

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 May 2024

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

Address: Nobel House
17 Smith Square
London
SW1P 3JR

Decision (including any steps ordered)

1. The complainant has requested information relating to the manufacture, supply and usage of edible salts in the UK. The Department for Environment, Food & Rural Affairs (DEFRA) refused to provide the requested information, citing section 35(1)(a) (formulation of government policy) and section 24(1) (national security).
2. The Commissioner's decision is that DEFRA has failed to demonstrate that either exemption is engaged.
3. The Commissioner requires DEFRA to take the following steps to ensure compliance with the legislation:
 - Disclose the requested information.
4. The public authority must take these steps within 30 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

5. On 24 September 2023, the complainant wrote to DEFRA and requested:

"Please can you share results/findings and any available details of the most recent assessment(s), analysis/analyses and investigations/explorations you have made, if any, relating to the manufacture, supply (including security of supply) and usage of edible salt(s) in the UK. I'm particularly interested in any known and recorded risks, benefits, opportunities, costs and impacts related to these activities."

6. On 12 October 2023 DEFRA asked for clarification.

7. The complainant provided this clarification on 29 October 2023:

"I had initially assumed you'd know which salts are edible and, not being a chemist myself, I've done a few cursory Google searches and found that there are some other chemical compounds (which could feasibly be construed as 'edible salts') besides sodium chloride that fit this description but I'm not clued up on the nuances enough to know whether to consider them as 'edible salts' in and of themselves or if they would more accurately be described as edible salt substitutes/alternatives.

In any case, please can you consider my request as being for sodium chloride initially.

In terms of usage of salts, yes I was considering not just the food industry but more widely than this. If the latter is too expansive in scope, please constrain to the food industry in the first instance.

With respect to this point: "Finally, please could you clarify what activities you wish to receive 'any known and recorded risks, benefits, opportunities, costs and impacts' on." The activities I'd cited were meant to be in reference to the aforementioned 'manufacture', 'usage' and 'supply (including security of supply)' of edible salts (now constrained to sodium chloride) in the UK."

8. DEFRA responded to the request on 16 November 2023. It refused to provide the requested information, citing section 35(1)(a) (government policy).
9. The complainant requested an internal review on 17 November 2023.
10. DEFRA provided the outcome to its internal review on 27 December 2023. It upheld its previous position.

Scope of the case

11. The complainant contacted the Commissioner on 27 December 2023 to complain about the way their request for information had been handled. The complainant is concerned that DEFRA has applied section 35(1)(a) in a blanket manner and that certain information could be disclosed.
12. During this investigation, DEFRA also cited section 24(1) (National security).
13. The Commissioner considers that the scope of his investigation is to determine whether DEFRA is entitled to withhold the requested information.
14. The Commissioner will first consider section 35(1)(a). Depending on his findings, he may then go on to consider section 24(1).

Reasons for decision

15. Section 35 of FOIA states:

“(1) Information held by a government department is exempt information if it relates to –

(a) the formulation or development of government policy.”

16. The Commissioner’s guidance ‘Section 35 – Government Policy’¹ states ‘the purpose of section 35(1)(a) is to protect the integrity of the policymaking process, and to prevent disclosures which would undermine this process and result in less robust, well-considered or effective policies. In particular, it ensures a safe space to consider policy options in private.’
17. Section 35 is a class-based exemption; this means that information simply has to relate to the formulation or development of government policy; there is no requirement for disclosure to prejudice either of those policy processes. Section 35 only applies to central government departments, such as DEFRA.
18. Section 35 is also a qualified exemption which means that it’s subject to the public interest test. If information is found to engage the exemption,

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

it can only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosure.

19. In line with Tribunal decisions the Commissioner considers that the term 'relates to' should be interpreted broadly. Information does not have to contain policy options, advice or decisions; any significant link between the information and the formulation or development of government policy is sufficient.
20. Formulation and development refers to the design of new policy, and the process of reviewing or improving existing policy. Information that relates to the application or implementation of established policy isn't covered by the exemption, it must specifically relate to the formulation and development of these policies.
21. There are no universal rules to help the Commissioner ascertain whether decisions made in relation to a policy represent the formulation or development of that policy or implementation changes. It's often difficult to differentiate between the two.
22. So, as part of this investigation, the Commissioner asked DEFRA to confirm when the formulation or development of the policy (or policies) to which this information relates was completed, or confirm why DEFRA considers the formulation or development of this particular policy (or policies) to have been ongoing at the time the complainant submitted their request.
23. In response, DEFRA confirmed:

"the withheld information contributes to specific policy areas, including:

 - "Food Supply as a Critical National Infrastructure Sector
 - Food Supply chain resilience
 - Food Security
 - Consumer Confidence"
24. Again, it's not enough for the withheld information to 'contribute' to any of the above policies. It must relate to its formulation or development.
25. DEFRA has explained that:

"Our information on vulnerabilities and security of supply of key commodities widely used in the food system (which includes edible salt) is periodically refreshed, to reflect any changes in supply risk, logistics, geopolitics (particularly for those commodities sourced outside of the UK), supply/demand, formulation advancements allowing ingredient substitution, etc."

