

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 September 2023

Public Authority: Department for Environment Food and Rural Affairs

Address: Seacole Building
4th Floor
2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested information held by the Department for Environment, Food and Rural Affairs (Defra) about a trip made to the United States of America (US) in April 2022, by the then Secretary of State for Defra, George Eustice.
2. Whilst Defra provided the complainant with some information, it advised that any remaining information relevant to the request was exempt from disclosure under section 35(1)(a) - government policy, section 27(1)(a) - international relations, and section 29(1)(a) - the economy, of FOIA. Defra later advised the Commissioner that it was also withholding some information under section 40(2) - personal data, of FOIA.
3. The Commissioner has decided that Defra correctly applied sections 27(1)(a), 29(1)(a) and 35(1)(a) to different parts of the withheld information, finding in each case that the balance of the public interest favoured maintaining the exemption.
4. However, the Commissioner considers that section 40(2) is engaged in respect of only a very limited set of information.

5. The Commissioner has also found that some information which Defra did not consider to be subject to the exemptions cited, should have been released to the complainant in response to their request. Defra's failure to disclose such information is a breach of section 1(1)(b) of FOIA.
6. The Commissioner requires Defra to take the following steps to ensure compliance with the legislation:
 - Disclose all the information that is not highlighted as being exempt from disclosure within the withheld bundle of information submitted by Defra for the Commissioner's consideration (with the redaction of any contact information which, if disclosed, would breach a data protection principle).
 - disclose all the information previously withheld under section 40(2), with the exception of the limited set of information which the Commissioner has identified separately to Defra.
7. Defra must take these steps within 35 calendar days of the date of this decision notice. 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

8. On 7 November 2022, the complainant wrote to Defra and requested information in the following terms:

"Could I please have the following documents:

 - Any briefings, reports, summaries or notes that came out of George Eustice's trip to the United States from 24/04/22 to 28/05/22
 - A list of meetings held by George Eustice whilst on his trip to America
 - with whom, when and about what topic.
9. On 14 December 2022, Defra provided its response to the request. Whilst it released a list of meetings which took place, and details of some invitees, it advised that it was withholding the remaining information relevant to the request under section 27(1)(a), 29(1)(a) and 35(1)(a), of FOIA.
10. The complainant requested an internal review, arguing that Defra should now provide the following information:

"any briefings, reports, summaries or notes from the following meetings:

Meeting with US Food Industry representatives (26/04/22)
Meeting with US Dairy Export Council (26/04/22)
Meeting with Hon Ted McKinney, NASDA CEO (26/04/22)
Meeting with farm and food industry association representatives
(27/04/22)."

11. Defra's internal review decision confirmed that it was satisfied that its original response to the request was correct.

Scope of the case

12. The complainant has advised the Commissioner that they believe that Defra should release all the information held in response to their request.
13. The complainant has argued that the names of companies and associations that the Secretary of State for Defra met with on a trip to the US should not be withheld, stating that these are commercial entities and are usually listed as standard departmental protocol for ministerial meetings held in the UK.
14. The complainant has also said that details of meetings, such as agenda, briefings, summaries or minutes are also routinely provided in response to information requests relating to ministerial meetings, and they should therefore have been released in response to their request.
15. During the Commissioner's investigation Defra advised that, in addition to the exemptions cited in its responses to the complainant, it is also relying on section 40(2) as its basis for withholding some information.
16. The Commissioner found that some of the information contained within the withheld bundle provided by Defra for his consideration was not highlighted as being subject to any exemption. Defra has confirmed that it did not consider such information to fall under any of the exemptions that it has cited. However, it has said that this information was not released to the complainant as it was considered to be meaningless and of little value, if disclosed in isolation.
17. The Commissioner will decide:
 - whether the information contained within the withheld bundle of documents provided by Defra which is not highlighted as being exempt from disclosure should have been released to the complainant.

- whether Defra is correct to rely on section 27(1)(a), section 29(1)(a), section 35(1)(a) and, or, section 40(2) of FOIA as its basis for withholding different parts of the requested information. Where Defra has applied more than one exemption to the withheld information, the Commissioner will consider whether Defra can rely on any of the exemptions it has cited as its basis for withholding such information.

