

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 October 2023

Public Authority: Department for Culture, Media and Sport
Address: 100 Parliament Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant has requested information about roundtable meetings relating to the setting up of the Creative Industries Independent Standards Authority (CIISA). The then Department for Digital, Culture, Media and Sport (now the Department for Culture, Media and Sport (DCMS)) originally refused the request under section 3(2)(a) of FOIA (information held solely on behalf of another person). In its internal review, DCMS amended its position, citing section 36(2)(b)(ii) of FOIA (prejudice to the effective conduct of public affairs).
2. The Commissioner's decision is that section 36(2)(b)(ii) of FOIA is engaged. However, he finds that the public interest in maintaining this exemption does not outweigh the public interest in disclosure. In addition, DCMS failed to respond to the request within 20 working days and therefore also breached section 10(1) of FOIA.
3. The Commissioner requires DCMS to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld information falling in scope of the request (ie information up to 25 January 2023) to the complainant, with the exception of limited redactions for information exempt under section 40(2) (third party personal data) which are identified in the confidential annex provided to DCMS only.
4. The public authority 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 FOIA and may be dealt with as a contempt of court.

Background

5. On 29 June 2021, the then Minister for Digital and Culture convened a roundtable with representatives from across television, film, music and fashion to agree a plan of action for the creative sector to overcome issues with bullying, harassment and discrimination.¹
6. The roundtable/working group went on to develop a proposal for a cross sector independent standards authority. This became known as the Creative Industries Independent Standards Authority (CIISA). An interim CEO of CIISA was appointed in September 2022.
7. UK broadcasters - BBC, Channel 4, Channel 5, ITV, and Sky - subsequently committed financial support to CIISA, whose remit later expanded to include theatre, games, and advertising.
8. CIISA now has a website² stating that its aim to: uphold and improve standards of behaviour across the creative industries and to prevent and tackle all forms of bullying and harassment, including bullying and harassment of a discriminatory nature.
9. On 18 September 2023, a CIISA press release³ indicated that it was, "now moving into preparation ahead of going live and further announcements will be made shortly." On 29 September 2023, an announcement indicated that CIISA would be ready to take cases in 2024.⁴

¹ <https://www.broadcastnow.co.uk/dcms-prepares-to-tackle-bullying/5161006.article>

² <https://ciisa.org.uk/#whatciisawilldo>

³ <https://ciisa.org.uk/uncategorized/ciisa-statement/>

⁴ <https://ciisa.org.uk/uncategorized/the-creative-industries-independent-standards-authority-to-go-live-in-2024/>

Request and response

10. On 25 January 2023, the complainant submitted the following request to DCMS:

“Can you please give me access to the transcripts or recordings of the roundtables the DCMS conducted with Creative UK, Time’s Up UK and others, regarding the setting up of the new regulator for the Creative Industries (formerly ISA, now CIISA)?”

11. On 24 February 2023, DCMS responded saying to the complainant that it did not hold information relevant to the request. DCMS stated it was relying on section 3(2)(a) of FOIA as it only held information on behalf of the working group. DCMS said it was a convener only and not a member of the working group.
12. The complainant requested an internal review on 28 February 2023. He disputed that section 3(2)(a) applied and also said that there was “an overwhelming and overriding public interest in this process.”
13. The complainant contacted the Commissioner on 12 April 2023 as they had not received a substantive response to their internal review request.
14. On 2 May 2023, the Commissioner accepted this complaint without an internal review in order that the complainant was not subject to further delays.
15. On 18 May 2023, the Commissioner wrote in the usual way to DCMS requesting its submissions in support of its application of section 3(2)(a) to the requested information. The Commissioner stated:

“If you decide to apply a new exemption, you should inform the complainant of your revised position and let me have answers to the questions in respect of the corresponding exemption/exception, which can be found at: [Key Questions for Public Authorities – Freedom of Information Act 2000 | ICO.](#)”

16. DCMS subsequently advised the Commissioner on 1 June 2023 that it was considering amending its position to rely on section 36 of FOIA.
17. DCMS then responded to the complainant’s internal review on 21 July 2023. It confirmed that DCMS did not hold transcripts or recordings of the roundtable meetings but rather held minutes of the meetings. It amended its position saying that section 3(2)(a) of FOIA was “an incorrect use of exemption” but refused to provide the meeting minutes citing section 36(2)(b)(ii) of FOIA (free and frank exchange of views for the purpose of deliberation).