26. Again, it's important to recognise that when a policy is 'periodically refreshed', this might be better described as implementation of policy, rather than formulation or development. When the policy that deals with vulnerabilities and supply risks was devised, and any processes that inform that policy created, this would be the formulation and development of that policy. Any subsequent decision about which food or commodity sits where as a result of those processes would then be implementation.
27. In *DfES v Information Commissioner & the Evening Standard* (EA/2006/0006, 19 February 2007) the Tribunal clarified that policy formulation and development is **not** a continuous process or 'seamless web' of policy review and development, in which any change to the policy represents its formulation and development, rather than the application or implementation of already established policy.
28. DEFRA has confirmed that 'Food security policy is about an ongoing assessment as part of national security (as a Critical National Infrastructure sector) and will never be considered "complete".' This suggests a continuous process which is contradictory to the Tribunal's findings when considering section 35(1)(a).
29. The Commissioner's guidance states 'Not every decision or alteration made after an original policy was settled will amount to the development of that policy. If policy is a plan to achieve a particular outcome in the real world, the development of that policy is likely to involve a review of its intended outcomes, or a significant change to the original plan. By contrast, minor adjustments made in order to adapt to changing circumstances, avoid unintended consequences, or better achieve the original goals might more accurately be seen as decisions on implementation.'
30. The outcome of the government's food supply policies will always remain the same, to protect the country's food supply. Where edible salts sit, and how they interact with other foods or commodities might change, depending on availability, supply and demand or formulation advancements, but the outcome of these policies will always remain the same.
31. Looking at the relevant policies that DEFRA has cited (paragraph 23), it's clear that edible salt has an important part to play in food supply and food security in the UK. However, the Commissioner remains unconvinced that the requested information relates to the formulation or development of its own policy, rather than business as usual decisions on where edible salt sits within already well established policies.

32. Overall, DEFRA's arguments in support of section 35(1)(a) are lacking, it's stated:

"The documents that include the information requested on edible salts holds sensitive analysis on critical inputs to the food supply chain, assessing their vulnerability through a number of lenses to inform policy making and provide a broader assessment of the stability of the UK's food supply chain."

33. This argument, however, seems to relate more to the application of section 24(1), which, since the Commissioner has determined section 35(1)(a) isn't engaged, he will now consider.

Section 24(1) – national security

34. Section 24(1) states that information is exempt if it's required for the purpose of safeguarding national security. There is no definition of national security for the purposes of section 24(1) but it generally means the security of the United Kingdom and its people.
35. The exemption exists to protect all information that could impact national security, even if there is no evidence that an attack is imminent. Although there has to be a real possibility that the disclosure of requested information would undermine national security, the impact does not need to be direct or immediate.
36. Section 24 is a qualified exemption which means that it's subject to the public interest test. If information is found to engage the exemption, it can only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosure.
37. DEFRA has explained:
- "Releasing information about the supply of sodium chloride, including information on sourcing and stock resilience, would allow hostile actors wishing to cause disruption to the UK's food system to use it to impact on food security supply if there was potential speculation about the supply, or security of supply, of sodium chloride."
38. It's also confirmed the withheld information includes "sensitive analysis on critical inputs to the food supply chain, assessing their vulnerability through a number of lenses." However, it's failed to provide an example of this to the Commissioner. Looking at the withheld information, he doesn't consider it particularly sensitive.
39. Furthermore, DEFRA has failed to explain or speculate **how** these hostile actors would use the withheld information to cause disruption to the UK's food system. As previously discussed, an attack doesn't have to be

imminent for the exemption to be engaged but the causal link between the withheld information and national security must be credible.

40. DEFRA has also explained:

“Speculation could influence consumer behaviour (including deliberately, as referenced above) which could then lead to supply chain issues and shortages of staple products, through sudden changes in consumer behaviour such as panic buying or stockpiling.

Consumers would then be negatively impacted by any supply chain interruptions and product shortages that arose (including in staple products such as bread). Any such disruptions would not only negatively impact consumer confidence and choice, but also consumer health; nutrition; and household food insecurity, including food security for vulnerable groups. This is particularly evidenced by recent events in the UK supermarkets during the COVID pandemic.”

41. The Commissioner acknowledges that food shortages are becoming increasingly frequent, due to transportation issues, climate change and ongoing global conflicts. With this, comes the need for shops to occasionally put restrictions on certain items.
42. However, the Commissioner considers DEFRA’s explanation above to be tenuous. We aren’t in the middle of the coronavirus pandemic and the commodity in question is salt. He considers it unlikely that the general public would panic buy or stockpile salt; it’s not a food staple, nor an essential household item.
43. Again, DEFRA has failed to demonstrate to the Commissioner that the exemption is engaged and therefore it’s not entitled to rely on it. Since there are no exemptions being cited alternative to section 35(1)(a) or section 24(1), the information must be disclosed.

Right of appeal

44. 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

45. 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.
46. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Alice Gradwell
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