

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 November 2022

Public Authority: Department for Environment, Food and Rural Affairs

Address: Nobel House
17 Smith Square
London
SW1P 3JR

Decision (including any steps ordered)

1. The complainant has requested the Department for Environment, Food and Rural Affairs (Defra) to disclose information relating to All-Party Dog Advisory Welfare Group's contact with the head of animal welfare at Defra or predecessors from 30 April 2020 onwards. Defra refused to disclose the requested information citing sections 35(1)(a) and 40 of FOIA.
2. The Commissioner's decision is that Defra is entitled to rely on section 35(1)(a) of FOIA. He therefore does not require any further action to be taken.

Request and response

3. On 26 March 2022, the complainant wrote to Defra and requested information in the following terms:

"Please provide me with the following

1. Any briefing notes or other documents prepared by or for Zac Goldsmith in relation to the meeting with Marc Abraham on 30 April 2020

2. All notes relating to the 30 April 2020, for the avoidance of this includes notes prepared prior to, contemporaneously or after the meeting
 3. If there have been any subsequent meetings between Zac Goldsmith, or any other minister or official at DEFRA, and Marc Abraham, or PupAid or any member of the APPG referred to above, please confirm the date of the meetings and the attendees. Please also provide the information outlined at points 1 and 2 above in respect of any subsequent meetings. For the avoidance of doubt, this question relates all meetings and is not restricted to meetings to discuss Lucy's Law.
 4. All correspondence between Zac Goldsmith and Marc Abraham since 30 April 2020 in relation to any matter, not just Lucy's Law.
 5. All correspondence between Zac Goldsmith and PupAid or any member of the APPG referred to above since 30 April 2020 in relation to any matter, not just Lucy's Law.
 6. All correspondence between any DEFRA minister (other than Zac Goldsmith) or official and Marc Abraham since 30 April 2020 in relation to any matter, not just Lucy's Law."
5. Defra responded on 20 March 2022. It refused to comply with the request citing section 12 of FOIA. In accordance with section 16, it advised the complainant how best to refine and narrow their request.
 6. The complainant submitted a revised request on 3 April 2022 as follows:

"Taking your points in order

- The FOI request relates to the All-party Parliamentary Dog Advisory Welfare Group "APDAWG" only. I do not require information in relation to any other APPG.
- I will not be removing point 2. This is already limited to one specific meeting and includes information before, during and after the meeting. Points 3 to 6 cover information after 30 April 2020 only. For the avoidance of doubt I will not require you to provide information more than once.
- With regards to point 3 to 6 I am prepared to refine the request as follows

"The request is limited to Marc Abrahams, Secretary of APDAWG, and the officers of APDAWG, currently listed as Dr Lisa Cameron, Sir Roger

Gale, Jane Stevenson, Rosie Duffield, Kerry McCarthy and Tommy Sheppard, and their contact with Zac Goldsmith and Marc Casale (head of animal welfare at DEFRA in November 2020) or his predecessor/successor if he was not in post for the entire period covered by this request.

“The request is limited to any matter relating to dogs”

7. Defra responded on 3 May 2022. It refused to disclose the requested information citing sections 35(1)(a) and 40 of FOIA.
8. The complainant requested an internal review on 3 May 2022.
9. Defra carried out an internal review and notified the complainant of its findings on 21 June 2022. It upheld its previous position.

Scope of the case

10. The complainant contacted the Commissioner on 18 June 2022 to complain about the way their request for information had been handled. They disagree the requested information is exempt under section 35(1)(a) of FOIA.
11. The Commissioner has seen the withheld information and received additional submissions from Defra. He is satisfied that section 35(1)(a) of FOIA applies. The following section will explain why.

Reasons for decision

12. Section 35(1)(a) of FOIA states that information is exempt from disclosure if it relates to the formulation or development of government policy. It is a class based exemption meaning that Defra does not need to consider the sensitivity of the information in order to engage the exemption. It must simply fall within the class of information described. The classes are interpreted broadly and will catch a wide range of information.
13. Defra explained that Lucy's Law is a regulation which limits the sales of puppies and kitten as pets in England. An amendment to the existing Animal Welfare (Licensing of Activities Involving Animals) (England) Regulation 2018 (the 2018 Regulations) was passed into Law in May 2019. The instrument was the Animal Welfare (Licensing of Activities Involving Animals) (England) (Amendment) Regulation 2019 (the 2019 Amendment). The 2019 Amendment came into effect on the 6 April 2020, with licensed commercial traders no longer allowed to sell kittens

or puppies less than six months old as pets, if they had not been bred by the seller.

14. Although the relevant legislation and amendments have been completed, Defra advised that there are ongoing issues in relation to this particular piece of law which it is looking at for future policy development. It is in the process of reviewing and potentially improving the existing policy and assessing detailed policy options.
15. The Commissioner is satisfied that the withheld information falls within the definition of this exemption and therefore section 35(1)(a) of FOIA is engaged. It relates to the formulation of detailed policy options and the review or improvement of existing policy (see paragraphs 33 and 48 of the Commissioner's guidance¹. The Commissioner is unable to go into more detail as to do so will disclose the contents of the withheld information itself.
16. In terms of the public interest, Defra acknowledges the public interest in animal welfare and the huge campaign to introduce the Lucy's Law amendment into the UK legislation, to address the issue of the sale of low welfare puppies and kittens as pets. It stated that animal welfare is a devolved policy matter, so the amendment made by Defra relates to England only.
17. However, it argued that it is important for Defra officials to be able to discuss and consider ongoing detailed policy options and review the existing policy with a view of improvement in a safe space without the premature intrusion of the public. It said it is critical to allow Defra officials and Ministers the safe space to discuss such matters in order to properly identify any issues, explain details and debate key points and it is currently in the process of doing that. Disclosure would hinder Defra's ability to do that and this would not be in the wider interests of the public.
18. The Commissioner agrees with Defra that the public interest rests in maintaining the exemption. There is ongoing and live policy development and Defra officials and Ministers should be permitted the private thinking space to consider detailed policy options and its review of the existing policy. Disclosure would hinder Defra's ability to do that freely and candidly and would potentially result in less robust decisions being made as a result. This is not in the interests of the wider public.

¹ [government-policy-foi-section-35-guidance.pdf \(ico.org.uk\)](https://ico.org.uk/government-policy-foi-section-35-guidance.pdf)

19. Again it is difficult to go into specific detail, as to do so would disclose the contents of the withheld information. The Commissioner is however satisfied that section 35(1)(a) applies and the public interest rests in maintaining the exemption.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: 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

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