

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 July 2017

Public Authority: Department for Digital, Culture, Media and Sport

Address: 100 Victoria Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant has requested information concerning Departmental meetings with BP plc and invitations issued to Ministers by BP plc to attend cultural events or performances. The Department for Culture, Media and Sport (DCMS)¹ provided some information within scope of the request but withheld some information from the note of a meeting on 9 June 2015 between the Minister for Culture, Communications and Creative Industries and representatives of BP plc. DCMS withheld the information under Section 35(1)(a) (formulation or development of government policy) and Section 27(1) (prejudice to international relations). Section 35(1)(d) (the operation of any Ministerial private office) and Section 40(2) were also applied to a small amount of the withheld information.
2. The Commissioner's decision is that DCMS was entitled to rely on Section 35(1)(a) to withhold all of the withheld information and the balance of the public interest supported maintaining the exemption.
3. No steps are required.

Request and response

¹ In July 2017 DCMS became the Department for Digital, Culture, Media and Sport

4. On 23 February 2016, the complainant wrote to DCMS and requested information in the following terms:

'1) Have John Whittingdale MP or Ed Vaizey MP attended any meetings with staff from, or representatives of BP plc, since the 11th May 2015?

2) If the answer to (1) is yes, please give the details (date, location, agenda/minutes etc) of those meetings and copies of any relevant correspondence.

3) Have John Whittingdale MP or Ed Vaizey MP been invited to and/or attended any cultural events, performances or similar at the invitation of BP plc since the 11th May 2015?

4) If the answer to (3) is yes, please give details of those invitations and copies of any relevant correspondence'.

5. DCMS responded on 14 March 2016. The Department advised (in response to points 1 and 2 of the request) that Ed Vaizey MP (then Minister for Culture, Communications and Creative Industries) had met with Ms Des Violaris (BP Head of UK Arts and Culture) and Andrew Mennear (BP Head of UK Government Affairs) in June 2015. The Department also advised (in response to points 3 and 4 of the request) that John Whittingdale MP (then Secretary of State for Culture, Media and Sport) was invited to attend the BP annual business reception 2015, and to a performance by 2015 International Tchaikovsky Competition prize winning artists, conducted by Maestro Valery Gergiev at Cadogan Hall.
6. The Department advised that Mr Whittingdale attended a dinner to mark the opening of the Cosmonauts exhibition at the Science Museum. This event was hosted by the Science Museum in conjunction with BP, with the initial invitation being from Bob Dudley, Chief Executive of BP. DCMS advised that Mr Whittingdale was invited to, but did not attend, a private dinner for the Vogue 10 exhibition on 8 February 2016 and that he had been invited to an evening performance of Romeo and Juliet conducted by Maestro Valery Gergiev on 18 April 2016 at Cadogan Hall. The Department advised that Mr Vaizey was invited to, but did not attend, the BP portrait award on 17 July 2015.
7. DCMS provided the complainant with a redacted copy of the minutes of a meeting which had taken place on 9 June 2015 between Mr Vaizey and Ms Violaris and Mr Mennear of BP. The Department advised that they had determined that the redacted information was exempt from disclosure under sections 35(1)(a), 35(1)(d) and 40(2) of the Act. The response provided no information or explanation as to which policy or policies the withheld information related to and the public interest was

generic, making no reference to the specific information requested or the background and circumstances of the same. The Department stated that *'this remains an area of ongoing policy development'*, and *'we are continuing to use the information at issue here to inform the development of our ongoing policy and Government response to the consultations'*.

