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Department for Transport
Great Minster House
76 Marsham Street
London SW1P 4DR

XXXXXXXXXXXXXXXXXXXX@dft.gsi.gov.uk

Web Site: www.dft.gov.uk

Our Ref: F0007882

5TH AUGUST 2011

Dear XXXXXXXX,

Freedom of Information request – F0007882

I am writing in response to your request for information, received on 28th June. In that request, you asked for the official report regarding the suspected leak of a document from DSA Nottingham on 14 January 2011.

The Department holds the information requested but is withholding it by virtue of the exemptions at sections s30, s31, s35, s36 and s40 of the Freedom of Information Act 2000. Specifically the exemptions engaged are:

- s30(1)(a) in respect of information held in relation to an investigation conducted by the Department s30(2)(a)(iii) in respect of information obtained and recorded for the purposes of ascertaining whether any person has failed to comply with the law or is responsible for conduct which is improper (s.31(2)(a)&(b));
- s.31(1)(a), s.31(1)(b) and s.31(1)(g) in respect of disclosure of information likely to prejudice the prevention or detection of crime, the apprehension of offenders and the exercise of the functions of the Secretary of State for the purposes of section 31(2);
- s.35(1)(a) in respect of information related to formulation or development of government policy;
- s.36(2)(b)(i)(ii) & (c) in respect of information that is not exempt under s.35(1)(a) and which, if released, would be likely to inhibit the free and frank provision of advice or exchange of views, or would otherwise prejudice, or would be likely otherwise to prejudice the effective conduct of public affairs; and
- s.40(2) & (3) in respect of information which falls under the definition of “data” in section 1(1) of the Data Protection Act 1998 and where disclosure would contravene any of the data protection principles.

In applying exemptions under sections 30, 31, 35 and 36 we have had to balance the public interest for and against disclosing the information requested. The exemption under section 40 is absolute and does not require a public interest test to be completed.

The Department for Transport takes the issue of unauthorised disclosure very seriously

and will act appropriately in instances where official documents or information appear to have been handled otherwise than in accordance with relevant standards without authority. Where the Department believes there has been a leak, it will conduct an investigation, the nature of which will depend on the seriousness of the leak. However it is not Government's practice to make these details public.

Information about the scope, methodology, frequency and duration of leak investigations can be of value to individuals determined to avoid detection. It is vital to ensure that the Government can keep sensitive information secure, and while we recognise the value of transparency, there is a critical public interest in ensuring that these investigations are as effective as possible. In this case we consider that the public interest in favour of ensuring public confidence in and integrity of the process of such investigations, should they occur, is maintained.

In considering the balance of the public interest, we acknowledged that there is a public interest in knowing whether alleged leaks have been or are being investigated and whether those who have leaked information are held to account. There is also a public interest in showing that public authorities are taking all reasonable steps to prevent the unauthorised leak of information. However it is the duty of Government to ensure that sensitive information is protected. Therefore, in considering the relevant public interests in this case we have concluded that the overriding public interest is in ensuring that measures to investigate unauthorised disclosure involving Government information, and actions taken to identify and take action against those who may intentionally disclose information without authorisation, are as effective as possible.

In relation to information that may relate to the formulation of government policy or the conduct of public affairs it was recognised that there is an interest in transparency, in relation to how Departments manage their affairs and develop options and advice. However, Government must have space in which to be able to exchange views, formulate and develop policy and provide free and frank advice. Therefore, in considering the relevant public interests in this case, we have concluded that the greater interest is in ensuring that this space is maintained.

The attached annex A to this letter sets out the exemptions in full.

If you are unhappy with the way the Department has handled your request or with the decisions made in relation to your request you may complain within two calendar months of the date of this letter by writing to the Department's Information Rights Unit at:

XXXXXXXXXX
Ashdown House
Sedlescombe Road North
Hastings
East Sussex TN37 7GA
E-mail: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Please see attached details of DfT's complaints procedure and your right to complain to the Information Commissioner.

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

Yours sincerely

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Your right to complain to DfT and the Information Commissioner

You have the right to complain within two calendar months of the date of this letter about the way in which your request for information was handled and/or about the decision not to disclose all or part of the information requested. In addition a complaint can be made that DfT has not complied with its FOI publication scheme.