Scope of the case

18. The complainant contacted the Commissioner on 23 July 2023 to complain about the outcome of the internal review.
19. The complainant did not accept that the withheld information was exempt from disclosure under section 36 and provided the Commissioner with additional arguments relating to the public interest in the case. The complainant also stated that, "I would of course understand if some sensitive materials needed to be redacted as necessary, such as anything which might lead to the identities of anyone reporting wrongdoing, or the accused, being exposed."
20. On 7 August 2023, the Commissioner contacted DCMS and noted that DCMS's submissions to the Commissioner, due on 31 July 2023, had not been received. DCMS responded to the Commissioner on 11 August 2023 providing both its submission to the Commissioner and Qualified Person (QP) and three pieces of withheld information (two from 2021 and one from April 2023, which the Commissioner notes was created *after* the date of the request and so technically falls outside the scope of the request).
21. On 18 September 2023, the Commissioner wrote to DCMS requesting further information. He asked DCMS to provide him with a copy of the QP's (or their private office) email or response to the QP submissions, as it had not been provided. Regarding the withheld information, the Commissioner queried whether all of it had been provided to him, as he noted that only three documents had been provided and there was a gap of two years between the dates of them.
22. On 21 September 2023, DCMS provided the Commissioner with the QP's response to the submissions and six more pieces of withheld information (including one from July 2023, which again the Commissioner notes technically falls outside the scope of the requested information as it was created *after* the date of the request).
23. The Commissioner has therefore considered whether DCMS was entitled to rely on section 36(2)(b)(ii) to withhold the information falling within the scope of the request.

Reasons for decision

Section 36: prejudice to the effective conduct of public affairs

24. Section 36(2)(b) of FOIA provides that information is exempt if in the reasonable opinion of a qualified person (QP), disclosure of the information would, or would be likely to inhibit:
- (i) the free and frank provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation.
25. Information may be exempt under section 36(2)(b)(ii) if its disclosure would, or would be likely to, inhibit the ability of public authority staff, and others, to express themselves openly, honestly and completely, or to explore a range of options, when providing advice or giving their views as part of the process of deliberation.
26. Section 36(5) sets out who may act as the QP in relation to a public authority. In the case of government departments, any Minister of the Crown may act as the QP.⁵
27. The Commissioner has published guidance on section 36⁶ which explains that the QP's opinion does not have to be one with which the Commissioner would agree, nor the most reasonable opinion that could be held. The opinion must be in accordance with reason and not irrational or absurd. The test of reasonableness is not meant to be a high hurdle and if the Commissioner accepts that the opinion is one that a reasonable person could hold, he must find that the exemption is engaged.
28. DCMS confirmed that the QP in this case was the temporary Minister for Media, Tourism and Creative Industries at DCMS, John Whittingdale. The Commissioner accepts that as a Minister of the Crown, John Whittingdale was authorised to act as the QP.
29. DCMS provided the Commissioner with copies of its submissions to the QP. The submission was dated "XX May 2023" but the Commissioner is

⁵ Defined at section 8(1) of the Ministers of the Crown Act 1975 as "the holder of an office in [His] Majesty's Government in the United Kingdom".

⁶ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/section-36-prejudice-to-the-effective-conduct-of-public-affairs/>

prepared to accept that the document he was provided with was the same version provided to the QP.

