

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 January 2024

Public Authority: Department for Environment, Food and Rural Affairs (Defra)

Address: Nobel House
Smith Square
London SW1P 3JR

Decision (including any steps ordered)

1. The complainant has requested information associated with the Responsible Dog Ownership taskforce. Defra initially disclosed some relevant information and withheld taskforce meeting minutes in their entirety, under section 35(1)(a) of FOIA.
2. Defra has subsequently advised that it will now disclose some of the information in the minutes but continues to rely on section 35 in respect of the remainder of that information.
3. The Commissioner's decision is that Defra is entitled to withhold some information in the taskforce minutes under section 35(1)(a) of FOIA. The information being withheld relates to the formulation of government policy and the public interest favours non-disclosure.
4. The Commissioner requires Defra to take the following step to ensure compliance with the legislation:
 - If it hasn't already done so, communicate to the complainant the information in the six sets of Responsible Dog Ownership taskforce minutes from which Defra has withdrawn its application of section 35(1)(a).

5. Defra must take this step 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

6. The complainant sent the following information request to Defra on 7 July 2023:

“In a recent public address, the Secretary State of DEFRA mentioned the formation of a taskforce dedicated to the concerning rise of dog attacks. As per the stated objectives of openness and transparency, I am seeking the following information:

Q1: The membership of the said taskforce.

Q2: The specific remit of the taskforce.

Q3: Any minutes or notes from previous taskforce meetings.

Q4: The expected timeline for the taskforce to complete its report.”

7. Defra addressed Q1, Q2 and Q4 and advised that the information within scope of Q3 – notes of six taskforce meetings - was exempt from disclosure under section 35(1)(a) of FOIA.
8. The complainant requested an internal review on 28 August 2023 and Defra indicated that it would provide one by 23 October 2023.
9. Defra didn't go on to provide a review and the Commissioner accepted the substantive complaint without one having been carried out.
10. As a result of the complaint to the Commissioner, Defra reconsidered its response to the request. It had previously withheld the taskforce meeting minutes in their entirety. However, Defra's advised the Commissioner that it now intends to disclose to the complainant some of the information in the minutes. However, Defra confirmed it continues to rely on section 35(1)(a) in respect of the remaining information in the minutes.
11. Defra has provided the Commissioner with redacted and unredacted copies of the meeting minutes it intends to disclose. It appears to the Commissioner that some of the redacted information is personal data because it's people's names. Section 40(2) of FOIA is the exemption that applies to personal data, not section 35.

Reasons for decision

12. Defra's confirmed to the Commissioner that none of the individuals whose names it will withhold from the information it intends to disclose could be categorised as senior decision-makers. The Commissioner is therefore satisfied that it's appropriate for the personal data to be withheld under section 40(2) of FOIA.
13. The focus of this decision is whether Defra is entitled to apply section 35(1)(a) of FOIA to the remaining withheld information that falls within scope of Q3 of the complainant's request. He'll also consider Defra's handling of the internal review.

Section 35 – formulation of government policy, etc

14. Section 35(1)(a) of FOIA says that information held by a government department is exempt information if it relates to the formulation or development of government policy.
15. Section 35 isn't a prejudice-based exemption; it's class-based. That means that the information must simply fall within the class of information described. If the withheld information relates to the formulation or development of government policy, it's exempt information. The timing of a request isn't relevant. The question is whether the information relates to the activity, irrespective of when the request was made. However, section 35 is a qualified exemption which means that it's subject to the public interest test.
16. In its submission to the Commissioner, Defra confirmed that it maintains that section 35(1)(a) is engaged in respect of information it intends to continue to withhold. This is because the issues are still live and ongoing policy formulation. The remit of the Responsible Dog Ownership taskforce is wide and covers more than just issues around dangerous dogs/dog attacks. Policy options are currently being debated around interventions that the government intends to make, to address issues around responsible dog ownership in general.
17. In relation to dog attacks, the taskforce is currently considering policy options relating to a range of areas, including:
 - improved data collection and reporting for dog control incidents and improved healthcare data where someone presents to hospital with a dog control-related injury
 - improved and consistent enforcement of current dog control legislation; and

- improved education and communications regarding safe behaviour around dogs.
18. In relation to dog ownership generally, the taskforce is considering policy options around encouraging responsible dog ownership through improved education and communications, improved regulation of the dog training and behaviour sector, improved regulation of rescue and rehoming practices, and strengthened regulation of breeding practices. Additionally, Defra says, there's ongoing consideration of additional legal requirements for all dog owners.
19. Ministers haven't yet considered the taskforce's recommendations and no policy decisions have been made. Defra says its position is that until those recommendations have been made and Ministers have agreed which policy options will be formally taken forward, the information remains live policy formulation and therefore section 35(1)(a) of the FOIA is engaged.
20. As noted, the Commissioner has reviewed the information being withheld under section 35 and, in line with the matters discussed at paragraph 15, the Commissioner's satisfied that this information relates to the formulation of government policy on dog ownership. The Commissioner is therefore satisfied that Defra correctly applied section 35(1)(a) of FOIA to the information it's continuing to withhold. He's gone on to consider the associated public interest test.