Your complaint will be acknowledged and you will be advised of a target date by which to expect a response. Initially your complaint will be re-considered by the official who dealt with your request for information. If, after careful consideration, that official decides that his/her decision was correct, your complaint will automatically be referred to a senior independent official who will conduct a further review. You will be advised of the outcome of your complaint and if a decision is taken to disclose information originally withheld this will be done as soon as possible.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

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

Annex A

Section 30

Investigations and proceedings conducted by public authorities

1. Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of
 - (a) Any investigation which the public authority has a duty to conduct with a view to it being ascertained
 - (i) whether a person should be charged with an offence, or
 - (ii) whether a person charged with an offence is guilty of it,
 - (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
 - (c) any criminal proceedings which the authority has power to conduct.
2. Information held by a public authority is exempt information if:
 - (a) it was obtained or recorded by the authority for the purposes of its functions relating to:
 - (i) investigations falling within subsection (1)(a) or (b),
 - (ii) criminal proceedings which the authority has power to conduct,
 - (iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or
 - (iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and
 - (b) it relates to the obtaining of information from confidential sources.
3. The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2).
4. In relation to the institution or conduct of criminal proceedings or the power to conduct them, references in subsection (1)(b) or (c) and subsection (2)(a) to the public authority include references:
 - (a) to any officer of the authority,
 - (b) in the case of a government department other than a Northern Ireland department, to the Minister of the Crown in charge of the department, and

(c) in the case of a Northern Ireland department, to the Northern Ireland Minister in charge of the department.

5. In this section "criminal proceedings" includes:

(a) proceedings before a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 or a disciplinary court constituted under section 52G of the Act of 1957,

(b) proceedings on dealing summarily with a charge under the Army Act 1955 or the Air Force Act 1955 or on summary trial under the Naval Discipline Act 1957,

(c) proceedings before a court established by section 83ZA of the Army Act 1955, section 83ZA of the Air Force Act 1955 or section 52FF of the Naval Discipline Act 1957 (summary appeal courts),

(d) proceedings before the Courts-Martial Appeal Court, and

(e) proceedings before a Standing Civilian Court;

"offence" includes any offence under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957.

6. [application of this section to Scotland]

Section 31

Law enforcement

1. Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice:
 - (a) the prevention or detection of crime
 - (b) the apprehension or prosecution of offenders
 - (c) the administration of justice
 - (d) the assessment or collection of any tax or duty or of any imposition of a similar nature
 - (e) the operation of the immigration controls
 - (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained
 - (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)
 - (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
 - (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.
2. The purposes referred to in subsection (1)(g) to (i) are:
 - (a) the purpose of ascertaining whether any person has failed to comply with the law
 - (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper
 - (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise
 - (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on
 - (e) the purpose of ascertaining the cause of an accident,
 - (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration
 - (g) the purpose of protecting the property of charities from loss or misapplication
 - (h) the purpose of recovering the property of charities
 - (i) the purpose of securing the health, safety and welfare of persons at work, and
 - (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.

3. The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

Section 35

Formulation of Government Policy

1. Information held by a government department or by the National Assembly for Wales is exempt information if it relates to:
 - (a) the formulation or development of government policy
 - (b) Ministerial communications
 - (c) the provision of advice by any of the Law Officers or any request for the provision of such advice, or
 - (d) the operation of any Ministerial private office.
2. Once a decision as to government policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded:
 - (a) for the purposes of subsection (1)(a), as relating to the formulation or development of government policy, or
 - (b) for the purposes of subsection (1)(b), as relating to Ministerial communications.
3. The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).
4. In making any determination required by section 2(1)(b) or (2)(b) in relation to information which is exempt information by virtue of subsection (1)(a), regard shall be had to the particular public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to decision-taking.
5. In this section:

"government policy" includes the policy of the Executive Committee of the Northern Ireland Assembly and the policy of the National Assembly for Wales;

"the Law Officers" means the Attorney General, the Solicitor General, the Advocate General for Scotland, the Lord Advocate, the Solicitor General for Scotland and the Attorney General for Northern Ireland;