30. DCMS, however, did not provide the Commissioner with any written record of the QP having expressed an opinion but instead stated that "permission" was received from the QP on 21 June 2023.
31. The Commissioner observes that while DCMS was able to confirm the date that the opinion was provided as 21 June 2023, DCMS did not provide a copy of the record or other evidence of the QP opinion to the Commissioner. DCMS were aware that the Commissioner had raised this omission in a previous decision notice in May 2023: see IC-189807-M5Y0⁷. The Commissioner therefore requested a record of the QP opinion from DCMS and it was provided. However, the Commissioner expects DCMS to ensure that appropriate QP records are provided to the Commissioner, together with the QP submissions, in future cases.
32. The Commissioner has inspected the submission provided to the QP. The Commissioner notes that the QP's opinion was obtained during the internal review in July 2023 rather than at the time the request was made in January 2023. DCMS relied on section 3(2)(a) in the first instance but the Commissioner notes that he does not consider that DCMS's late reliance on section 36(2) renders the opinion unreasonable.
33. The Commissioner has considered the reasonableness of the QP's opinion. He is mindful that the test of reasonableness is not intended to be a high bar, and if the opinion is one that a reasonable person could hold, he must find that the exemption is engaged.
34. During the course of his investigation, as explained above, the Commissioner has had sight of the withheld information. He considers that it can accurately be described as the minutes from nine roundtable meetings. Five are from 2021, two from 2022, two are from 2023 (April and July 2023 so, as explained above, these two documents technically fall outside the scope of the information requested on 25 January 2023). The minutes record the attendees names and contact details and briefly summarise what each attendee contributed to the meeting, along with setting out action points for the next meeting and press statements.
35. DCMS stated in its submissions to its QP in May 2023 that:

⁷ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4025320/ic-189807-m5y0.pdf>

"..Creative UK was asked by DCMS to take the lead on progressing an action plan to address Bullying, Harassment and Discrimination (BHD) issues across the creative industries. Creative UK have been convening an industry roundtable working group to develop this work. As part of the industry efforts, a proposal for an industry-funded Creative Industries Independent Standards Authority (CIISA), that would support the reporting and investigation of cases of BHD within the creative industries, has been developed. The CIISA would not have any statutory grounding, but would be reliant on industry buy-in and the reputational risk of individuals or companies not signing up to / cooperating with the CIISA, as it gains more support."

36. DCMS went on to say in its QP submissions that:

"it is more accurate to describe these roundtables as industry working groups, chaired by Creative UK, at which DCMS attends and provides secretariat support. The Department therefore has copies of the minutes, but these are industry documents as opposed to Government products. DCMS' role with regard to the work of the industry roundtables is to attend to hear the latest developments in the creative industries efforts to tackle BHD, and act as a 'critical friend.' To assist Creative UK with resourcing this work, we also provide secretariat support to produce the draft minutes, with Creative UK then refining the draft, and sharing with the roundtable group."

37. DCMS further explained in its submissions to the QP that Creative UK is aware of this FOI request:

"When advised of the FOI request, Creative UK, the organiser and chair of the roundtables, have advised that: 'In the view of Creative UK the discussions that have been held with industry about the development of the Creative Industries Independent Standards Authority (CIISA) are both private and sensitive. Members attending these meetings have not given permission to share details of discussions outside of the attendee group and we do not have the resource to re-visit each of the meeting notes to redact content that is private or sensitive in nature.'"

38. In this case the submission provided to the QP was brief and advised in generic terms that disclosure of the requested information would be likely to impact on "safe space" and would be likely to dissuade officials and stakeholders from engaging in open discussions and in providing candid advice to ministers. It also advised that disclosure 'could' have a "chilling effect" on this type of future engagement as "Creative UK, and other stakeholders, may be unwilling to provide a full picture of all policies being considered, inhibiting our ability to influence stakeholder's policy and preventing fully informed advice going to Ministers for their Parliamentary engagements."

