

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 25 May 2023

**Public Authority:** Department for Environment Food & Rural Affairs (Defra)

**Address:** Seacole Building  
4<sup>th</sup> Floor  
2 Marsham Street  
London  
SW1P 4DF

### **Decision (including any steps ordered)**

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1. The complainant has requested Defra to disclose information relating to the investigation it carried out into the 2022 heatwave and how this affected "broiler chickens" in the UK. Defra provided a little information in response to one element but refused to disclose the recorded information it holds in accordance with section 35(1)(a) of FOIA.
2. The Commissioner's decision is that Defra is entitled to refuse to disclose the withheld information in accordance with section 35(1)(a) of FOIA. He does not require any further action to be taken.

### **Request and response**

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3. On, 20 October 2022, the complainant requested Defra to provide the following information:  
  
"During the summer of 2022, the various heat waves resulted in the deaths of millions of chickens bred for meat ('broiler chickens') that were kept inside barns. This resulted in wide media coverage and public outcry.

We have been told by the Department of Food Environment and Rural Affairs that the issue was being looked into.

Following these assurances we would like the following information from you:

- 1) Any findings following an investigation on how the 2022 heatwave affected broiler chickens in the UK.
  - 2) Any research done or literature reviews conducted on the causes of heat stress in broilers / actions which could mitigate it.
  - 3) Minutes from any meetings where the 2022 heat waves' effect on broiler chickens was discussed.
  - 4) Any proposed actions on how to mitigate the effect of heatwaves on broiler chickens in future."
4. Defra sought clarification on 27 October 2022. The complainant responded the following day.
  5. Defra responded on 17 November 2022. It provided a response to question 1. In relation to questions 2, 3 and 4, it refused to provide the requested information citing section 35(1)(a) of FOIA.
  6. The complainant requested an internal review on 22 December 2022.
  7. Defra carried out an internal review and notified the complainant of its findings on 24 February 2023. In relation to question 1, it said it does hold further recorded information but this falls under section 35(1)(a) of FOIA. Regarding questions 2, 3 and 4, it upheld its application of section 35(1)(a).

### **Scope of the case**

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8. The complainant contacted the Commissioner on 6 April 2023 to complain about the way their request for information had been handled.
9. The Commissioner considers the scope of his investigation to be to establish whether or not Defra is entitled to rely on section 35(1)(a) of FOIA for all remaining withheld information which falls in the scope of parts 1 to 4 of the request.

## Reasons for decision

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10. Section 35(1)(a) of FOIA allows a public authority to refuse to disclose information if it relates to the formulation or development of government policy.
11. Section 35 is classed based, so there is no need to consider the sensitivity of the information in order to engage the exemption and it must simply fall within the class of information described. The classes are interpreted broadly and catch a wide range of information.
12. Defra confirmed that this exemption is to protect the integrity of the policy making process and to prevent disclosures which would undermine this process and result in less robust, well considered or effective policies. It explained further that the 'formulation' of policy comprises the early stages of the policy process – where options are generated and sorted, risks are identified, consultation occur, and recommendations/submissions are put to a minister or decision makers. On the other hand, 'development' goes beyond this stage to the processes involved in improving or altering existing policy such as piloting, monitoring, reviewing, analysing or recording the effects of existing policy.
13. The withheld information in this case discusses policy options that are available to Defra in mitigating any future effects a heatwave may have on animal welfare. It said that the withheld information feeds into a wider review of its policy, which includes a range of options, including strengthening the specific farm welfare legislation which meat chicken producers have to comply with – The Welfare of Farmed Animal Regulations 2007 and the Meat Chicken Welfare Code.
14. The Commissioner has reviewed the withheld information. He agrees with Defra that section 35(1)(a) and the 'development' of policy includes the process of reviewing, improving or adjusting existing policy. Defra has said (and it is also evident from the contents of the withheld information itself) that the review feeds into a wider review of existing policy with a view to presenting recommendations to ministers and potentially developing and implementing changes. The relevant existing government policy is The Welfare of Farmed Animal Regulations 2007 and the Meat Chicken Welfare Code.
15. The withheld information 'relates to' the development of government policy. The Commissioner is therefore satisfied that section 35(1)(a) of FOIA applies.
16. Defra said the review into the events of summer 2022 had commenced and was still ongoing at the time of the request and all elements of the

request fall within that review. They all form part of the ongoing process of formulating a series of policy options for ministers. It confirmed that the process of formulating these policy options has necessitated some initial engagement with industry. There has also been correspondence between officials about the summer 2022 heatwave. These discussions took place in the context of evaluating current policy and have informed advice on possible future safeguards and changes.

17. It said that it understood that animal welfare issues are very much in the public interest and it recognises that disclosure of information with regards to the response to the mass mortalities of chicken in the summer of 2022 will aid accountability and transparency.
18. However, Defra considers it is vital that government officials are able to have open and frank conversations internally, with ministers and/or stakeholders on how to mitigate the effect of heatwaves on the welfare of broiler chickens in the future. To enable this to happen Defra needs to have a safe space in which officials can operate and discuss policy options in private. It argued that disclosure would risk inhibiting Defra officials from having full, frank and open discussions as part of the process of formulating policy in relation to these issues which could, in turn, affect decision making and compromise animal welfare outcomes. Defra stated that this is clearly not in the public interest.
19. The Commissioner recognises the public interest in openness and transparency. Members of the public will want to know how these mortalities occurred and what is being done to ensure that a similar situation does not happen again. The withheld information concerns the welfare of animals and it accepted that, for many, this is an emotive subject and there are strong public interest arguments in favour of ensuring that all is being done and speedily to prevent such a situation occurring again in the future.
20. However, at the time of the request the withheld information formed part of a wider review into existing government policy and Defra has said that policy options and proposals going forward were still under consideration. The process of reviewing the incident, how this fed into existing areas of government policy and what recommendations/proposals could be put forward to strengthen policy and ensure a similar situation does not reoccur, were still ongoing at the time of the request. The Commissioner accepts that Defra required the safe space to consider its options and debate these candidly without the fear of premature disclosure and the distraction public disclosure at this stage would have caused. Safe space is vital to ensure all options and policy ideas are discussed and evaluated thoroughly and because the wider review was still ongoing at the time of the request, the need for this was still prominent. Premature disclosure and public interference at

such an early stage would hinder Defra's ability to do that, which would result in a less effective policy development process. This is not in the wider interest of the public or in the interests of animal welfare. He considers it is in the public interest to allow Defra the private thinking space it requires so it can protect the welfare of animals in the future during such weather conditions.

21. For the above reasons, the Commissioner is satisfied that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption.

## Right of appeal

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22. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. 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.
24. 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

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**