

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 28 February 2011

**Public Authority:** Department for Communities and Local Government (DCLG)

**Address:** Zone 1/H3  
Eland House  
Bressenden Place  
London  
SW1E 5DU

#### Decision

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1. The complainant requested information concerning the ceasing of grant funding to Planning Aid.
2. The Commissioner's decision is that by withholding the information under s35(1)(a) the DCLG did not deal with the request for information in accordance with the Act.
3. He requires the DCLG to disclose the withheld information to the complainant within 35 calendar days of the date of this Decision Notice.
4. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

#### Request and response

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5. On 4 December 2010 the complainant requested the following information from the DCLG:

6. *"Further to the announcement yesterday that the grant funding of Planning Aid England <sup>1</sup> is to cease on 31 March 2011...*
- (a) "When was this decision made and by whom? Who else was involved in this decision?"*
- (b) On what basis was it decided that the funding should cease entirely? What was the reasoning and the justification?"*
- (c) Any background information that informed the decision.*
- (d) What mechanisms the department will be putting in place to ensure that everyone (including those from deprived areas or who have no assets) will be able to access professional planning advice."*
7. The DCLG responded on 17 December 2010. It stated that:
- (a) The decision was made by ministers on 29 November informed by briefing provided by officials.
- (b) It was intended that the focus of funding should shift to a more direct support of the neighbourhood planning process.
- (c) Background information that informed the decision consisted of submissions dated 9 July, 8 October and 9 November 2010 from officials to ministers. This information was withheld under s35(1)(a) of the Act.
- (d) The Localism Bill would be putting in place provisions to empower communities to prepare neighbourhood plans. Parties would be invited to express an interest in bidding for funds.
8. The complainant appealed and following an internal review the DCLG informed the complainant on 1 February 2011 that it upheld its decision to withhold the information under s35(1)(a).

## **Scope of the case**

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9. On 1 February 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
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<sup>1</sup> Planning Aid provides free, independent and professional planning advice to communities and individuals who cannot afford to pay professional fees.

10. Parts of the requested information had been supplied to the complainant by the DCLG in its response. The scope of the Commissioner's investigation has therefore been confined to the withholding of the names of ministers and officials in relation to request (a) and the information withheld in relation to request (c). The information in relation to request (c) includes the submissions cited by the DCLG and also the responses from the relevant ministerial offices to those submissions.

## Reasons for decision

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11. Section 35(1) of the Act states that:

*"Information held by a government department or by the Welsh Assembly Government 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".*

12. The Commissioner requested a copy of the withheld information from the DCLG and asked it to:

(i) clarify which government policy the withheld information related to

(ii) clarify whether the formulation or development of that policy was ongoing at the time the complainant submitted his request

(iii) clarify when the formulation or development of the policy to which the withheld information related was completed.

13. With reference to (i) the department maintained that the decision to discontinue Planning Aid was part of the wider policy of neighbourhood planning. It said that new powers to give local people a voice to shape development in their area were being introduced in the government's Localism Bill.

14. With reference to (ii) the DCLG said that decisions about the new grant regime were made subsequent to the request but that the policy on neighbourhood planning was in development whilst the Localism Bill passed through parliament. A prospectus inviting applications for grant funding had been published on 7 January 2011 and the funding allocation

for a number of neighbourhood planning pilots was published on 13 April 2011. Royal assent for the Localism Bill was anticipated later in the year.

15. In relation to (iii) the DCLG referred the Commissioner to its response to (ii) and reiterated that the Localism Bill was continuing its passage through parliament.
16. The Commissioner is satisfied that the decision to cease funding for Planning Aid England was linked to the intention to formulate a policy to establish an alternative means of delivering aspects of the service. He therefore finds the information relates to formulation and development of government policy and the exemption is engaged.

*Public interest test*

17. Section 35(1)(a) is a qualified exemption and is therefore subject to the public interest test. Accordingly, the Commissioner has gone on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure. .

*Public interest arguments in support of maintaining the exemption*

18. (i) The DCLG submitted that disclosure of the information might result in constraints to the candour and frankness of advice submitted by officials.  
  
(ii) The department also submitted that disclosure might deter officials from formally recording their advice in the future. Instead it might be informally recorded (if at all) and then prematurely deleted. As a result there would be no records of the considerations that underpin governmental decision making.

*Public interest arguments in favour of disclosure*

19. (i) There is public concern that the decision to cease funding for free and independent planning advice will discriminate against deprived communities and individuals who cannot afford professional fees. Disclosure will afford transparency and accountability in the way that the decision to cease funding Planning Aid was reached.  
  
(ii) Disclosure of the information will inform the public of the extent to which officials and ministers have explored alternative policy options.  
  
(iii) At time of the request there was significant public debate regarding the prospective relaxation of planning controls in the Localism Bill in favour of sustainable development. Disclosure will help the public to assess whether the ceasing of impartial planning advice from Planning Aid will disadvantage local neighbourhoods in this respect.

(iv) Disclosure of the information will help the public to further understand the reasoning behind abolition of the Planning Aid scheme.

(v) Disclosure of the information will help to further the public's understanding of how the DCLG facilitates the formulation and development of policy and assists ministers in reaching decisions.

*Balance of the public interest arguments*

20. The basis of the DCLG's argument at 18(i) is that disclosure of the information might have a chilling effect on the advice given by officials and that this would lead to less appropriate policy options being submitted. By contrast, the Commissioner considers that the prospect of disclosure under the Act encourages officials to provide reasoned explanations for the advice they submit and that this serves to improve the quality of policy options and decisions made.
21. The Commissioner has only given the chilling effect arguments limited weight. He accepts that there was some risk of a chilling effect as there was a connected ongoing policy process and the request was made very close to the decision being made. However, the DCLG did not provide any specific evidence or convincing arguments focused on the circumstances of the case. The Commissioner notes that by the date of the request the decision to which the information related had been made. The DCLG did not provide a clear explanation as to how the withheld information related to the ongoing policy process in the Localism Bill or how the disclosure would impact on that process. As the chilling of the advice suggested by the department could not have occurred retrospectively, the DCLG's argument remains simply a general assertion that disclosure may have a chilling effect on any future advice.
22. With reference to the argument at 18(ii) the Commissioner considers it to be the responsibility of the department's management to ensure that officials keep proper records and perform their duties according to the professional standards of the civil service.
23. He also considers that owing to the recognition by officials of prospective disclosure under the Act, the obligation to provide reasoned explanations for their advice serves to negate the proposition that somehow they may then be deterred from recording such advice.
24. The Commissioner has accorded significant weight to the public interest arguments in favour of disclosure. A significant change to the planning system was underway and the decision to cease funding to Planning Aid England was an important part of this process. There is a significant public interest in the public being able to understand the reasoning behind the decision in more detail.

25. The Commissioner has weighed the competing public interest arguments and has concluded that in all the circumstances of the case the public interest in maintaining the exemption does not outweigh the public interest in disclosure. The DCLG must therefore disclose the information.

## Right of appeal

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26. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

27. If you wish to appeal against a Decision Notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
28. Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is sent.

**Signed** .....

**Steve Wood**  
**Head of Policy Delivery**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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