

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 January 2023

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information relating to licensed establishments under ASPA [Animals (Scientific Procedures) Act] 1986.
2. The Home Office provided some information within the scope of the request but refused to provide the remainder, citing section 38(1) (health and safety) of FOIA.
3. The Commissioner's decision is that the Home Office correctly relied on section 38(1)(a) and (b) of FOIA to withhold the remaining information and that the balance of the public interest favours maintaining the exemption.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 24 March 2022, following earlier correspondence, the complainant wrote to the Home Office and made the following request for information under FOIA (numbers added for reference):

"1. I would like to query the response to my question 2 that the Home Office does not hold information as to the classification of Establishments.

[...]

2. Per my question 3 please can I request a list of licenced establishments under ASPA 1986 that are public authorities for the purpose of FOIA 2000 i.e. include government departments, local authorities, the NHS, state schools, Universities and police forces.
3. For questions 2-3 please can you state the date that the information was prepared at".
6. The Home Office responded on 18 May 2022. While it provided some information in scope of the request, it cited section 38(1) (health and safety) of FOIA in respect of the information in scope of part (2) of the request.
7. The requester was dissatisfied with the application of section 38(1) to refuse the information in scope of that part of the request.
8. At internal review, having reviewed its handling of part (2) of the request, the Home Office clarified that it considers sections 38(1)(a) and (b) apply to the information in scope of that part of the request.

Reasons for decision

9. The following analysis explains why the Commissioner is satisfied that the Home Office was entitled to apply section 38(1)(a) and (b) of FOIA to withhold the information in scope of part (2) of the request, namely the list of licenced establishments under ASPA that are public authorities for the purpose of FOIA 2000.

Section 38 health and safety

10. The Commissioner's guidance 'Section 38 - Health and Safety'¹ recognises that section 38(1)(a) focuses on endangerment to any individual's physical or mental health while section 38(1)(b) focuses on endangerment to the safety of any individual.
11. The complainant confirmed that she was not asking for staff names, nor exact locations of animal research laboratories. Although not required to

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/section-38-health-and-safety/>

explain the reason for her request, she said that the purpose was to establish who she can send FOI requests to.

12. The Commissioner acknowledges that the complainant stated that some organisations have been willing to tell her whether or not they are licenced.
13. The Home Office accepts that individual organisations may, or may not, choose to voluntarily publish information on their work. However, it argued that establishments have an expectation that their information will not be shared by the Home Office.
14. In its submission to the Commissioner, the Home Office quoted from the Commissioner's guidance on section 38 where he considers the types of information that might pose a risk, if disclosed. Of relevance to this case, the guidance includes:

"sites of controversial scientific research where disclosure could lead to sabotage and therefore there would be risks to the physical safety of staff;"
15. The Home Office considers that the guidance example is identical to the case under consideration. It also referred to a previous decision² on the same issue, where the Commissioner found section 38 was engaged and that the information had been correctly withheld.
16. In support of its application of sections 38(1)(a) and (b) in this case, the Home Office argued that scientific work involving animals is highly controversial and that staff working at sites using animals have been, and continue to be, targeted for abuse and intimidation.
17. In that regard, the Home Office argued that there is a real, evidenced, risk to the physical and mental health and safety of individuals associated with licensed establishments. It provided the Commissioner with examples of activity where organisations and individuals involved in animal research have been targeted and their health and safety put at risk.

² https://ico.org.uk/media/action-weve-taken/decision-notices/2006/365862/DECISION_NOTICE_FS50082472.pdf

18. In relation to the level of endangerment in this case, the Home Office confirmed that it was relying on the lower level of threshold – would be likely to endanger.
19. The Commissioner recognises that a public authority will not necessarily be able to provide evidence in support of a causal link, because the endangerment relates to events that have not occurred. However, there must be more than a mere assertion or belief that disclosure would lead to endangerment: there must be a logical connection between the disclosure and the endangerment in order to engage the exemption.
20. The Commissioner cannot give an expert opinion on whether disclosure of the information would be likely to endanger the physical or mental health, or safety of an individual.
21. He recognises that the question of the degree of endangerment is not a straightforward one. However, he notes that the subject matter of the request relates to the use of animals in science which, he accepts, has been and remains an emotive issue.
22. He must also consider that disclosure of information under FOIA is disclosure of information to the world at large.
23. Taking all the above into account, the Commissioner accepts that the exemptions at sections 38(1)(a) and 38(1)(b) are engaged with regard to the withheld information – the list of organisations licensed under ASPA 1986. He is satisfied that there is a causal relationship between the disclosure of that information and the harm that sections 38(1)(a) and (b) are designed to protect.

The public interest test

24. Section 38 is a qualified exemption. This means that, even if the exemption is engaged, the public authority must go on to consider whether the public interest in maintaining the exemption outweighs the public interest in its disclosure.
25. The complainant argued that organisations that receive public funding should be transparent as to what the money is used for.
26. The Home Office recognised that there is significant public interest in enabling access to information about the use of animals in science and, specifically in enabling access to information about establishments licensed under ASPA.
27. However, it argued that there is a clear public interest in protecting against the risk of harm to individuals involved with the establishments on the requested list.

28. It also argued that it would be detrimental to the public interest if, by exposing individuals working in this area to greater risk, fewer people are prepared to work in this field, leading to an inability to conduct important work.

The balance of the public interest

29. The Commissioner will invariably place significant weight on protecting individuals from risk to their physical and mental wellbeing and their safety. The natural consequence of this is that disclosure under FOIA will only be justified where a compelling reason can be provided to support the decision.
30. Clearly in any such situation where disclosure would be likely to lead to endangerment to health or safety, there is a public interest in avoiding that outcome.
31. In reaching a decision in this case the Commissioner must take into account the fact that disclosure under FOIA is effectively an unlimited disclosure to the world at large, without conditions. The wider public interest issues must therefore be considered when deciding whether or not the information requested is suitable for disclosure.
32. In this case, in weighing up the risks to the health or safety of an individual or group, against the public interest in disclosure, the Commissioner has given greatest weight to those factors which he considers support the maintenance of the exemption.
33. In other words, he gives greater weight to avoiding endangerment to any individual's physical or mental health or safety which, in all the circumstances of this case, he considers release of the information would be likely to cause. It follows that the Commissioner has concluded that the public interest in maintaining the exemption outweighs the public interest in favour of disclosure.

Right of appeal

34. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

35. 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.
36. 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

Laura Tomkinson
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