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Dear Ms Lomri,

**Freedom of Information Act (FOIA) Request – 210401006**

Thank you for your request dated 1 April 2021 in which you asked for the following information from the Ministry of Justice (MoJ):

*“On 16 March 2021 the Independent Review of Administrative Law Panel (‘the Panel’) published its Report. On 18 March 2021 the Government published its response (‘the Response’) and launched its consultation into Judicial Review Reform.*

*Annex E to the Panel’s Report contains a List of Contributors, which includes 28 local and central Government departments. The Report also confirms that additional data was provided by the Ministry of Justice, the Upper Tribunal and the GLD. Both the Report and the Response make some references to submissions made by Government Departments such as Home Office. However, neither these submissions nor the evidence underlying them have been published.*

*On 18 March 2021 the Lord Chancellor and Secretary of State for Justice Robert Buckland stated in the House of Commons that “The Government submissions to the consultation will be summarised and published within the next 10 days or so, which will give everybody a clear view of submissions to the call for evidence, but in a way that is consistent with collective Cabinet responsibility...”. The Lord Chancellor did not commit to publishing the submissions in full.*

**Information requested under the Freedom of Information Act**

1. *Please provide all the submissions made by Government Departments to the Panel.*
2. *Please provide any underlying evidence, data or statistics provided by Government Departments to the Panel (whether those Departments were listed as contributors or not). In particular, please provide the data provided by the Ministry of Justice, and the data underlying the Home Office’s claim, quoted at paragraph 4.13 of the Report that “it spent over £75 million in 2019/20 on defending immigration and asylum judicial reviews and associated damages claims”.*

**Timings for response**

*Please respond to this FOIA request by 19 April 2021.*

*We note that a very similar FOIA request was made by Mr Robert Sharp on 18 March 2021. Paragraph 1 of our request asks for exactly the same information. MoJ acknowledged receipt of that request and stated that a response would be provided by 19 April 2021.*

*Considering that this request is very similar to that of Mr Sharp, that we are aware that other similar requests had been made previously, and the fact that the MoJ Consultation on Judicial Review Reform closes on 29 April 2021, it is reasonable to request an abridged time frame to respond to this request.*

Thank you also for your further letter dated 8 April in which you clarified your earlier request to the Ministry of Justice (MoJ):

*"I write further to our FOIA request made on 1 April 2021 for the Government's submissions to the IRAL Panel, along with any underlying evidence, data or statistics provided by Government Departments to the Panel. I have enclosed a copy of that request for your convenience.*

*I note that yesterday (7 April 2021) the Ministry of Justice published a 'Summary of Government Submissions to the Independent Review of Administrative Law' ('the Summary'). Pages 1 - 18 of the Summary outline, in general terms, the submissions made by 'fourteen Government departments'. It is not clear which Departments' submissions are included in the Summary. Pages 19 – 21 summarise statistical information provided to the Panel by eleven named Departments.*

*Annex E to the IRAL Report makes clear that fourteen central Government Departments and No. 10 Downing Street provided submissions to the Panel. It appears, but is unclear, that the No 10 Downing Street submission was not included in the Summary.*

*For the avoidance of doubt:*

- 1. The publication of the Summary on 7 April 2021 does not exempt the MoJ from complying with the FOIA request we made on 1 April 2021. That request was for the submissions and evidence provided by the Government to the Panel, not summaries thereof;*
- 2. Our FOIA request of 1 April 2021 covers all the submissions made to the Panel by Government departments and bodies, which includes the submission made by No. 10 Downing Street. Please take into account the above information when you respond to our FOIA request of 1 April 2021."*

Your request has been handled under the FOIA.

I can confirm that the MoJ holds the information that you have requested. However, part of the information is exempt from disclosure under section 36(2)(a) of the FOIA, because its release would prejudice the maintenance of the convention of the collective responsibility of Ministers of the Crown.

Of the 28 local and central Government submissions you identified, the following have been published: GOV001, GOV003, GOV009, GOV016, GOV017, GOV018, GOV019, GOV022, GOV024, GOV025, GOV026, GOV027 and GOV028. These can be found at the following link: <https://consult.justice.gov.uk/judicial-review-reform/judicial-review-proposals-for-reform/>

It may be worth clarifying that the Department for Infrastructure Planning Group, submission GOV009, is part of the Northern Ireland Executive.

In relation to the 15 remaining submissions, these have all been incorporated into the summary of Government submissions, also located at the above link. This summary includes the submission from No10, however the exact content of those submissions is exempt from disclosure under section 36(2)(a) of the FOIA, because it would prejudice the maintenance of the convention of the collective responsibility of Ministers of the Crown.

Section 36 is a qualified exemption which means that the decision to disclose the requested material is subject to the public interest test. When assessing whether it was in the public interest to disclose the information to you, we considered the following factors:

### **Public interest considerations favouring disclosure**

- There is a public interest in the release of information where this leads to a better understanding of how Government conducts its business. This can help to inform public debate and to increase public confidence that decisions are properly made.
- The potential reform of administrative law is a subject of constitutional importance and there is legitimate public interest in the evidence submitted to the IRAL.
- Release of the information sought would increase transparency.

### **Public interest considerations favouring withholding the information**

- Collective responsibility is a constitutionally important convention which underpins the system of Cabinet government. The collective responsibility exemption is therefore accorded a particularly high level of importance by the Information Commissioner's Office (ICO) given its constitutional nature.
- The principle requires that Ministers should be able to express their views frankly in the expectation that they can consider a wide range of views and options freely in private while maintaining collective responsibility when decisions have been reached.
- The provision of a wide range of options and views must be allowed to occur in a safe space, without the risk of disclosure, otherwise the range of options will be restricted, and quality of submissions and discussion will be poorer.

On balance, I consider the public interest favours withholding the information at this time.

In terms of the underlying data and evidence, I can confirm that we have several documents that fall within the scope of your request. We have documents from the following departments, which we enclose: OAG, BEIS, DHSC, and FCDO. As to your specific request asking for the underlying data for the Home Office claim, we do not hold this data. If you wish to acquire this information, then please contact the Home Office at [foirequests@homeoffice.gov.uk](mailto:foirequests@homeoffice.gov.uk).

The data that the Ministry of Justice provided was compiled from the published Civil Justice Statistics by the IRAL Secretariat and is already publicly accessible. The Ministry of Justice provided the panel with an online tool to access this data (<https://judicial-reviews-app.apps.alpha.mojanalytics.xyz/>) which is now publicly accessible through the Civil Justice Statistics publications (<https://www.gov.uk/government/collections/civil-justice-statistics-quarterly#2020>). There is a 'Sources' section on page 160 of the IRAL Report that details where the data in the Report came from.

### **Appeal Rights**

If you are not satisfied with this response you have the right to request an internal review by responding in writing to one of the addresses below within two months of the date of this response.

data.access@justice.gov.uk

Disclosure Team, Ministry of Justice

You do have the right to ask the Information Commissioner's Office (ICO) to investigate any aspect of your complaint. However, please note that the ICO is likely to expect internal complaints procedures to have been exhausted before beginning their investigation.

Yours sincerely

Judicial Review Reform team