39. Based on the limited submissions provided to the QP, the Commissioner is satisfied that the QP had sight of some of the withheld information and sight of the text of the relevant provisions of section 36. The submission included a request that the QP give his opinion as to whether disclosure "would be likely" to cause the aforementioned inhibitions. The Commissioner is broadly satisfied that the QP, given their ministerial role, is likely to have an understanding of the relevant issues of transparency versus the need to protect the "safe space" in which this type of sensitive subject could be discussed. The QP would also be aware of the "chilling effect" that disclosure would be likely to have on this type of future engagement.
40. The Commissioner notes that the onus is on the public authority to demonstrate that the opinion is a reasonable one and would have preferred more explanation, reasoning and evidence in the submissions to the QP to show how the opinion was arrived at. This would have demonstrated more clearly that the QP had arrived at a reasonable opinion. For example, he would have preferred to see the QP being given more detailed information for and against engaging the exemption and for the arguments to be linked to specific examples of the actual content of the withheld information. This is especially the case regarding the 'chilling effect' arguments and the direct impact this would have on "fully informed advice going to Ministers for their Parliamentary engagements."
41. The Commissioner notes that this identical advice about the lack of evidence provided by DCMS has already been made to DCMS in two decision notices – both pre-dating this one and the QP submissions – and is, therefore, dissatisfied that DCMS have not taken these learning points into account in the QP submissions in this case – see the decision notices from March 2023 (IC-180121-M7C9⁸) and May 2023 (IC-189807-M5Y0⁹).
42. However, despite these criticisms, the Commissioner accepts that the QP's opinion is one that a reasonable person could hold. The Commissioner accepts as reasonable that the effect of disclosing this information on a topic both sensitive (i.e. bullying, harassment and discrimination in the creative industries) and of media interest, would be

⁸ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4025099/ic-180121-m7c9.pdf>

⁹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4025320/ic-189807-m5y0.pdf>

likely to cause members of the roundtable to be more reticent in engaging in open and frank discussions. And in future, would be likely to inhibit them from expressing their candid views of policies being considered.

43. He is further satisfied that the lower level of prejudice, ie, would be likely to prejudice, applies.
44. The Commissioner finds that the exemption at section 36(2)(b)(ii) is engaged on the basis of the QP's opinion.
45. Section 36(2)(b)(ii) is a qualified exemption. The fact that prejudice has been identified and accepted is not in itself conclusive evidence that information should be withheld. Rather, the public authority must consider whether, in all the circumstances of the case, the public interest in maintaining the exemptions outweighs the public interest in disclosure.

Public interest in favour of maintaining the exemption

46. DCMS provided the Commissioner with short submissions on 11 August 2023 to support its amended reliance on section 36(2)(b)(ii).
47. However, the Commissioner notes that the submissions are largely a 'cut and paste' of the same limited and generic information provided to the complainant in the internal review response and in the submissions provided to the QP.
48. DCMS repeated in its submissions to the Commissioner that there was a public interest in preserving a "safe space" around the roundtable meetings so that stakeholders and officials could engage in open discussions on a range of issues.
49. DCMS also repeated in its submissions that disclosure 'could' have a "chilling effect" on this type of future engagement and limit the willingness of participants to exchange free and frank views in this sensitive area. It went on to say that Creative UK, and other stakeholders, may be unwilling to provide a full picture of all policies being considered, "inhibiting our ability to influence stakeholder's policy and preventing fully informed advice going to Ministers for their Parliamentary engagements."
50. DCMS advised the Commissioner in its 11 August 2023 submissions that it considered that the balance of public interest falls on the side of withholding the information. It did not provide any details of its consideration, either to the complainant or to the Commissioner.

51. The Commissioner is extremely disappointed at the brevity and generic wording of the explanation provided by DCMS with regard to section 36. Once again, the Commissioner notes that this point has previously been made to DCMS in decision notices that pre-date this one - see the decision notices from March 2023 (IC-180121-M7C9), May 2023 (IC-189807-M5Y0) and July 2023 (IC-144583-B8L3¹⁰).

Public interest in favour of disclosing the withheld information

52. DCMS acknowledged the general public interest in government transparency. It recognised that transparency makes government more accountable and increases trust.
53. The complainant made public interest arguments in favour of disclosure in their request for internal review and to the Commissioner in a large volume of information provided in support of their complaint. The Commissioner examined all the information provided by the complainant.
54. The complainant initially argued in their internal review request of 28 February 2023 that:

“There is an overwhelming and overriding public interest in this process.

