

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 March 2019

**Public Authority:** Department for Exiting the European Union  
**Address:** 1 Victoria Street  
London  
SW1H 0ET

#### Decision (including any steps ordered)

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1. The complainant has requested information on specified meetings attended by representatives of the Legatum Institute ("Legatum").
2. The Commissioner's decision is that the Department for Exiting the European Union ('DExEU') has appropriately relied on section 35(1)(a) to withhold some of the requested information whilst disclosing the remaining information.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

#### Request and response

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4. On 24 November 2017, the complainant wrote to DExEU and requested information in the following terms:

"According to a previous disclosure to a FOI request, there were meetings with Legatum representatives in September 2016, February 2017, July 2017 and August 2017.

For each of these specified meetings, I would like the following information:

- A full list of attendees, including the full names and titles of each attendee, as well as who each attendee represents
- The exact time and date of when the meeting took place

- The location of the meeting
  - A copy of the agenda for the meeting
  - Materials that were handed out and received during the meeting, such as presentation slides, brochures, reports, and leaflets
  - Minutes taken during the meeting, as well as any accompanying briefing notes and papers.”
5. DExEU responded on 24 January 2018. It provided some information, redacted in reliance of section 40(2) – third party personal information, whilst withholding further information in reliance of the exemption at section 35(1)(a) FOIA.
6. The complainant requested an internal review on 6 February 2018. Following an internal review the DExEU wrote to the complainant on 29 June 2018. It stated that it was upholding its reliance on section 35(1)(a) and in addition applied the section 27(1)(a)-(d) exemptions to the same information. It varied the initial refusal notice by advising the complainant that the information requested at the fourth and fifth points of the request are not held with respect to all the meetings.

## Scope of the case

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7. The complainant contacted the Commissioner on 29 September 2018 to complain about the way her request for information had been handled. She provided the Commissioner with a detailed explanation of her consideration of the background to her request and DExEU’s application of the section 35 and 27 exemptions. The complainant’s view comprises the same content which she provided to the Commissioner with reference to an earlier case<sup>1</sup>. The request here essentially reflects the request to DExEU in that case in regard to different meetings. As in the earlier case, the complainant explained her concerned interest in the role of a named individual and his access to government. She also explained her view that Legatum, which is a registered charity, has emerged as one of the most influential think tanks in Westminster and referenced an investigation by the Charity Commission which found that Legatum’s work on Brexit ‘crossed a clear line’ and ‘failed to meet the required standards of balance and neutrality’. The complainant stated that she did not dispute the application of section 40(2), however, she

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<sup>1</sup> Decision notice FS50790211

challenges the application of both section 35 and 27 in respect of the public interest.

8. During the course of her investigation the Commissioner questioned whether some of the withheld information was, in fact, already in the public domain. DExEU concluded that one of the documents namely a document entitled: "Developing a True Transatlantic Partnership – a High Standard Trade Agreement to Propel the Global Economy June 2017 by Shanker A. Singham, Victoria Hewson and Radomir Tylecote" was in the public domain as it had been included on Legatum's website. However, the document no longer appears on Legatum's website.
9. DExEU subsequently provided a copy of the document to the complainant on 30 January 2019.
10. The Commissioner considers the scope of her investigation to be to determine whether DExEU appropriately applied the section 35 and 27 exemptions to the remaining withheld information.

### **Reasons for decision**

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11. Section 35(1)(a) FOIA states:

"(1) Information held by a government department or by the National assembly for Wales is exempt information if it relates to-

(a) the formulation or development of government policy,"

12. This exemption is a class-based one which means that, unlike a prejudice-based exemption, there is no requirement to show harm in order for it to be engaged. The relevant information simply has to fall within the class described, in this case, the formulation of government policy.
13. The Commissioner considers that the purpose of section 35(1)(a) is to protect the integrity of the policymaking process, and to prevent disclosures which would undermine this process and result in less robust, well considered or effective policies. In particular, it ensures a safe space to consider policy options in private. Her guidance advises that a public announcement of the decision is likely to mark the end of the policy formulation process.
14. The Commissioner considers that the term 'relates to' in section 35 can be interpreted broadly within the meaning of the class based exemption. This means that the information itself does not have to be created as part of the activity. Any significant link between the information and the activity is sufficient.

15. The Commissioner notes that DExEU provided the complainant with an internal review which replicates the internal review provided in case reference FS50790211. She also notes that DExEU's submission to her is identical in its content. This is unsurprising, as noted above in paragraph 7, the request asks for the same material related to similar meetings. The arguments put forward to explain the application of the section 35(1)(a) exemption in both cases are therefore the same.
16. In the light of the above the Commissioner will not reproduce the content of her decision notice FS50790211 which considers in detail the application of the exemption.
17. Having viewed the withheld information in this case the Commissioner is satisfied that it relates to the formulation and development of government policy and the exemption at section 35(1)(a) is therefore engaged.
18. In the same way, the Commissioner's consideration of the balance of the public interest is based on the same information provided by the complainant and DExEU in the earlier case, FS50790211. She can see no reason for her conclusions here to differ from those in the previous case. She therefore finds that the balance of the public interest favours maintaining the exemption.
19. In light of this decision the Commissioner has not considered whether the withheld information is also exempt from disclosure on the basis of the section 27 exemptions cited by DExEU as the exemption has been applied to the same information.

## **Other matters**

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20. FOIA does not impose a statutory time within which internal reviews must be completed albeit that the section 45 Code of Practice explains that such reviews should be completed within a reasonable timeframe. In the Commissioner's view it is reasonable to expect most reviews to be completed within 20 working days and reviews in exceptional cases to be completed within 40 working days.
21. The complainant asked for an internal review of the outcome of her request on 6 February 2018. DExEU did not provide the results of its review until 29 June 2018, almost five calendar months later.
22. As with the internal review in the earlier case DExEU did not offer an explanation for this delay, save an apology and acknowledgement of the

40 working day expectation. The Commissioner considers that a period of five calendar months, albeit less delayed than in the earlier case, to conduct the internal review is excessive and not in accordance with the section 45 code. She considers this to be an unsatisfactory period of time.

23. The Commissioner is developing a specific department – Insight and Compliance – to engage with public authorities to improve their compliance. If further such cases are brought to the attention of the Commissioner she will consider taking any action open to her in order to ensure that DExEU complies with not only its statutory responsibilities under the legislation but also to ensure that internal reviews are undertaken in line with the timeframes set out in her guidance.

## **Right of appeal**

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24. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

25. 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.
26. 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 .....**

**Gerrard Tracey**  
**Principal Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**