Reasons for decision

Section 1 - general right of access to information

18. Section 1(1) of FOIA states that:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

19. Defra has confirmed that whilst it had identified that some of the information held relevant to the request was not subject to an exemption under FOIA, this was not disclosed as it considered that it would not be meaningful or hold value if released in isolation. However, Defra has already confirmed that it is willing to release such information, if required to do so.
20. It is the Commissioner’s decision that, with the exception of contact information (which contains personal data that the Commissioner considers would, if disclosed, breach one of the data protection principles), Defra should have released information held that was relevant to the request where it did not consider it to be subject to an exemption under FOIA. By failing to do so, Defra has failed to comply with its duty under section 1(1)(b) of FOIA.

Section 27(1) – international relations

21. Section 27(1)(a) states that information is exempt from disclosure under FOIA if disclosure would, or would be likely to, prejudice “relations between the United Kingdom and any other state”.
22. Defra has advised that, at the time of the request, the UK was in the process of negotiating a free trade agreement with the US. It claims that disclosing part of the withheld information would be detrimental to the

UK's negotiating position and would harm relations between the two countries; Defra says that this could potentially harm any free trade agreement final decisions.

23. Furthermore, Defra states that disclosure of information given with the expectation that it would be treated in confidence could lead to less free and frank discussions in the future, and this would harm future negotiations.
24. The Commissioner notes that Defra has claimed that the higher threshold of "would" rather than "would be likely to" cause harm to the relationship between the UK and the US.
25. The Commissioner considers that the disclosure of the relevant part of the withheld information whilst negotiations are ongoing would reduce the trust and confidence between the UK and the US (and potentially other countries).
26. The Commissioner is therefore persuaded that the release of the withheld information would prejudice the relationship between the UK and the USA, and that section 27(1)(a) is engaged in respect of part of the withheld information.
27. The Commissioner will therefore go on to consider the public interest test.

Public interest test

Defra's position

28. Defra has said that it recognises that there is a public interest in disclosure of information concerning meetings attended by ministers. As such, the release of information concerning meetings attended by the Secretary of State for Defra whilst on a visit to the US, aids the public understanding of any discussions that may have taken place while on that visit.
29. However, Defra argues that the public interest favours maintaining the exemption in this case, because of the harm which would result from disclosure of the withheld information.
30. Defra has said that the UK's relations with various partners are important to uphold, and that it would not be in the public interest if disclosure allowed future negotiating positions to be inferred. Defra also states that disclosure of comments on international negotiations and negotiating positions would not be conducive to ongoing relations. It says that it has the potential to affect the background against which

those negotiations take place, with the risk of repercussions to business and other relations between the UK and other countries involved.

The Commissioner's finding

31. The Commissioner recognises that there is a public interest in transparency and accountability and having a better understanding of the details relevant to the negotiations that were taking place on such an important matter. A trade agreement (or not) between the two countries is likely to have significant impact on the UK economy and its residents.
32. However, the Commissioner considers that substantial weight is attached to the public interest in protecting the ability of the UK to preserve and strengthen its interests with countries such as the US. In order to achieve this, the UK must have a good relationship with the relevant countries. In accepting that the exemption at section 27 is engaged, the Commissioner has accepted that disclosure of the withheld information would prejudice relations between the two countries.
33. It is important the UK is able to protect its interests abroad, and disclosure of the withheld information subject to the exemption at section 27(1)(a) would, in the Commissioner's view, harm relations between the UK and the US, which would not be in the public interest.
34. Having had particular regard to the content of the information, and the fact that negotiations were still ongoing at the time of the request, the Commissioner is not persuaded that the benefit of disclosure would justify or mitigate the prejudice caused by such a disclosure in this case.
35. The Commissioner has therefore decided that the public interest in maintaining the exemption at section 27(1)(a) outweighs the public interest in the disclosure of the withheld information.

Section 29(1)(a) – the economy

36. Section 29(1)(a) states that information is exempt if disclosure under FOIA would, or would be likely to, prejudice "the economic interests of the United Kingdom or any part of the United Kingdom."
37. Defra has argued that the withheld information that it has highlighted as being subject to the exemption at section 29(1)(a) details information about the UK's trade interests domestically and internationally. Defra considers that the release of this information "would be likely" to risk the stability of the UK economy and directly affect market confidence, potentially resulting in detriment to the UK stock market, such as a fall in shares. Defra goes on to say that it is recognised that the financial markets can be very sensitive to the release of information about the

economy and that, generally speaking, information that distorts the financial markets is seen as damaging to the economy.