"Ministerial communications" means any communications:

- (a) between Ministers of the Crown,
- (b) between Northern Ireland Ministers, including Northern Ireland junior Ministers, or
- (c) between Assembly Secretaries, including the Assembly First Secretary,

and includes, in particular, proceedings of the Cabinet or of any committee of the

Cabinet, proceedings of the Executive Committee of the Northern Ireland Assembly, and proceedings of the executive committee of the National Assembly for Wales;

"Ministerial private office" means any part of a government department which provides personal administrative support to a Minister of the Crown, to a Northern Ireland Minister or a Northern Ireland junior Minister or any part of the administration of the National Assembly for Wales providing personal administrative support to the Assembly First Secretary or an Assembly Secretary;

"Northern Ireland junior Minister" means a member of the Northern Ireland Assembly appointed as a junior Minister under section 19 of the Northern Ireland Act 1998.

Section 36

Prejudice to effective conduct of public affairs

1. This section applies to:

- (a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and
- (b) information which is held by any other public authority.

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:

(a) would, or would be likely to, prejudice:

- (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
- (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
- (iii) the work of the executive committee of the National Assembly for Wales

(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 otherwise to prejudice, the effective conduct of public affairs.

3. The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).

4. In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words "in the reasonable opinion of a qualified person".

5. In subsections (2) and (3) "qualified person":

- (a) in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown,
- (b) in relation to information held by a Northern Ireland department, means the Northern Ireland Minister in charge of the department,
- (c) in relation to information held by any other government department, means the commissioners or other person in charge of that department,
- (d) in relation to information held by the House of Commons, means the Speaker of that House,
- (e) in relation to information held by the House of Lords, means the Clerk of the Parliaments,

(f) in relation to information held by the Northern Ireland Assembly, means the Presiding Officer,
(g) in relation to information held by the National Assembly for Wales, means the Assembly First Secretary,
(h) in relation to information held by any Welsh public authority other than the Auditor General for Wales, means:

(i) the public authority, or
(ii) any officer or employee of the authority authorised by the Assembly First Secretary

(i) in relation to information held by the National Audit Office, means the Comptroller and Auditor General,
(j) in relation to information held by the Northern Ireland Audit Office, means the Comptroller and Auditor General for Northern
(k) in relation to information held by the Auditor General for Wales, means the Auditor General for Wales
(l) in relation to information held by any Northern Ireland public authority other than the Northern Ireland Audit Office, means:

(i) the public authority, or
(ii) any officer or employee of the authority authorised by the First Minister and deputy First Minister in Northern Ireland acting jointly,

(m) in relation to information held by the Greater London Authority, means the Mayor of London,
(n) in relation to information held by a functional body within the meaning of the Greater London Authority Act 1999, means the chairman of that functional body, and
(o) in relation to information held by any public authority not falling within any of paragraphs (a) to (n), means:

(i) a Minister of the Crown,
(ii) the public authority, if authorised for the purposes of this section by a Minister of the Crown, or
(iii) any officer or employee of the public authority who is authorised for the purposes of this section by a Minister of the Crown.

6. Any authorisation for the purposes of this section:

(a) may relate to a specified person or to persons falling within a specified class
(b) may be general or limited to particular classes of case, and
(c) may be granted subject to conditions.

7. A certificate signed by the qualified person referred to in subsection (5)(d) or (e) above certifying that in his reasonable opinion:

(a) disclosure of information held by either House of Parliament, or
(b) compliance with section 1(1)(a) by either House,

would, or would be likely to, have any of the effects mentioned in subsection (2) shall be conclusive evidence of that fact.

Section 40

Personal Information

1. Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
2. Any information to which a request for information relates is also exempt information if:
 - (a) it constitutes personal data which do not fall within subsection (1), and
 - (b) either the first or the second condition below is satisfied
3. The first condition is:
 - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene:
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
 - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.
4. The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).
5. The duty to confirm or deny:
 - (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
 - (b) does not arise in relation to other information if or to the extent that either:
 - (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
 - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

6. In determining for the purposes of this section whether anything done before 24 October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.

7. In this section:

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.