

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 February 2021

Public Authority: Department for Transport
Address: Great Minster House
33 Horseferry Road
London
SW1P 4DR

Decision (including any steps ordered)

1. The complainant has requested the Department for Transport (DfT) to disclose the details of any meetings between ministers and/or senior officials and Carnival UK between 1 January and 1 March 2019. The DfT disclosed some information but withheld the remainder citing sections 35(1)(a), 35(1)(d) and 40 of the FOIA.
2. The Commissioner's decision is that the DfT is entitled to rely on section 35(1)(a) and 35(1)(d) of the FOIA in this case and the public interest rests in maintaining these exemptions.
3. The Commissioner does not require any further action to be taken.

Request and response

4. On 9 July 2019, the complainant wrote to the DfT and requested information in the following terms:

"Under the Freedom of Information Act 2000, I would like to request information relating to meetings between Carnival UK and the government.

Please could you tell me what meetings and correspondence there have been between Ministers and/or Senior civil servants (Grade 5 or above) and employees from Carnival UK between January 1 and March 1, 2019.

In respect of each meeting, please provide the following details:

- The dates of the meetings
 - Who participated in the meeting (Names, and/or position/rank)
 - Minutes from the meeting(s)
 - Correspondence between the parties"
5. The DfT responded on 30 August 2019. It disclosed some information but withheld the remainder, citing sections 35(1)(a), 35(1)(d) and 40 of the FOIA.
6. The complainant requested an internal review on 3 September 2019. He disputed the application of sections 35(1)(a) and 35(1)(d), advising the DfT that the public interest rested in disclosure. He however confirmed that he had no complaint about the application of section 40 of the FOIA.
7. The DfT carried out an internal review and notified the complainant of its findings on 11 October 2019. It upheld the application of sections 35(1)(a) and 35(1)(d) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 29 November 2019 to complain about the way his request for information had been handled.
9. The complainant confirmed at the internal review stage that he has no complaint about the application of section 40 of the FOIA. The Commissioner's investigation has therefore focussed on the application of sections 35(1)(a) and 35(1)(d) of the FOIA.

Reasons for decision

Section 35 - Government policy

10. Section 35(1)(a) of FOIA states that information held by a government department is exempt information if it relates to the formulation or development of government policy.
11. For information to be exempt under section 35(1)(a) it simply has to relate to the formulation or development of government policy; there is no requirement for the disclosure of the information to be in any way prejudicial to either of those policy processes.

12. Section 35(1)(d) states that information held by a government department or by the Welsh Assembly Government is exempt information if it relates to the operation of any Ministerial private office.
13. All government ministers have their own private offices comprising a small team of civil servants. They form the bridge between the minister and their department. The private office's role is to regulate and streamline the ministerial workload and allow the minister to concentrate on attending meetings, reading documents, weighing facts and advice, and making policy decisions.
14. The Commissioner's guidance confirms that this exemption is rarely used. However, the Commissioner considers that the purpose of section 35(1)(d) is to ensure that ministerial business is managed effectively and efficiently.
15. In line with Tribunal decisions the Commissioner considers that the term 'relates to' should be interpreted broadly. This means that any significant link between the information and the policy process (35(1)(a)) or the operation of Ministerial private office (31(1)(d)) is sufficient to engage these exemptions.
16. The DfT confirmed that the withheld information relates to meetings between the DfT, Carnival UK, UK Chamber of Shipping, HMRC, HMT and UKSR concerning the formulation and development of EU Exit policy and tonnage tax, which were and remain to be live policy issues. It stated that the contribution of the attendees was designed to feed into the formulation of policy.
17. The Commissioner has reviewed the withheld information and she is satisfied that some relates to the formulation and ongoing development of policy and the remainder relates to the operation of the Ministerial private office. She is therefore satisfied that both section 35(1)(a) and section 35(1)(d) of the FOIA applies.

Public interest test

18. The DfT stated that there is a general public interest in this information as greater transparency makes government more accountable. However, it considers the public interest rests in maintaining these exemptions. It confirmed that it is important that the policy process is able to proceed in a safe space, and that officials and ministers are able to have those discussions, and raise potential options and risks, necessary to fully inform the best possible policy options. It also believes the public interest rests in preserving a safe space for the private office to focus on managing the minister's work efficiently without external interference and distraction.

19. It confirmed that the policies under discussion had not been finalised at the time of the request and implementation had not commenced. The formulation and development of both policies was and remain live issues. Consequently, disclosure of the withheld information at the time of the request would compromise the DfT's ability to effectively deliver the policy making process. The DfT said that it requires the safe space to manage the minister's work effectively and consider thoroughly policy options. It argued that it relies on the input of stakeholders, such as Carnival UK, when developing important maritime policies. It said that if stakeholders felt that details of their input was inappropriately or prematurely disclosed, they would be likely to be reluctant to cooperate with such candour in the future. Consequently, disclosure of the withheld information would be likely to fetter the DfT's ability to engage fully with ministers and stakeholders in developing policy.
20. The complainant raised concerns with the DfT that Carnival UK is involved in the policy discussions, they can be regarded as lobbyists and therefore the public interest in disclosure is much greater. He argued that there is a need to know what influence, if any, Carnival UK has on the formulation and development of government policies.
21. The DfT addressed this point and stated that the consultation of a business with regards to the formulation and development of policy is an appropriate and accepted component of policy making. It advised, in this context, the consultation/meeting with Carnival UK, formed an essential and wholly appropriate part of the policy making process. It argued that it continues to be particularly vital in preparation for the UK's exit from the EU and the ongoing development of the tonnage tax policy. It disagreed that consultation with Carnival UK on important aspects of EU exit shipping policy and tonnage tax amounts to interference in the form of lobbying. It commented that the ICO's guidance itself makes it clear that, in addition to ministers and civil servants, external experts and stakeholders will be involved at several stages of any policy making process.
22. The Commissioner recognises the public interest in openness, transparency and accountability and providing the public access to information to enable them to understand more closely how government policy is formulated and developed and how the Ministerial office operates. She accepts that there is a public interest in understanding what role external stakeholders play in the policy making process and how their involvement assists or influences the direction of government policy.
23. However, the Commissioner considers the public interest rests in maintaining the application of both section 35(1)(a) and 35(1)(d) of the FOIA. While there are public interest arguments in favour of disclosure,

she considers these are outweighed by the public interest in maintaining these exemptions in this case.

24. Dealing with section 35(1)(a) first, the Commissioner notes that the information withheld under this exemption discusses live policy issues; ones which were and still are live and ongoing. She accepts the DfT requires the safe space to formulate and develop these policies and consult with key stakeholders. Premature disclosure and public interference during the policy development process would be likely to hinder the DfT's, the other departments involved and the stakeholders consulted, ability to discuss and debate, candidly and openly, the various policy options available. It would also be likely to deter key stakeholders from participating in such discussions, with the necessary candour that is required, if they felt their input or deliberations could be prematurely disclosed into the public domain.
25. Turning now to section 35(1)(d), the Commissioner considers the public interest rests in preserving a safe space for the private office to focus on managing the minister's work efficiently without external interference and distraction. She considers the timing of the request and the age of the information to be key to the consideration of the balance of the public interest test. In this case, the request was made within a few months of the information and the ministerial arrangements evidenced in it. The Commissioner considers there was still a need for safe space to manage the minister's work around the topics under discussion at this time. She therefore accepts that disclosure would reveal information about ongoing and live processes and any potential future events.

Right of appeal

26. 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@justice.gov.uk

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

27. 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.
28. 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
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