8. The complainant requested an internal review of the decision and provided detailed submissions in support of his contention that the public interest test had not been sufficiently thorough in its analysis and had consequently reached an incorrect conclusion. The complainant noted that, *'the arguments cited are generic and broad level and do not relate to the specific public interest of the material in question'*.
9. DCMS provided the complainant with their internal review on 3 June 2016. The review upheld sections 35(1)(a) and (d) to the withheld information and introduced a new exemption, section 27(1)(prejudice to international relations). The review did not mention section 40(2) although in his later complaint to the ICO the complainant advised that he considered that the redactions made under the personal data exemption had been justified and he did not challenge the same.
10. The review stated that the Department had considered the content and sensitivity of the meeting note, and the effects of disclosure, when providing the original response and *'the public interest considerations provided previously may have been broad but they remain relevant'*. DCMS stated that providing detailed arguments *'may in fact inform of the information that is exempt from release'*.
11. The Department informed the complainant that the information withheld under section 35(1)(a) *'relates to ongoing policy development concerning cultural protection and future options to reduce pressures on public funding'*. The Department stated that Ministers would not be able to formulate this policy area effectively, if the full meeting note was released. The review noted that section 35(1)(a) ensures a safe space to consider policy options in private, and stated that the arguments for upholding the exemption outweighed the arguments in favour of disclosure of the information.
12. In respect of section 35(1)(d) the review stated that the public interest favoured maintaining this exemption because *'revealing the methods and processes used by ministerial private offices would cause a distraction and disrupt the effective operation of ministerial private offices'*. The Department's explanation and rationale for the introduction of section 27(1) was inadequate as it was entirely generic, with no evidence of the exemption's specificity to the specific withheld information.

Scope of the case

13. The complainant contacted the Commissioner on 6 July 2016 to complain about the DCMS reliance on sections 35(1)(a), 35(1)(d) and 27(1) to withhold some of the information contained in the meeting note.
14. Having had sight of the withheld information, the Commissioner would note that the meeting note is quite brief, comprising approximately 22 lines of information, around half of which was disclosed by the Department to the complainant.

Reasons for decision

15. Section 35(1)(a) states:

'Information held by a government department or by the Welsh Assembly Government is exempt information if it relates to the formulation or development of government policy'.

16. Section 35(1)(a) is a class-based exemption, which means that there is no requirement to show any harm in order to engage the exemption. The information simply has to fall within the class described. The term 'relates to' can be interpreted broadly (DfES v Information Commissioner & the Evening Standard [EA/2006/0006, 19 February 2007]). The timing of the request is not relevant – the question is whether the information relates to the activity, irrespective of when the request was made. The activity does not have to be the sole or even the main focus of the requested information, as long as it is one significant element of it.
17. As DCMS advised the complainant in their internal review, the withheld information relates to ongoing policy development concerning cultural protection (in certain global regions/areas) and future options to reduce pressures on public funding. In his request for an internal review the complainant stated that *'the information provided within the meeting note as it is currently disclosed does not suggest that a specific piece of government policy is being consulted upon. Rather, it focuses on BP's own specific interests for refining its own role within the areas of culture, media and sport. While the term 'government policy' can be interpreted in a number of ways, it is not made clear how the Department is examining how it intends to achieve a particular outcome or change in the real world'.*

18. The Commissioner would note that the complainant's assessment of the disclosed (non-sensitive) portion of the meeting note is a fair and accurate one. The (disclosed) information in the first half of the note does not discuss or refer to government policy and effectively sets the scene for the very brief policy discussion contained in the second (largely withheld) portion of the note. Whilst that policy discussion clearly has potential relevance or interest to BP, the focus is on the government's policy interests rather than the specific commercial interests of BP. The complainant correctly notes that the information disclosed in the meeting note does not make clear the policy outcome that the Department is seeking to achieve, but this is because the policy remains at the sensitive development stage and therefore the information relating to such policy in the meeting note has been withheld under section 35(1)(a).
19. Having had sight of the withheld information, the Commissioner is satisfied that it does relate to the Government's policy development concerning cultural protection in overseas countries and surrounding funding options for such work and cultural engagement with foreign countries. It is not possible for the Commissioner to provide further detail in this notice without revealing sensitive information and such detail is contained in a Confidential Annex.

