by relying upon the UKRI Privacy Notice.”

You have also requested:

Please can you add the internal communications about my FOI request to date detailing the discussion that led to such a conclusion (the consideration of exemptions 36 and 42), and the dates that these communications were made, to the FOI request

The initial decisions to consider section 36 (prejudice to the effective conduct of public affairs) and 42 (Legal Professional Privilege) were made on the basis that the CEO Submission document noted above may be within scope and might be considered to be “a data protection assessment” in some form and should therefore be considered for disclosure. These determinations were made verbally therefore there is limited correspondence that captures these discussions.

However, after further consultation and internal deliberations as part of the FOI process, we subsequently determined that this was an incorrect conclusion. Consequently, due to this change from the initial approach, it was no longer necessary to consider whether these exemptions might be engaged for this purpose. I apologise for any confusion this may have caused.

Please find attached “*FOI2023_00015 Email correspondence*” which contains internal discussions around the engagement of Section 36 and 42 for your FOI request. Some information within this document has been redacted as it is out of scope of your request.

Additional information has been redacted where it concerns the names and contact details of individuals and is withheld under Section 40(2) for personal information. Under section 40(2) of the FOIA disclosing this information would contravene the first Data Protection Principle as defined under Section 86 of the Data Protection Act 2018 and Article 5 of UK General Data Protection Regulation (UK GDPR).

Section 40(2) is an absolute exemption and does not require a public interest test.

Furthermore, some information has been redacted as it is considered to be legal advice and is therefore exempt under Section 42(1) for Legal Professional Privilege. Section 42(1) is a qualified exemption and we have undertaken a public interest test to determine whether the public interest outweighs the requirement to maintain legal professional privilege.

Public interest in favour of disclosure

- There is a general public interest in the disclosure of information to ensure transparency and openness of a public organisation
- There is a requirement by UKRI to be accountable and transparent in its processes and decision making. Releasing information on the nature of legal advice may shed light on the decisions taken by UKRI.
- There is a public interest in ensuring that a public authority is conducting their FOI process in accordance with and is adhering to the relevant legislation

Public interest in favour of withholding the information

- There is a strong public interest in protecting information on the type of legal advice received, which is considered to be confidential and to protect the ability for UKRI to be able to seek out legal advice in regard to the application of legislation, in this instance the disclosure of information under the FOI Act.
- UKRI's ability to communicate freely with the provider of legal advice for the purpose of obtaining legal advice is a fundamental requirement of the English legal system. UKRI must be free to discuss sensitive and confidential matters with their legal advisor(s) without needing to be concerned that such discussions may be made public. UKRI as a public authority must also be free to seek good quality, frank legal advice to inform our decisions without being concerned that the advice might in future be turned against us.

- We maintain that UKRI needs space in which we can develop our thinking and explore options in communications and discussions with legal advisors. During the FOI process, it is important to consider all the implications of particular options when reviewing information within scope and determining what may be considered to be sensitive. In this instance consultation with the Legal team was necessary to the processing of the request in order to ensure that the relevant legislation was being adhered to.
- Disclosure of legal advice could result in a chilling effect in that it could dissuade staff from requesting, obtaining and/or providing such advice in the future if they consider that it would become public. This in turn would have a detrimental impact on UKRI's internal processes, where legal advice provides essential input as to the direction and implementation of exemptions in accordance with the law.
- Furthermore, the legal advice in scope of this request does not relate to a policy decision with widespread or significant impact to the public and therefore we deem this to have limited public interest
- The general public interest inherent in this exemption will always be strong due to the importance of the principle behind LPP: safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice. A weakening of the confidence that parties have that any legal advice will remain confidential undermines the ability of parties to seek advice and thus erodes the rule of law and the individual rights it guarantees. It may also curtail the depth of advice the lawyers will give, therefore weakening the access to legal advice by the public sector.
- Without such confidentiality, a public authority's decision-making may be compromised. Confidentiality between professional legal advisors and clients is the foundation of legal and professional privilege as it ensures open, honest and frank exchanges between the client and the legal advisor.

We have therefore concluded, taking the above arguments into consideration, that the public interest in maintaining the exemption outweighs the public interest in disclosure; therefore this information is exempt from disclosure.

If you have any queries regarding our response or you are unhappy with the outcome of your request and wish to seek an internal review of the decision, please contact:

Head of Information Governance


Email: foi@ukri.org

Please quote the reference number above in any future communications.

If you are still not content with the outcome of the internal review, you may apply to refer the matter to the Information Commissioner for a decision. Generally, the ICO cannot make a decision unless you have exhausted the review procedure provided by UKRI. The Information Commissioner can be contacted at: www.ico.org.uk.

If you wish to raise a complaint regarding the service you have received or the conduct of any UKRI staff in relation to your request, please see UKRI's complaints policy: <https://www.ukri.org/about-us/policies-and-standards/complaints-policy/>

Yours sincerely,


 Information Governance
 Information Rights Team
 UK Research and Innovation
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