Public interest test

21. In their request for an internal review, the complainant presented the following arguments in favour of disclosing the withheld information:
- There's an extraordinarily high level of public interest in the issue at large and the risk and impact of dangerous dogs, with 57% of the British public in favour of banning particular types of dog not currently banned. Disclosing the information would contribute to the public discussion of the issue.
 - The information be valuable to the public in terms of the risks of particular types of dogs and the danger posed to them. Police have recorded a 34% rise in dog attacks "in the past year" in England and Wales.
 - There's a public interest in "the suspicion of wrongdoing." There's a plausible basis to suggest that wrongdoing may have taken place in relation to the "Dog Task Force." It's been alleged that the RSPCA, a key member of the taskforce, is itself "an inaccurate and unreliable organization in relation to the dangers of particular types of dog breeds." This "fact" could suggest that the taskforce's

actions and reports may be unclear or open to question. Disclosing the information would help prevent this and may refute that suspicion or indicate that it's justified.

22. In its submission to the Commissioner, Defra has acknowledged that the issue of dog attacks and dangerous dogs is of high public interest at the moment.
23. However, Defra has gone on to say it believes that in order to come up with effective policy solutions Defra officials and Ministers need to be able to consider the potential options. And once decisions have been made around which options will be formally adopted and taken forward, Defra officials and Ministers need to be able to debate how they might be best implemented.
24. Defra believes that to release the information about policy options that are being debated at this point in time would confuse the public as it isn't yet clear which options will be taken forward as formal policy. Nor is it yet clear how individuals themselves may be affected by those potential forthcoming policies.
25. It's likely to cause unnecessary angst amongst members of the general public if they were to become aware of potential options without also being made aware of how those policies would be implemented, or when they would come into force, if they were to be taken forward.
26. In its submission Defra says that the risk for confusion is particularly pertinent "against the decision to ban the XL Bully by the end of the year" [ie by the end of 2023]. Defra's concerned that the content of the minutes may be misinterpreted as official government policy that will be introduced alongside the ban, which isn't the case. Defra has confirmed that the content that it intends to withhold doesn't relate to specific types of dogs (as indicated in the complainant's correspondence). Instead it relates to discussion around policy options to encourage responsible dog ownership more widely across all breeds of dogs.
27. Defra says it's likely that the minutes will be published early next year as part of the Responsible Dog Ownership taskforce's final report. This will provide an opportunity for the general public to make up its own mind on the effectiveness of the decision-making process in context.
28. Defra has also confirmed that the remit of the Responsible Dog Ownership taskforce is to consider policy options to encourage responsible dog ownership across all breeds of dog, and the discussion of breed-specific legislation is not within the scope of the group. This is important to note in relation to the complainant's concerns around "suspicion of wrongdoing" in their request for an internal review.

The balance of the public interest

29. Public interest arguments associated with section 35(1)(a) must focus on the effect of disclosing the information in question at the time of the request, rather than the effect of routinely disclosing that type of information. Public interest matters also needs to be considered at the time the public authority should have responded to the request and take account of the circumstances as they were at that point.
30. In this case, the policy in question was 'live' at the time of the request, and currently, and no final decisions have been made. However, it's expected that the taskforce minutes and its report will be published in 2024.
31. It's certainly the case that there's significant public interest in matters associated with dog ownership at this time. However, on balance the Commissioner considers that there's greater public interest in protecting the 'safe space' in which to debate this important policy issue, away from external interference and distraction and so as to avoid unnecessarily confusing and concerning dog owners and the general public.

Other matters

32. Offering an internal review isn't a requirement of FOIA but is a matter of good practice. Concerns can often be resolved through the internal review process, making a complaint to the Commissioner unnecessary.
33. The Commissioner recommends that a public authority provide an internal review within 20 working days of a request for one and, in the most complex cases only, within 40 working days as a maximum.
34. In this case, in its response to the request Defra offered to provide an internal review and the complainant requested one on 28 August 2023. Defra didn't go on to provide a review and it's acknowledged this oversight in its submission to the Commissioner. The Commissioner has, however, recorded this matter for monitoring purposes.

Right of appeal

35. 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

36. 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.
37. 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

Cressida Woodall
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