Public interest test

20. Section 35(1)(a) is subject to the public interest test set out in section 2(2)(b) FOIA. The Commissioner has therefore also considered whether in all the circumstances of this case, the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

Public interest arguments in favour of disclosing the withheld information

21. In their initial response to the request, DCMS recognised that there were arguments in favour of disclosure of the information requested. These were that greater transparency makes government more accountable to the electorate and increases public trust, and *'the desirability of citizens being confident that decisions are taken on the basis of the best available information'*. The Department acknowledged the argument that knowledge that the arguments relating to a debate will be released will in fact improve the quality of those arguments, and that *'far from inhibiting the frank provision of advice, there might be circumstances where the prospect of disclosure would enhance the quality of advice'*.
22. In their internal review DCMS acknowledged that disclosure of the withheld information *'may be of benefit'* because greater government

transparency increases trust and understanding and there is public interest in seeing that decisions made by government are taken on the basis of the best available information. The Department also recognised that there is a public interest *'in the disclosure of information which may lead to a better public understanding of Government engagement with companies such as BP'*.

23. In his request for an internal review, the complainant advanced detailed public interest arguments in support of disclosure of the withheld information.

24. The complainant stated that:

'BP is primarily an oil and gas company. Its interests in engaging with the Department for Culture, Media and Sport are, by extension, secondary to its core aims as a company. Its desire to inform or be involved in the formation of government policy within the Department's remit must therefore be subject to thoroughgoing scrutiny, in order to fully analyse the company's motives'.

25. The complainant highlighted the decision of the Information Tribunal in EA/2014/0040 (which involved a request to Tate Gallery for BP sponsorship information). In that case the Tribunal accepted *'that arts sponsorship can legitimately be understood as a means of maintaining BP's 'social licence' to operate and of enhancing, maintaining or repairing BP's brand'* (paragraph 21). The Tribunal did not agree with the Commissioner's reliance (as a factor favouring disclosure) on the *'huge public interest' in BP's relationship with cultural institutions, in so far as this is a reference to the degree of public curiosity, rather than to whether disclosure would be for the public good'* (paragraph 32).

26. The complainant stated that BP's involvement in the area of DCMS, an area lying outside of its core aims, *'represents a commercial decision with the purpose of advancing its wider strategic interests'* and contended that, *'it is clearly within the public interest to analyse in the fullest possible way whether BP is seeking to influence policy within DCMS in order to further this 'social licence' and therefore not act in the best interests of the cultural sector and the public'*.

27. The complainant noted that the meeting had taken place on 9 June 2015 and *'while the issues discussed may still be relevant, the government's policy framework has advanced significantly, both in the cultural sector and more broadly'*. As such, the complainant submitted that the requirement of a 'safe space' in which to discuss and formulate policy is not a sufficiently strong argument. The complainant contended that the greater public interest *'lies in assessing whether BP has, in fact, made a*

substantive or tangible impact on government policy in a way that could be deemed disproportionate to its role in the sector'.

28. Describing BP as a *'company with core interests outside the remit of the DCMS'* the complainant contended that *'key stakeholders within the cultural sector and with core activity in the fields of culture, media and sport will, in fact, benefit from greater transparency around how the department engages with lobbyists of this kind'*. The complainant submitted that *'BP's views on culture, media and sport do not represent the 'best advice available' as this would be sourced from those actively working within the sector without what could be deemed additional or ulterior motives for their engagement with the department'*.
29. The complainant contended that the redactions made to the disclosed meeting note had impeded a clear understanding of the specific areas of government policy being consulted on. *'As such, it is not possible to ascertain (a) the area of policy, and (b) whether a full and diverse range of other groups and individuals has been consulted. If policy is, as the application of section 35 suggests, still in the process of being formulated, it should be scrutinised as to whether BP has been given disproportionate opportunity to influence or lobby'*.
30. The complainant noted that the Department's original request response had detailed a number of event invitations issued to the Department's Ministers by BP and that any conversations between Ministers and stakeholders at the events and functions were not recorded. Consequently, the complainant contended that it was in the public interest to *'fully disclose that information that has been recorded in order to make the fullest assessment possible of BP's motives for issuing event invitations to ministers from a Department that does not relate to its core business interests'*.
31. It was submitted by the complainant that the redacted disclosed note, rather than indicating that the meeting had referred to a broader government position, indicated that the discussion had concerned *'clearly defined projects and issues of specific interest to BP'*, for example the Cosmonauts exhibition referenced in the disclosed information. The complainant submitted that full disclosure of the note would allow further scrutiny of any policy issues that were discussed with BP *'at a stage when alternative perspectives and opinions can be presented'*.
32. Finally, the complainant stated that *'there is significant evidence of BP's extensive involvement in lobbying at the UK, EU and international level, often relating to highly sensitive issues, from climate change to the imposition of sanctions on Russia following the escalation of tensions in Ukraine'*. He contended that *'in order to maintain public trust in the*