The regulator is being set up against a backdrop of, and in response to, high profile cases of bullying, harassment and assault in the industry. It will profoundly change the Arts.

It is therefore incredibly important that the members involved in the formulation of CIISA are, themselves, not completely inappropriate for this important and sensitive project. It has come to my attention that one such member has tweeted that [they], apparently received a police caution for criminal harassment (I attach evidence). This obviously raises urgent and major safeguarding, ethical, competence and fitness issues around the regulator itself, given that its setting up surely included [their] input, which therefore must be embedded in its DNA.

If the process is also not transparent, then this could create the perception of a cover up.”

¹⁰ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4025929/ic-144583-b8l3.pdf>

55. However, on 28 July 2023, the complainant later wrote to the Commissioner clarifying their position as follows:

"..I have admitted as evidence tweets from one of the roundtables' participants. However, I offer no opinion on the veracity of their contents and certainly do not accuse [them] of any wrongdoing.

... the purpose of this request is not to discover the veracity of their contents - the focus is not [named individual] at all. They are merely context for the actual focus, which is the roundtables and therefore the standards authority they have formulated and to understand their culture and method of operating."

56. During the complainant's initial correspondence with the Commissioner, it is noted that the complainant focused primarily on a particular individual in attendance at the roundtable meetings. The complainant was particularly interested to know whether the roundtable was aware of an allegation of wrongdoing against that individual. More recently, however, the complainant has altered their focus. Latterly their arguments to the Commissioner have stressed the weighty public interest in the disclosure of information about the roundtable meetings to inform the public about how the roundtable meetings influenced the development of the CIISA. In addition, the complainant has stated they are eager to ascertain how the CIISA has been set up, the culture and prevalent attitudes of the roundtable process, and what this could mean in practice for both the rights of those accused and the confidentiality of those coming forward with allegations.
57. The Commissioner is prepared to accept the complainant's later change in focus. The Commissioner has therefore considered the complainant's later public interest arguments in the context of the specific information withheld in this case under section 36(2)(b)(ii).
58. In addition to the complainant's public interest arguments, the Commissioner highlights that he himself has identified information which suggests that disclosure of the information falling in scope of the request would not be particularly prejudicial. This is contained in the minutes of the roundtable meeting dated 13 July 2023.
59. DCMS is recorded as having attended this meeting on 13 July 2023. The minutes state:

"3. FOIs

- There have been FOI requests for information relating to discussions held at the roundtable. The group agreed they were

happy for minutes of the meetings to be available as public record. Any sensitive information would be redacted.”

60. The Commissioner comments that the readout minutes of this roundtable meeting dated 13 July 2023 were provided to him on 21 September 2023, when he asked DCMS to provide a complete copy to him of all the withheld information.
61. The Commissioner has noted above that, technically, these minutes do not fall in scope of the complainant's request, having been written 6 months *after* the date of the complainant's request. They also post-date when the QP provided his reasonable opinion on 21 June 2023 and the reference in the QP submissions to Creative UK's view that the minutes were "both private and sensitive".
62. However, the Commissioner observes that the 13 July 2023 meeting occurred before the internal review response was sent to the complainant on 21 July 2023 and well before DCMS provided its submissions to the Commissioner on 11 August 2023.
63. The fact of this statement in clear support of disclosure of the roundtable minutes was not highlighted by DCMS in any of its correspondence to the Commissioner. It is therefore unclear to the Commissioner whether DCMS were aware of this statement when it responded to the internal review or provided the Commissioner with submissions. Either way, the Commissioner finds it surprising that DCMS did not bring this information to the attention of the Commissioner or appreciate that information after the date of the original request did not fall within scope of the request. He speculates that this is because DCMS did not carefully read (or at all) the withheld information before providing the Commissioner with a copy of it on 21 September 2023.
64. The impact of the July minutes on the Commissioner's decision is discussed further below.