38. The Commissioner accepts that the relevant withheld information highlighted by Defra relates to negotiations about a potential trade agreement which will have an effect on UK trade and the economy. It is the Commissioner's view that the disclosure of this information would be likely to risk the credibility of the government by demonstrating that it was unable to successfully control confidential information in its possession. This would weaken the strength of the UK's relationship with potential trade partners and harm its ability to trade with the most successful outcomes.
39. The Commissioner also considers that disclosure would reveal details of the UK's plans and objectives in relation to trade, which would weaken the UK's bargaining position, and in turn, would be likely to have a detrimental effect on its economic interests.
40. Having considered the withheld information which Defra has claimed to be subject to the exemption at section 29(1)(a), the Commissioner is satisfied that, given its content, and the subject matter to which it relates, disclosure of this information represents a real risk of prejudice to the UK's economic interests.
41. The Commissioner is satisfied that section 29(1)(a) is engaged, and has therefore gone on to consider the public interest test.

The public interest test

Defra's position

42. Defra has advised that it recognises that there is a public interest in disclosure of information concerning possible implications for the economy, and that the release of such information provides transparency and accountability within the government.
43. However, Defra has said that it considers that there is a stronger public interest in withholding information that sets out the UK's domestic trading position which, if released, would harm and cause prejudice to the economic interests of the UK. It goes on to say that after leaving the EU, the UK needs to ensure it protects its economic interest by being in strong negotiating positions when it comes to trade. Defra argues it is important that ministers are able to discuss issues relating to standards and trade (in this instance in relation to dairy and food) with third party countries to enable this to happen.
44. Defra argues that it would not be in the public interest if information about options the UK government considered could be used to inform

negotiating positions taken by the UK, or its trading partner, as this would weaken its position. It states that disclosure of the withheld information would also be likely to directly affect market confidence in the UK, and that given this, the public interest favours withholding the information in this instance.

The Commissioner's position

45. The Commissioner accepts that there is a public interest in understanding the various stages of trade negotiations, and what is being considered. Disclosure could therefore provide an insight into the government's position and provide reassurance to the public that the government is taking steps to achieve the best outcomes from its trade negotiations and deals. It could also provide an opportunity for further debate on the issue, and allow the public to express their views and, or concerns before any decision on the trade agreement is made.
46. However, the Commissioner has, once again, found the timing of the request to be critical to his decision as to where the balance of the public interest lies.
47. At the time of the request important decisions relating to the agreement had not yet been made, and negotiations were still live.
48. The Commissioner fully appreciates that public interest in trade deals goes beyond mere curiosity; the outcomes of any trade deal will undoubtedly have an effect on the UK's economy and therefore its residents.
49. However, the Commissioner considers that it is important that the UK is able to protect its economic interests and achieve the best deals possible. He therefore considers the risk to the UK's economic interests by the premature release of information that relates to ongoing negotiations with the US about a potential trade agreement to carry considerable weight in favour of withholding the requested information.
50. The Commissioner therefore considers that, on balance, the public interest favours maintaining the exemption at section 29(1)(a) in relation to part of the requested information in this instance.

Section 35(1)(a) – government policy

51. Section 35(1)(a) of FOIA 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.”

52. Section 35 is a class based exemption. This means that a public authority is not required to demonstrate any likelihood of prejudice for the exemption to be engaged; the information must simply fall within the class of information described. Therefore, in this case it must be shown that the withheld information "relates to" the formulation or development of government policy. As section 35(1)(a) is also a qualified exemption, where it is found to be engaged, a public authority must go on to apply the public interest test.
53. Defra states that it considers the withheld information to relate to policymaking, arising out of negotiations with the US for the purpose of moving forward towards a free trade agreement in relation to meat production and standards.
54. Defra argues that ministers and officials need to be able to conduct rigorous risk assessments in relation to the policy options for future free trade deals, and that it is vital that officials are able to carry out this process in private before any final decisions are made; therefore, a safe space is needed as it continues to develop the policy and agree any final trade positions.
55. Defra has referred to decision notice [IC-186114-V9S7](#) in support of its claim that section 35(1)(a) is engaged. In that case, the Commissioner accepted that the withheld information, which concerned trade negotiations, related to the formulation and development of government policy, and that the exemption was therefore engaged in respect of such information.
56. The complainant has argued that whilst the meetings between the Secretary of State for Defra and certain US officials may possibly meet the description of information set out within section 35(1)(a), the remaining information withheld under this exemption is unlikely to form negotiations relating to trade, and therefore would not meet the criteria necessary for the exemption to apply.
57. The Commissioner's [guidance](#) states that the classes set out within the various subsections of section 35 are to be interpreted broadly, and will encompass a wide range of information. In addition, the Commissioner considers that the term "relates to" should also be interpreted broadly. Given this, in most cases, if the majority of a piece of information relates to a particular activity, any associated or incidental information is considered to also relate to that activity, even if in isolation it is not covered.
58. The Commissioner accepts that not all information held relating to potential trade arrangements and agreements will fall within the definition set out within section 35(1)(a); the information must be

considered on a case by case basis. It is also important to note that it is not only the content of the information which must be taken into account when deciding whether the exemption is engaged, but also the circumstances and context in which such information is held.