Department and how it conducts its affairs, it is in the public interest to demonstrate that BP has not had any undue or disproportionate influence over how policy was arrived at'.

Public interest arguments in favour of maintaining the exemption

33. In their original request response of 14 March 2016, DCMS put forward the following arguments in favour of maintaining section 35(1)(a) to the withheld information:
- *'Ministers and their officials need space in which to develop their thinking and explore different options in communications and discussions. We are continuing to use the information at issue here to inform the development of our ongoing policy and Government response to the consultations;*
 - *Ministers and their officials need to be able to think through all the implications of different options. In particular, they need to be able to undertake rigorous and candid assessments of risks to particular policy options;*
 - *Good government depends on good decision making and this needs to be based on the best advice available and a full consideration of all the options – there may be a deterrent effect on stakeholders who might be reluctant to provide advice because it might be disclosed prematurely'.*
34. In the subsequent internal review the Department confirmed that the withheld information related to policy in development and that ministers and their officials need space in which to develop their thinking and explore options around cultural protection. DCMS contended that good government depended on good decision making and this needed to be based on the best advice available and a full consideration of all the options. The Department submitted that ministers and officials *'need to be able to conduct rigorous and candid risk assessments of their policies and programmes including considerations of the pros and cons without there being premature disclosure which might close off better options'.*
35. In submissions to the Commissioner the Department provided more detailed explanation in support of their contention that the public interest in maintaining the exemption outweighed the public interest in disclosure of the withheld information. The Commissioner is unable to discuss such explanation in this notice as to do so would, as DCMS have stated, *'inform of the information that is exempt from release'.* Consequently the Commissioner has detailed the confidential aspects of the submissions in the attached Confidential Annex.

Balance of the public interest arguments

36. The Commissioner would note at the outset that with regard to the information held within scope of the complainant's request, DCMS did not take a blanket or broad brush approach to the same, and disclosed approximately half of the information contained in the brief meeting note. In doing so, the Department recognised the legitimate and important public interest in transparency and accountability of this particular information.
37. With regard to the information in the meeting note that has been disclosed, the complainant has made the point that this does not suggest that a specific piece of government policy is being consulted upon, but rather focusses on BP's own specific interests for refining its own role within the areas of culture, media and sport. The Commissioner considers that this is a fair and accurate assessment of the disclosed information, since it does not discuss or refer to identifiable government policy but rather essentially sets the scene for the (very brief) policy discussion contained in the second (largely withheld) portion of the note.
38. As the complainant has correctly noted, in EA/2014/0040 (Tate Gallery case), the Information Tribunal accepted that arts sponsorship can legitimately be understood as a means of maintaining BP's 'social licence' to operate and of enhancing, maintaining or repairing BP's brand. The Tribunal noted that the sponsorship system is an '*essentially commercial relationship*' and that BP '*needs ways of enhancing, maintaining or repairing its brand*' (paragraph 21).
39. The complainant has contended that there is significant evidence of BP's extensive involvement in lobbying at the UK, EU and international level, often in relation to highly sensitive issues. The Commissioner notes that BP has historically enjoyed a particularly close and beneficial relationship with UK governments. A detailed article by the Guardian newspaper on 20 May 2015² examined BP's close ties with and influence on government policy following the release of information through FOIA requests. Following the Deepwater Horizon disaster in 2010³, the

² <https://www.theguardian.com/environment/2015/may/20/revealed-bps-close-ties-with-the-uk-government>

