

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 June 2015

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

Decision (including any steps ordered)

1. The complainant requested information concerning an application for a licence to carry out animal testing. The Home Office refused to disclose this information and cited the exemptions provided by sections 44(1)(a) (statutory prohibition to disclosure) and 38(1) (endangerment to health and safety) of the FOIA.
2. The Commissioner's decision is that section 44(1)(a) was cited correctly and so the Home Office was not obliged to disclose the requested information.
3. The Commissioner does not require the Home Office to take any steps to ensure compliance with the legislation.

Request and response

4. On 28 August 2014, the complainant wrote to the Home Office and requested information in the following terms:

"The application for a project licence to conduct the research project 'The generalisation of high alert states' in chickens, which was granted during 2013 under the Animals (Scientific Procedures) Act, including the application, discussion of its merits and communications about the project and its licence."
5. The Home Office responded on 23 September 2014. It refused the request and cited the exemptions provided by the following sections of the FOIA:

- 38(1) (endangerment to health and safety)
- 40(2) (personal information)
- 44(1)(a) (statutory prohibition to disclosure)

6. The complainant responded to the request on 23 September 2014 and requested an internal review. The Home Office responded with the outcome of the internal review on 3 November 2014. The conclusion of this was that the refusal under the exemptions cited previously was upheld.

Scope of the case

7. The complainant contacted the Commissioner on 5 November 2014 to complain about the refusal of his information request. At this stage the complainant indicated that he did not agree with the exemptions cited by the Home Office.
8. When making his request the complainant specified the Environmental Information Regulations 2004 (EIR), although the Home Office responded under the auspices of the FOIA. The Commissioner is satisfied that it was reasonable for the Home Office to find that the requested information was not "environmental" according to the definition in the EIR and so it was correct for it to respond to the request under the FOIA.

Reasons for decision

Section 44(1)(a)

9. This section provides an exemption in relation to information the disclosure of which is prohibited by another enactment. This is an absolute exemption, so it is not qualified by the public interest. This means that considering whether this exemption is engaged involves only a single stage. If disclosure of the information is prohibited by enactment, it is exempt; there is no requirement to go on to consider what the results of disclosure may be, nor whether it is in the public interest for this information to be disclosed.
10. The prohibition that the Home Office is relying on in this case is section 24(1) of the Animals (Scientific Procedures) Act 1986, which is as follows:

"A person is guilty of an offence if otherwise than for the purpose of discharging his functions under this Act he discloses any information which has been obtained by him in the exercise of those functions and which he knows or has reasonable grounds for believing to have been given in confidence."

11. This provision sets three conditions:

- Disclosure would not have discharged a function of the ASPA.
- The information must have been obtained by the Home Office in the exercise of its functions under the ASPA.
- The Home Office must have known, or had reasonable grounds to believe, that the information was given in confidence.

12. The information in question here can be separated into two categories; materials supplied to the Home Office in relation to the application for a licence to carry out the experiment referred to in the request, and materials generated within the Home Office when considering that application.

13. Covering the first category – information directly supplied to the Home Office as part of the application – the Commissioner has established previously¹ that information similar to that in question here is subject to section 24(1) of the Animals (Scientific Procedures) Act 1986. In line with his previous decisions, and without repeating his previous analysis, the Commissioner finds that the information in this first category is exempt by virtue of section 44(1)(a) of the FOIA and so the Home Office was not obliged to disclose this information.

14. Turning to the second category of information – that generated within the Home Office when considering the licence application – the Commissioner has given further consideration as to whether this information can fall within the statutory bar.

15. The argument made by the Home Office in relation to this information was that, as the internally generated materials discussed the application and its content, these materials contained information obtained by the Home Office.

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2007/403592/FS_50088298.pdf

16. It is important to consider how narrowly the statutory prohibition should be interpreted. There is relevant caselaw from the High Court on this issue. The case of *Financial Services Authority v Information Commissioner EWHC 1548 (Admin)* discussed the interpretation of the statutory bar contained in section 348 of the Financial Services and Markets Act 2000 (FSMA). The wording of FSMA statutory bar is similar to the Animals (Scientific Procedures) Act 1986 and the intention is the same. Although the circumstances of the information to be disclosed were different, the judgment highlights the importance of not interpreting the statutory prohibition too narrowly, and considering the effect of disclosure and the intention of the provision.
17. The Commissioner has therefore considered the context and the intention of the statutory provision when considering the second category of information. Having considered the information the Commissioner is satisfied that disclosure of the majority of this information would have the effect of disclosing confidential information obtained by the Home Office. The Commissioner has considered whether it would be possible to redact the documents and remove the information caught by the exemption but he has concluded that this would not leave any meaningful information.
18. Therefore, the Commissioner also concludes that disclosure of this second category of information would constitute an offence under section 24(1) of the Animals (Scientific Procedures) Act 1986. As a result, this information is exempt by virtue of section 44(1)(a).
19. In light of this conclusion it is not necessary to go on to consider the other exemptions cited by the Home Office.

Right of appeal

20. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

21. 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.
22. 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

Steve Wood
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