59. Having considered the content of the relevant part of the withheld information which Defra claims to be subject to the exemption at section 35(1)(a), and also the context in which it is held, the Commissioner is satisfied that it relates to the formulation and development of government policy, in particular in relation to meat production and standards, and trade.
60. The Commissioner is therefore satisfied that the exemption at section 35(1)(a) is engaged in respect of part of the withheld information.
61. The Commissioner has therefore gone on to consider the public interest test.

Public interest test

Defra's position

62. Defra has said that it accepts that there is a public interest in disclosure of information which relates to policy issues arising from discussions between the Secretary of State for Defra and the US; this is because it would aid accountability and transparency about the working of government.
63. However, Defra states that it considers the public interest factors in favour of maintaining the exemption at section 35(1)(a) to outweigh the public interest in accountability and transparency in this instance.
64. Defra has argued that disclosure of the withheld information would have an adverse impact on the ability of the government to develop policy effectively. It has said that the UK is proud to have some of the highest animal welfare standards in the world, and that it is vital that any trade agreements that are set up meet those expectations. Defra goes on to say that it would not be in the public interest for the UK to formulate policy and enter into any trade deals where welfare standards are not considered and assessed properly prior to any final decisions being made.
65. Defra has said that ministers and officials need to be able to conduct rigorous risk assessments in relation to the policy options for future trade deals in relation to food production and standards, and that it is essential that they have a safe space to carry out the process in private before any final decisions are made on the policy going forward. It says

that if this was not possible, it would not allow for effective policy making.

66. Defra has also argued that disclosure of the information would reveal the UK's policy making process in relation to its domestic trading position, which could be harmed if the information was released and accessible by other states, in particular the US, and this would not be in the public interest.

The Commissioner's finding

67. The Commissioner's published guidance on section 35 says that as a class based exemption, section 35 carries no inherent weight in favour of maintaining the exemption. The relevance and weight of the public interest arguments will depend entirely on the content and sensitivity of the particular information in question, and the effect its release would have in all the circumstances of the case.
68. The Commissioner accepts that the disclosure of the requested information will provide an opportunity to inform the public discussion and debate on the UK's policy on meat production and trade.
69. The Commissioner also recognises that the formulation of policy and the government's objectives in relation to meat production and trade will undoubtedly have an effect on the UK's farming and business sector, the economy and therefore UK residents. Public interest in animal welfare as it relates to meat production is also a relevant factor to take into consideration.
70. The Commissioner also considers there to be a public interest in further understanding of the government's broader trade policies, and its aims and objectives. Disclosure of the withheld information could reassure the public that the government is taking steps to achieve the best outcomes from all its trade negotiations and deals.
71. However, the Commissioner has concerns that whilst providing access to the information will allow the public the opportunity to scrutinise and debate the policy options relating to meat production and trade, there is a real risk that disclosure at the early stages of the formulation and development of such policy will have a detrimental impact on the government's ability to make sound policy decisions.
72. The Commissioner is mindful that, with the passage of time, the arguments for withholding the information under section 35(1)(a) may be more speculative. However, when making his decision he must only consider the circumstances relevant at the time of the request, and what the public authority did, or should have done, at that time.

73. The Commissioner considers that there is a strong public interest in allowing policy making to be of the highest quality and being fully informed by a consideration of all the options, particularly when it comes to significant trade decisions. In order to achieve this, it is the Commissioner's view that whilst the policy making process is still live (which it was at the time of the request), it is important that ministers and government officials have a safe space in which to have frank and open discussions, share opinions and advice, and are able to prepare, explore and consider various policy options without external interference.
74. The release of the information would also provide the US with details of the UK's policymaking objectives in relation to trade. In the Commissioner's opinion, disclosure of such information at the time of the request, when the policy making process was still live, is likely to have undermined the government's position when trying to develop its trade policy, and when negotiating any agreement with the US.
75. The Commissioner also considers that disclosure of certain information held about the US would (whilst the policy making process was still live), have had a detrimental impact on the relationship between the UK and the US, and therefore the government's ability to develop effective policy. This, in the Commissioner's view, would not be in the public interest.
76. Having considered all relevant factors, in particular the content and context of the withheld information, and the timing of the request, the Commissioner has decided that the public interest favours maintaining the exemption at section 35(1)(a) in respect of part of the withheld information in this particular instance.