³ The explosion which took place on 20 April 2010 on the Deepwater Horizon offshore drilling rig in the Gulf of Mexico, which subsequently led to the largest accidental release of oil into marine waters in history, with severe environmental, health and economic consequences, and serious legal and public relations repercussions for BP.

newspaper reported that *'although the government viewed the financial hit as BP's problem, it was worried the oil giant's vast bill for the Gulf accident would hit many UK pension-holders'*. It also reported that at a meeting between BP and DECC⁴, the oil company was *'assured by DECC that it would do what it could, with lawyers from the Treasury, the Foreign Office and the business department, to find 'an operational solution' to allow BP to reopen the major North Sea gas field it owned jointly with Iran despite the EU's sanction regime against that country'*.

40. The Commissioner considers that where information has the potential to affect the public at large or significant sections of the public, (for example either environmentally through BP's exploratory activities or financially through UK pension-holders) then such information will carry significant public interest weight in favour of disclosure. The Commissioner would recognise that BP's core interests are clearly outside the remit of the culture, media and sport sector and their involvement in such areas is clearly motivated, as the Information Tribunal recognised, by commercial brand enhancement or reparation considerations. The Commissioner recognises that such considerations will not necessarily complement or match the relevant public interest aims or outcomes in a given cultural field, and for this reason she considers that the need for appropriate and proportionate transparency and openness goes further than public curiosity.
41. That having been said, it is important to note that it is entirely possible for engagement between government and an external stakeholder/party whose motivations are commercially focused and orientated, rather than cultural, to produce positive public interest outcomes. That is to say, the 'ulterior' motives of companies such as BP, which are in any case well understood, will not necessarily be injurious or inimical to the public interest in the particular field or sector. Therefore, whilst the Commissioner would agree with the complainant's contention that there is a legitimate public interest in knowing whether BP is seeking to *'influence policy within DCMS in order to further this 'social licence'*, she does not consider that such policy influence (if it were to occur) would necessarily *'not act in the best interests of the cultural sector and the public'*.
42. In any event, in this instance, the policy discussion to which the Department has applied section 35(1)(a) is not of a lobbying nature. Whilst the policy discussion obviously has potential relevance or interest

⁴ The Department of Energy and Climate Change, which became part of the Department for Business, Energy and Industrial Strategy in July 2016.

to BP, the focus is on the government's own policy interests concerning cultural protection and future options to reduce pressures on public funding in this area. In contrast to the information disclosed from the meeting note, in which it is BP taking the lead in the meeting, the information which has been withheld under section 35(1)(a) is that in which it is the Minister and officials taking the lead in sensitive policy discussion.

43. As previously noted, the Commissioner is unable to provide further detail in this notice as to the policy discussion without disclosing the withheld information. However, the Commissioner is entirely satisfied that the policies to which the withheld information relates were at an early stage of formulation and development at the time of the meeting (9 June 2015) and were not sufficiently advanced as to have passed into implementation by the time of the complainant's request eight months later (23 February 2016). Indeed, in subsequent submissions to the Commissioner, DCMS confirmed that the withheld information relates to *'ongoing policy development around cultural protection'* (in foreign countries).
44. Safe space arguments of the type advanced by DCMS in this case are central to section 35(1)(a) and there is a well-established strong and legitimate public interest in Government being afforded the safe space in which to develop and finalise policy prior to its implementation. The need for the safe space will very much depend upon the stage at which the relevant policy or policies had reached at the time of the request and the individual circumstances of each case. Such considerations of timing have a very important (often decisive) bearing on the determination of the public interest balance in cases concerning this exemption.
45. Having carefully considered the withheld information and the submissions from both parties, the Commissioner has concluded, for the reasons given above, that in all the circumstances of the case, the public interest balance favours maintaining section 35(1)(a) to the withheld information. Given the broad interpretation of 'relates to', the Commissioner is satisfied that all the withheld information is encompassed by this exemption.
46. As the withheld information in the meeting note is exempt from disclosure under section 35(1)(a), the Commissioner has not proceeded to consider the applicability of section 35(1)(d) and section 27(1).

Right of appeal

47. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

48. 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.
49. 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

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