



# Home Office

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Mr Pete [REDACTED]

Reference: [REDACTED]

02 July 2008

Dear Mr [REDACTED]

Thank you for your e-mails about the targeted online advertising and the compatibility of the Regulation of Investigatory Powers Act 2000. I am writing further to my partial responses and I am pleased to be able to disclose to you some of the information that you requested. This is attached.

I can also confirm that I am not obliged to disclose some of the information you requested. After careful consideration we have decided that this information is exempt from disclosure by virtue of sections 40, 41, 42 and 43 of the Freedom of Information Act 2000. These provide that information can be withheld in relation to personal information, information provided in confidence, legal professional privilege and commercial interests – and, in relation to qualified exemptions, where the public interest falls in favour of non-disclosure.

Section 40 has been applied to incidental references in the information to identifiable individuals; section 41 has been applied to material explicitly provided to the Home office in confidence where a person would be able to bring a successful action for breach of confidence as a result of disclosure to the public; Section 42 has been applied to material subject to legal professional privilege and Section 43 has been applied to material the disclosure of which would, or would be likely to, prejudice the commercial interests of any person. Regarding our decision to refuse to disclose

information under sections 41 (Information provided in confidence) and 43 (Commercial in confidence), we are endeavouring to consult the relevant third parties to ensure that they want to information to be withheld. We will write to you again in connection with this. We are sorry for the further delay this will cause.

#### **Section 40**

It is the general policy of the Home Office not to disclose, to a third party, personal information about another person. This is because the Home Office has obligations under the Data Protection Act and in law generally to protect this information. Private company staff names constitute personal data and have been exempted under section 40(3) of the FOIA as its disclosure would breach the first principle of the Data protection Act 1998. The first principle of the Act prescribes that personal data should be processed fairly and lawfully. In the absence of at least in of certain criteria within the DPA being met (Schedule 2) information cannot be regarded as being processed ( in this case disclosed) fairly and lawfully. In this case we believe that to release the data would be unfair to the individuals concerned.

#### **Section 41**

Private company staff names and private company names are exempt under section 41 (1) (information provided in confidence). Section 41 is an absolute exemption. We are satisfied that this information was provided by a third party, that the information has the necessary quality of confidence and that releasing it would be a breach of that confidence which would be actionable under the Common Law duty of confidence by the companies or individuals concerned. We are further satisfied that the arguments for maintaining the duty of confidence in this instance would not be overridden by any public interest arguments.

#### **Section 42**

There is a public interest in public authorities being accountable for the quality of their decision making. Ensuring that decisions have been made on the basis of good quality legal advice is part of that accountability. Transparency in the decision making process and access to the information upon which decisions have been made can enhance accountability.

It is in the public interest that the decisions taken by Government are taken in a fully informed legal context where relevant. Government departments therefore need high quality comprehensive legal advice for the effective conduct of their business. That advice needs to be given in context, and with a full appreciation of the facts. It needs to be sought and given in a timely fashion to ensure that policy develops in a fully informed way. The legal adviser needs to be able to present the full picture to his or her departmental clients, which includes not only arguments in support of his or her final conclusions but also the arguments that may be made against them. It is in the nature of legal advice that it often sets out the possible arguments both

for and against a particular view, weighing up their relative merits. This means that legal advice obtained by a government department will often set out the perceived weaknesses of the department's position. Without such comprehensive advice the quality of the Government's decision-making would be much reduced because it would not be fully informed and this would be contrary to the public interest.

Disclosure of legal advice has a high potential to prejudice the Government's ability to defend its legal interests – both directly, by unfairly exposing its legal position to challenge, and indirectly by diminishing the reliance it can place on the advice having been fully considered and presented without fear or favour. Neither of these is in the public interest. The former could result in serious consequential loss, or at least in a waste of resources in defending unnecessary challenges. The latter could easily result in poorer decision-making. The decisions themselves may not be taken on a fully informed basis. Alternatively there may be a risk that lawyers and clients will avoid making a permanent record of the advice that is given or make only a partial record. This too would be contrary to the public interest. It is in the public interest that the provision of legal advice is fully recorded in writing. As policy develops or litigation decisions are made it will be important to be able to refer back to advice given along the way. It is in the public interest that the record describes the process of decision making accurately and fully, the legal advice must be part of that record. At worst there may even be a reluctance to seek the advice at all. This could lead to decisions being made that are legally flawed. In addition to undermining the quality of the Government's decision-making this is likely to attract successful legal challenges which could otherwise have been avoided.

The public interest test concludes that withholding the information outweighs the public interest in disclosing the information.

### **Section 43**

The public interest test has been considered in relation to the exercise of this exemption. There is a public interest in the disclosure of commercial information in order to ensure that there is transparency in the accountability of public funds and that departments commercial activities, including the procurement process are conducted in an open and honest way.

However, the public interest in withholding is that disclosure would make it less likely that companies, or individuals would provide the department with commercially sensitive information in the future and consequently undermine the ability of the department to fulfil its role. In addition, working to protect the public, we can help industry understand the threats to public safety from emerging technologies and achieve a workable balance between commercial and public safety interests. Both public safety considerations and legal obligation can be taken into account, where appropriate, in the conception of new products and services. Companies share commercially sensitive ideas

and proposals with us in confidence. Disclosure of such information would jeopardise this process.

The public interest test concludes that withholding the information outweighs the public interest in disclosing the information.

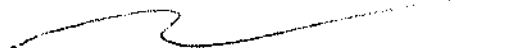
If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting your complaint within two months to the below address quoting reference 9419 or 9640:

Information Rights Team  
Information and Record Management Service  
Home Office  
4<sup>th</sup> Floor, Seacole Building  
2 Marsham Street  
London  
SW1P 4DF

Should you request an independent review, the department's handling of your information request will be reassessed by staff who were not involved in providing you with this response. Should you remain dissatisfied after this internal review, you will have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

I hope that you find this information of interest, and would like to assure you that you have been supplied with all disclosable information that the Home Office holds. Where information has been withheld, I would like to assure you that we have considered the application of exemptions with great care.

Your sincerely



**Andy James**