

REQUEST INITIATIVE

Jack Alexander
Request Initiative

foia@requestinitiative.org
Tel: 07834816325

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Dear FOIA Officer

This request concerns Transatlantic Trade and Investment Partnership (TTIP) and other associated international trade deals including CETA and TISA and the Investor State Dispute Settlement (ISDS) provisions.

When contacted concerning this issue, the government's stock response is often;

"I am aware people fear that investors could sue the government for losses and win if the government takes a decision in the wider public interest, whether on health, the environment or consumer safety. However, I am pleased the Government has made clear this could never happen. These concerns relate to the Investor State Dispute Settlement (ISDS) provisions. The purpose of these provisions is to protect businesses investing abroad against discrimination and unfair treatment, not to allow companies to undermine public policymaking. Such measures are not new, they already exist in over 90 bilateral investment treaties and there has never been a successful claim brought against the UK. However, please be assured that extensive consultation has taken place and all provisions are being looked at carefully."^{1, 2}

I would like copies of any research, for example a risk assessment or similar, that has been done to justify this claim.

Exceptions

If Section 35 does arise, careful consideration should be given to what information should be covered. Each piece of information should be considered individually, rather than using Section 35 as a blanket exemption. Dept. for Education and Skills v Information Commissioner And Evening Standard [2007] UKIT (EA/2006/0006) discards the idea that policy formulation is a 'seamless web' of policy formulation and suggests marking the end of formulation and the beginning of implementation as an announcement of the policy.

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<http://www.alistair-burt.co.uk/index.php/campaigns/405-transatlantic-trade-investment-partnership-backbench-business-committee-debate-on-10-12-15-coming-soon>

² <http://www.andrewjonesmp.co.uk/campaigning-lobbying-response/ttip/>

Going further, the DFES ruling above makes clear that even when information does relate to policy formulation, it is not automatically exempt. Information should be disclosed when there is a greater public interest in disclosure than the possible harm to good governance.

BERR v Information Commissioner and Friends of the Earth (EA/2007/0072) suggests that where information relates to lobbying or promoting a sectional interest, the 'safe space' for policy formulation should be less liberally applied. Evans vs IC and MoD 2007 (EA/2006/0064) goes further, by saying that the public interest is served by disclosure that shows both how influence is exerted and the government's response to it, regardless of actual outcome.

We would also note that arguments against disclosure relating 'the chilling effect' have been found unconvincing by successive Tribunal hearings, the Information Commissioner and the Justice Select Committee.

In DfES v IC and Evening Standard (EA/2006/0006), which considered Section 35 of the FOIA, the tribunal stated: "In judging the likely consequences of disclosure on officials' future conduct, we are entitled to expect of them the courage and independence that has been the hallmark of our civil servants since the Northcote - Trevelyan reforms. These are highly educated and politically sophisticated public servants who well understand the importance of their impartial role as counsellors to ministers of conflicting convictions.

Public interest

I submit that there is a clear and compelling public interest in favour of disclosure.

TTIP is a deal that aims to remove 'non-tariff barriers to trade'. There's very little obstacle to trade between the EU and the US at present — tariffs are at an all-time low. But corporations, on both sides of the Atlantic, want to remove other rules and regulations that might be stopping them from making even bigger profits.

Safety regulations, workers' rights, environmental protection rules and food standards regulations are all threatened by TTIP. All of these can and are seen by corporate interests as barriers to trade and profits. Corporations have a new way of imposing their will, called the Investor State Dispute Settlement mechanism (ISDS), which is part of the TTIP deal.

ISDS is a legal system, run entirely by corporate lawyers, which allows corporations to sue governments if they think legislation will impede future profits. It is a system that has been implemented in other trade deals previously and we can see the injustices it brings:

- Tobacco giant Philip Morris has sued Australia for introducing plain packaging on cigarettes
- Philip Morris also sued Uruguay for simply printing a health warning on cigarette packets
- Waste and energy company Veolia sued Egypt for introducing a minimum wage
- Argentina was sued for freezing energy prices to protect consumers following the country's financial collapse

TTIP is being decided without proper public involvement and the release of documents in this area would add significantly to the public discussion and understanding of the nature and extent of the trade deal and its impact on the UK public.

Responding to the request

If you feel that a substantive response to this request is not possible within a reasonable time frame I would be grateful if you could contact me by telephone (07834 816 325) and provide assistance as to how I could refine the request.

If you are unable to release certain records because the requested information is caught by one or more exceptions, please provide a register of all information in the scope of the request, including that which is being withheld. Please provide the date and description of each record and indicate which exception is cited to withhold it from disclosure.

Furthermore if part of the information in the scope of this request catches one or more exceptions please remember to apply a public interest test when necessary, referring to the importance in transparency as mentioned above. I would be grateful if you could release as much information as possible and provide documents in their original context (rather than digested extracts). Where exceptions apply please annotate the redactions and state which specific regulation the information is being withheld under. Please apply redactions in a granular fashion rather than applying boilerplate arguments to entire documents.

I would like to receive the information in an electronic format. Where the information is held in a database I wish to receive it in .xls or .csv format.

I would be grateful if you could confirm that you have received this request. I look forward to your response within 20 working days, as outlined by the statute.

Many thanks,

Jack Alexander
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