Balance of the public interest

65. Section 36(2)(b)(ii) is a qualified exemption. The fact that prejudice has been identified and accepted is not in itself conclusive evidence that information should be withheld. Rather, the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemptions outweighs the public interest in disclosure. This means that the Commissioner accepts that a reasonable opinion has been expressed that prejudice or inhibition would, or would be likely to, occur, but he will go on to consider the severity, extent and frequency of that prejudice or inhibition in forming his own assessment of whether the public interest test dictates disclosure.

66. The Commissioner accepts (and agrees with the complainant's later position) that there is a legitimate, and considerable public interest in disclosure of the withheld information, in the wider context of the establishment of a body to uphold and improve standards of behaviour across the creative industries. He also accepts that the public interest in transparency around issues concerning the remit and proposed work of the CIISA is significant, especially in light of recent events.¹¹
67. As the Upper Tribunal recently confirmed in *Montague v The Information Commissioner and The Department of Trade*¹² (UA – 2020- 000324 & UA[1]2020-000325) [13 April 2022], the time for judging the competing public interests is the time when the public authority should have given a response in accordance with the timeframe required by FOIA. Therefore, the appropriate time in this case was 23 February 2023 (i.e., 20 working days after the complainant's request of 25 January 2023).
68. However, the Commissioner's guidance¹³ states that:
- "it is sometimes possible that – during the Commissioner's investigation or at tribunal – new facts and evidence emerge since the time you made your decision on a request. If this happens, the Information Commissioner can take into account the new evidence in so far as this can inform the grounds of exemptions you rely on...
- Where events after the time of your decision have changed the balance of the public interest test in such a waythe ICO has discretion to decide what we order you to do."
69. To this end, the Commissioner has noted his discovery of support for disclosure in the contents of the readout minutes of the roundtable meeting dated 13 July 2023. It is clear to the Commissioner that the roundtable group agreed on 13 July 2023 they were now happy for minutes of the meetings to be available as a public record via FOI requests as long as "any sensitive information would be redacted."
70. Following his guidance set out above, it is clear to the Commissioner that this is new evidence that significantly changes DCMS's decision to

¹¹ <https://www.bbc.co.uk/news/uk-66836556>

¹² <https://www.gov.uk/administrative-appeals-tribunal-decisions/montague-v-the-information-commissioner-and-department-for-international-trade-2022-ukut-104-aac>

¹³ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/the-public-interest-test/>

withhold the information at the internal review stage. It provides clear support to the contrary and, in terms of the public interest test, means that the argument in favour of maintaining the exemption should be given less weight in the balancing exercise. The Commissioner notes that DCMS attended the meeting where this was recorded and did not record an objection to this approach. The Commissioner therefore has a discretion to take the new evidence into account in this case, even though these minutes post-date the complainant's request.

71. The Commissioner wishes to place on record his surprise and disappointment that DCMS did not at any point specifically advise the Commissioner about the roundtable's revised position on responses to FOI requests. At the very least, the Commissioner would have expected DCMS to raise this point with the Commissioner when it provided him with all the withheld information on 21 September 2023, even if DCMS was not aware of it when it provided the complainant with its internal review on 21 July 2023.
72. However, even if the Commissioner had not been provided with the July readout minutes indicating support for disclosure, the Commissioner's view is that he could not, in any event, find any information or compelling arguments contained within DCMS's correspondence to the complainant, QP, or to the Commissioner himself, which would lead him to draw a different conclusion. As explained above, the Commissioner was not convinced as to the merits of DCMS's arguments given the scarcity of DCMS's analysis, poor quality of submissions and the lack of specificity in its submissions.
73. In particular, the Commissioner notes the identical, brief and generic 'cut and pasted' arguments in the internal review, and in both the submissions to the QP and Commissioner. The lack of reference in any of the documents to the content of the requested information itself is striking. The Commissioner also notes he had to ask DCMS to provide him with all the withheld information as it was not initially provided. This lack of detail makes it more difficult for the Commissioner to be persuaded by DCMS's arguments that the information should be withheld.
74. The Commissioner cannot accept such generic arguments, particularly in the context of the specific withheld information, since they clearly do not demonstrate that the public authority has considered all the circumstances of this case or the harm that disclosure would be likely to cause. The Commissioner again notes that this point was made in a recent decision notice which was issued before the internal review was issued in this case - see IC-144583-B8L3.