Section 40 – personal information

77. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A), (3B) or 40(4A) is satisfied.
78. Defra has been very specific about the information it has withheld solely under section 40(2) of FOIA. Whilst it has not provided detailed arguments in support of its position in this regard, the Commissioner would not order disclosure of information where he considers to do so is likely to breach one of the data protection principles.
79. Section 3(2) of the Data Protection Act 2018 (DPA) defines personal data as:

“any information relating to an identified or identifiable living individual.”

80. The Commissioner is satisfied that the withheld information which Defra has highlighted as being subject to section 40(2) is the personal data of individuals; it clearly relates to and identifies such individuals.
81. In considering whether disclosure of this personal data would be in breach of any of the data protection principles, the Commissioner has focussed on principle (a), which states:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
82. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
83. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
84. The Commissioner considers that the complainant is pursuing a legitimate interest as the request relates to transparency around government policy making in relation to meat production, standards and trade.
85. Furthermore, the Commissioner considers that disclosure would be necessary in order to achieve the legitimate interests identified; he considers that it would provide the public with a greater understanding of the activities of government in relation to the formulation of its trade policy, in particular with the US, and that there are no less intrusive means of achieving these aims.
86. It is necessary to balance the legitimate interest in disclosure against the data subjects' interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that information would be disclosed to the public under the FOIA, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
87. It is the Commissioner's view that a small amount of the information that has been withheld under section 40(2) would identify individuals who would not have had any reasonable expectation that their personal information would be disclosed to the public. This is primarily because of their roles, and level of responsibility they hold: as far as the Commissioner can see, they are not senior officers. Furthermore, the

Commissioner considers there to be very little public value in the release of this particular information.

88. Given the above, the Commissioner considers there to be insufficient legitimate interest to outweigh the rights and freedoms of certain individuals who would be identified from the disclosure of certain information. Given this, he has decided that Defra is entitled to rely on section 40(2) as its basis for withholding a very limited part of the information that would identify certain individuals.
89. With regard to the remaining information which Defra has claimed to be exempt from disclosure under section 40(2), the Commissioner considers this to relate to officials and individuals who hold very senior positions within government and various organisations and associations. Furthermore, the information is about their professional roles, and activities that relate to them in an official capacity. It is the Commissioner's view that such individuals should have a reasonable expectation that details which confirms their attendance at high profile meetings with the Secretary of State of Defra would be made available to the public.
90. The Commissioner also considers it to be the case that, aside from that information which confirms that individuals were invited to attend a meeting with the Secretary of State, the remaining information that has been withheld under section 40(2) is likely to already be in the public domain.
91. Based on the information available, the Commissioner has been unable to identify any specific harm or distress that disclosure of the information may cause to the data subjects. Release may potentially raise questions or provide for debate, but the Commissioner does not consider this to be sufficient argument to determine that the information would cause harm or distress, or should be withheld in this case.
92. Based on the above factors, the Commissioner has determined that where the withheld information relates to senior officials and representatives, there is sufficient legitimate interest in disclosure to outweigh the data subject's rights and freedoms. The Commissioner therefore considers that there is an Article 6 basis for processing and that the disclosure of such information would be lawful.
93. Even though it is demonstrated that disclosure of part of the information which Defra has claimed is subject to the exemption at section 40(2) would be lawful, it is still necessary to show that disclosure of such information would be fair and transparent under principle (a).

94. In relation to fairness, the Commissioner considers that if the disclosure passes the legitimate interest test for lawful processing, it is highly likely that disclosure will be fair for the same reasons.
95. The Commissioner considers that the requirement for transparency is met because, as a public authority, Defra is subject to the FOIA.
96. In these circumstances, the Commissioner has therefore decided that Defra has failed to demonstrate that the exemption at section 40(2) is engaged where the information relates to senior officials and representatives of business and associations. Given this, based on the information that is available, the Commissioner has determined that such information should be disclosed in response to the complainant's request.
97. With regard to that very limited set of information where Defra's application of section 40(2) has been upheld (paragraph 89-90 of this decision notice), the Commissioner has provided details of this information within separate correspondence sent to Defra on 1 September 2023.

Right of appeal

98. 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

99. 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.

100. 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

Suzanne McKay
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