75. Further, DCMS did not appear to appreciate what the specific timeframe of the request was (ie only information up to 25 January 2023), nor provide the Commissioner with more detailed arguments in support of its position regarding the balance of public interest. DCMS simply advised that it concluded that "the balance of public interest to fall on the side of withholding the information." It did not provide any further details of this consideration, nor evidence that weighing of the public interest arguments had been done.
76. In addition, despite claiming the lower threshold of prejudice (would be likely to), the Commissioner notes that some of DCMS's arguments to the QP and Commissioner indicate that disclosure of the withheld information "could" or "may" prejudice DCMS. The use of "could" or "may" is plainly insufficient in the context of section 36.
77. The Commissioner notes again that the submissions to the QP and himself were provided *after* the date of the decision notices referred to above pointing out previous inadequacies in DCMS's submissions as regards section 36.
78. Given the paucity of DCMS's submissions, the lack of specificity in what submissions there are, and the readout minutes dated 13 July 2023, the Commissioner finds that DCMS's public interest arguments are too brief and general to carry significant weight in the balancing process. The Commissioner is mindful that it is for a public authority to satisfy him that it has handled a request in accordance with the requirements of FOIA. It is therefore essential that a public authority provide detailed and specific arguments in support of any decision to refuse a request, otherwise the Commissioner is more likely to order the disclosure of information.
79. Consequently the Commissioner's decision is that the public interest in maintaining this exemption does not outweigh the public interest in disclosing the requested information.
80. The Commissioner will therefore order disclosure of the withheld information falling in scope of the request (ie only the information up to 25 January 2023).
81. In reaching this conclusion the Commissioner is conscious that it is standard practice for the names and contact details of junior staff in organisations to be redacted from FOI disclosures on the basis of section

40(2) of FOIA.¹⁴ Section 40(2) FOIA says that information is exempt information if it is the personal data of another individual and disclosure would contravene a data protection principle.

82. The position relating to the non-disclosure of junior staff names, as opposed to the disclosure of senior staff names, is well established and supported in a recent ICO decision notices.¹⁵ The position is also supported in the Upper Tribunal case of *Cox v Information Commissioner and Home Office*: [2018] UKUT 119 (AAC).¹⁶
83. The Commissioner has identified such information in the material he is ordering disclosure of and therefore such information can be redacted on the basis of section 40(2). In addition, the email addresses of senior officials can also be redacted (but not their names), as can a brief reference to biographical information about an attendee at the meeting. The Commissioner accepts these individuals would not expect such information to be disclosed and there is a limited legitimate interest in the disclosure of such information. The Commissioner has provided DCMS with a short confidential annex which identifies the specific information he accepts can be redacted on the basis of section 40(2) FOIA.

Procedural matters

84. Section 10 of FOIA specifies that public authorities must comply promptly to requests, and no later than 20 working days following the date of receipt of the request.
85. The complainant's request for information was dated 25 January 2023, but it was not responded to by DCMS until 24 February 2023, one day late.
-

¹⁴ https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

¹⁵ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4023656/ic-164636-c6t0.pdf>; https://ico.org.uk/media/action-weve-taken/decision-notices/2012/754504/fs_50446511.pdf; <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022405/ic-163983-t2m0.pdf>;

¹⁶ https://assets.publishing.service.gov.uk/media/5aded4de5274a0d820946cd/GIA_2906_2017-00.pdf

86. The Commissioner's decision is that DCMS therefore breached section 10 of FOIA.

Other matters

87. FOIA does not contain a time limit within which public authorities have to complete internal reviews. However, the Commissioner's guidance explains that in most cases an internal review should take no longer than 20 working days, or 40 working days in exceptional circumstances. In this case DCMS took just over 100 working days to complete its internal review response and only did so once the Commissioner intervened.

Right of appeal

88. 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

89. 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.

90. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF