

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 July 2021

Public Authority: British Wool
Address: Wool House
Sidings Close
Bradford
BD2 1AZ

Decision (including any steps ordered)

1. The complainant requested from British Wool copies of minutes from Board meetings. British Wool withheld the information under section 43(2) of the FOIA (commercial interests) and section 40(2) of the FOIA (personal data).
2. The Commissioner's decision is that British Wool was entitled to withhold the information in relation to which it specified section 40(2) or 43(2). The Commissioner's decision is also that British Wool was entitled to withhold under section 40(2) the names of individual employees and names of individuals from third party organisations.
3. However, British Wool did not cite an exemption for withholding some of the requested information. In relation to that information, the Commissioner requires British Wool to take the following steps to ensure compliance with the legislation.
 - Disclose to the complainant the information not highlighted within the copy of the withheld information it provided to the Commissioner, except from the names of individual employees, both internal and external to British Wool.
4. British Wool must take these steps 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

5. On 4 September 2020 the complainant wrote to British Wool and requested information in the following terms:

"1. Provide copies of the Minutes of meetings of the Board for all meetings from 1 September 2017 to date.

2. Provide the total spent, by year, on legal and related fees for the last three years (ie three years to 30 April 2020).

3. Within the above fees, identify the amount spent on corporate governance related advice each year.

4. Also within the above fees, identify the amounts spent in relation to advice etc resolving disputes and compensation type payouts to outgoing staff (including Directors and consultants).

5. For each of the above years, give the amounts spent on compensation and related payments to outgoing staff (including Directors and consultants) by number and in bands of £5,000 (I.e£1 to £5,000, £5,001 to £10,000 etc.).

6. Provide a copy of your FOIA policy."

6. British Wool responded on 22 September 2020. It refused points one, three and four of the request under section 12 of the FOIA (cost limit). It disclosed the information requested at points two and six. It refused point five of the request as it considered it to be personal data.
7. The complainant requested an internal review on 25 September 2020. In particular, she stated that she did not agree with the refusal of point one under section 12 of the FOIA. She also stated that she considered that some of the information at point five could be disclosed in an anonymised format.
8. On 7 October 2020 British Wool provided its internal review decision. It upheld its position in relation to point one. It disclosed some information in relation to point five.

Scope of the case

9. The complainant contacted the Commissioner on 16 October 2020 to complain about the way her request for information had been handled. In bringing this complaint to the ICO, the complainant confirmed that she only wished to complain about British Wool's handling of point one of the request. She stated:

"At this stage I would just like to pursue the request regards the Board minutes ie point 1. The others I can live with. The Board always used to publish Board minutes and it's in their policy (that I copied you) that these are publicly available. They have not been following their own policy for over three years and this information is very useful to members of the public, mainly sheep farmers and businesses that are related to the wool industry. They have become somewhat secretive, which I believe is wrong (as they are a public body). I believe the minutes should be published for this public body, and back dated to when they stopped. Then we may not be so shocked when we find out they are closing 4 of their 12 depots as announced earlier this month. They seem to be in financial trouble. The finances are important as we do not get paid by them for our wool until 12 months after sending it in, so they are indebted to the sheep farmers for a long time, and we hear nothing."

10. During the course of this investigation British Wool withdrew its citing of section 12(1) of the FOIA. It stated that it was instead withholding the information requested at point one under section 43(2) of the FOIA (commercial interests) and indicated that it intended to withhold some information under section 40(2) of the FOIA (personal data). In its revised response to the complainant British Wool stated:

"Board meeting minutes thereof discuss our commercial strategy and our current and forecast financial position in detail. This includes our approach to pricing, product development, marketing, our depot network and other sensitive information pertaining to our operations and commercial activities. Disclosure could therefore be extremely damaging to British Wool's competitiveness if this information were to fall into the hands of our competitors, suppliers, customers or members of the press."

Minutes also contain information of a personal nature with reference to our employees and their employment. Our employees are not classed as public sector workers. We have therefore applied the prejudice test and unfortunately must uphold our position to not disclose the information under

exemption 43 (2) 'Commercial Sensitivity'. We will confirm this to the ICO but we also have an obligation to advise you."

11. In its response to the Commissioner's investigation, British Wool stated, *"if we were forced to disclose a lot of information would be redacted based on section 43(2) and also on the grounds of GDPR. You will also note that we discuss restructuring, potential redundancies all of which would be redacted due to the sensitivity of the information"*. In light of that, the Commissioner asked British Wool if it intended to withhold some information under section 40(2) of the FOIA, and if so, to issue a fresh response to the complainant within which it explained that it now intended to rely upon section 40(2). The Commissioner also asked British Wool to provide its submissions regarding this exemption and to provide a copy of the withheld information clearly marked with which exemption applied to which parts of the information.
12. In response to the Commissioner, British Wool confirmed that it wished to maintain its reliance on both exemptions and stated that it had advised the complainant. British Wool explained that it was not in a position to provide further submissions and stated that, in its view, it had already provided a copy of the withheld information to the Commissioner with examples of how and where the exemptions would apply. The withheld information consists of 117 pages of meeting minutes. In the copy of the withheld information provided to the Commissioner British Wool has highlighted a significant amount of information which it has stated it deems to be particularly commercially sensitive. However, in its submissions to the Commissioner, British Wool has only provided reasoning for seven of the specific redactions made under section 43(2). It said that it has provided these seven examples in reference to two specific sets of meeting minutes, *"in an attempt to confirm the sensitivity of the information"*. British Wool has highlighted more information that it considers to be commercially sensitive than the seven sections of information that it has provided specific reasoning for.
13. In its submissions to the Commissioner, British Wool gave one explanation in relation to one specific redaction that it had made under section 40(2). The one redaction under section 40(2) was explained by British Wool as a reference to the employment status of an individual employee and that individual's role within the business, for which it stated that disclosure would breach the GPDR.
14. In light of the above, the Commissioner wrote to British Wool and stated that she would assume that the only information it intended to withhold under section 43(2) was the content it had highlighted in the information provided and the only information it intended to withhold under section 40(2) was the names of employees contained within the information. In response, British Wool stated:

"the areas highlighted would be the details that we would not disclose for the reasons our CEO documented in the same letter. We feel that we have already given sufficient evidence to support our decision in relation to both Commercial Sensitivity, Section 43 (2) and Personal Information, Section 40 (2)."

15. The Commissioner's understanding is that British Wool are withholding all of the information it has highlighted under section 43(2) of the FOIA, aside from the one paragraph withheld under s40(2). The information withheld under section 40(2) is the one paragraph highlighted and referenced by British Wool in its response to the Commissioner and elsewhere any employee names. Therefore, the scope of this notice is to consider whether British Wool was entitled to withhold all of the information it has highlighted under section 43(2) of the FOIA. It will also consider whether British Wool was entitled to withhold the one paragraph it has highlighted under s40(2) and employee names under s40(2).

Background

16. British Wool, formerly, the British Wool Marketing Board, is owned by approximately 35,000 sheep farmers in the UK. It collects, grades, markets and sells British Wool on behalf of its producers to the international wool textile industry for use in flooring, furnishings and apparel.¹ British Wool is a public, non-financial corporation. It was established as an agricultural board under the British Wool Marketing Scheme (Approval) Order 1950² and since then it has managed the collection, hand grading, core testing and sale of fleece wool from sheep breeds across the UK.³
17. In its initial response to the request, British Wool stated that it does not receive any support or funding from the public purse, nor does it have any dealing with the general public. It therefore argued that it operates in exactly the same way as any other commercial organisation.

¹¹ <https://www.britishwool.org.uk/>

² <https://www.legislation.gov.uk/ukxi/1950/1326/made>

³ <https://www.britishwool.org.uk/trade>

Nonetheless, British Wool is listed as a public authority under Schedule 1 of the FOIA.⁴

Reasons for decision

Section 43(2) – prejudice to commercial interests

18. Section 43(2) of the FOIA states that information is exempt if its disclosure would or would be likely to prejudice the commercial interests of any person, including the public authority holding it. This is a qualified exemption and is, therefore, subject to the public interest test.
19. The exemption can be engaged on the basis that disclosing the information either “would” prejudice commercial interests, or the lower threshold that disclosure “would be likely” to prejudice those interests. The term “likely” is taken to mean that there has to be a real and significant risk of the prejudice arising, even if it cannot be said that the occurrence of prejudice is more probable than not.
20. For the Commissioner to accept that prejudice *would* result, she must be satisfied that this outcome would be more likely than not.
21. The withheld information consists of the Board’s meeting minutes from September 2017 to September 2020. In providing this information to the Commissioner, British Wool stated that it had highlighted the information that it considered to be commercially sensitive and therefore exempt under section 43(2) of the FOIA. The Commissioner has therefore only considered British Wool to be withholding, under section 43(2), that information which it has highlighted within the copy of the meeting minutes which were supplied to the Commissioner.
22. When requesting an internal review, the complainant raised concerns about British Wool’s existing publication scheme which states that Board minutes will be published on its website. She stated that the meeting minutes appeared in the website until around three years ago when the previous secretary retired. When providing a copy of its publication scheme to the complainant, British Wool stated, “*please note the policy itself is due for review as some of the items listed are not produced anymore or are in a different format.*” British Wool later stated, “*during the last 5 years and in the financial interests of the producers the*

⁴ <https://www.legislation.gov.uk/ukpga/2000/36/schedule/1>

company has operated more commercially and therefore the minutes of Board meetings are particularly sensitive”.

23. During the course of this investigation, the Board issued a fresh response to the complainant within which it cited section 43(2). It emphasised that it does not operate as a public sector body and does not receive any public sector funding. It stated that its activities are of a purely commercial nature collecting, marketing and selling wool in the interests of its 35,000 members.
24. In its fresh response to the complainant, the Board argued that the meeting minutes discuss its commercial strategy and current and forecast financial position in detail. It explained that the minutes include its approach to pricing, product development, marketing, its depot network and other sensitive information pertaining to its operations and commercial activities. Ultimately, it argued that disclosure could be extremely damaging to British Wool's competitiveness if this information were to fall into the hands of its competitors, suppliers, customers or members of the press.
25. The Commissioner has thoroughly reviewed the withheld information. She notes that it consists of discussions regarding pricing, intake, stock levels, cash flow, and budget/forecasts. It also contains discussions surrounding depot operations, property values, staffing, wool grading, marketing and sales strategies, current/potential projects with buyers/sellers and its overdraft facility. Ultimately, all of this information relates to or has an impact upon British Wool's financial position. Therefore, having viewed the withheld information, and considering the request, the Commissioner accepts that the information is commercial in nature because it relates to British Wool's financial position.
26. The Commissioner accepts on the basis of this reasoning that the information is commercial in nature. The next step is for the Commissioner to consider the prejudice which disclosure would or would be likely to cause and the relevant party or parties that would be affected.
27. For section 43(2) to be engaged three criteria must be met:
 - Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to commercial interests;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the withheld information and the prejudice to those commercial interests; and

- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met, meaning whether there is at least a real and significant risk of the prejudice occurring.
28. In its response to the Commissioner's investigation, British Wool explained that the commercial interests that would be compromised or prejudiced if the information were to be disclosed would be those of its own and its subsidiaries.
 29. With regards to the first criterion, the Commissioner accepts that the prejudice envisaged would be to the commercial interests of the parties concerned. Therefore, the Commissioner is satisfied that the first criterion is met. This is not to say that she agrees it will happen; simply that the criterion is met.
 30. British Wool stated that the minutes refer explicitly to customer interest in British Wool and its stock position at a particular time. It argued that the information is commercially sensitive should it fall into the hands of its customers. British Wool explained, "*our product is sold via auction, not at a fixed price and bidding by our customers would be impacted if they knew how much alternative interest there was and our stock levels*". It also explained that the meeting minutes refer to its selling tactics and any factors that it will be taking into account.
 31. British Wool explained that the minutes refer to a meeting with a potential new customer. It argued that disclosure of this information would limit the number of competing bids at the auction therefore reducing competition for British Wool's product and the value it would be able to achieve for its producer members.
 32. Additionally, British Wool explained that the minutes explicitly state its cash position and that therefore disclosure would give competitors clarity on its financial strength. It argued that competitors would then be able to use this information to position their offer against British Wool's offer.
 33. Finally, British Wool argued that the minutes refer to its overdraft facility and ability to access government support which it argued would again give competitors clarity on its financial strength which could then be used against it. British Wool also argued that the minutes explain where profits lie within the business structure. It argued that if its competitors were to be informed of the profits that it achieved in one particular subsidiary then they could specifically target that business and undercut British Wool. Similarly, British Wool argued that if customers knew the level of profit within that particular operation, they could use it to negotiate down the price that British Wool charges.

34. Ultimately, British Wool's position is that disclosure of the withheld information would harm its selling and negotiating position because it would give competitors advantage over customer interest, stock position, cash position and detail of profits.
35. Regarding the second criterion, the Commissioner is satisfied that British Wool demonstrated that a causal relationship exists between the potential disclosure of information being withheld, and the prejudice to its commercial interests. British Wool's position is that disclosure of this information would harm its negotiating position when selling its product and this in turn would reduce the value it would be able to achieve for its producer members. Therefore, the Commissioner considers that the second criterion has also been met.
36. Turning to the third criterion, British Wool stated that it was relying on the higher threshold of prejudice, arguing that disclosure "would" prejudice its commercial interests. As covered above, for the Commissioner to find that prejudice *would* result, she must be satisfied that this outcome is more likely than not to occur as a result of disclosure of the withheld information.
37. Having considered the withheld information and the arguments put forward, the Commissioner does not accept that British Wool has clearly demonstrated that the disclosure of the information "would" have a detrimental impact on its commercial activities. However, the Commissioner accepts that British Wool was entitled to rely upon the lower threshold of prejudice. The Commissioner accepts that disclosure of the information "would be likely" to have a detrimental impact on its commercial activities. Specifically, that disclosure would be likely to prejudice British Wool's negotiating position in respect of selling its product. The Commissioner accepts that this would be likely to prejudice British Wool's commercial interests as it would be likely to affect the prices it would be able to achieve for its producer members. Therefore, the Commissioner finds that section 43(2) is engaged.

Public interest test

38. Having found that the exemption is engaged, the Commissioner has gone on to consider the public interest factors in favour of disclosing the withheld information and of maintaining the exemption. Although the Commissioner has found the section 43(2) exemption is engaged, the information must still be released if the public interest in maintaining the exemption does not outweigh the public interest in disclosure.

Public interest arguments in favour of disclosing the withheld information

39. In her original request, the complainant stated that the Chairman of the Board, *"will appreciate that the Act is intended to promote a culture of openness and accountability amongst public sector bodies, and therefore facilitate better public understanding of how public bodies carry out their duties, why they make the decisions they do, and how they spend public money."*
40. In her internal review request the complainant referred to British Wool's existing publication scheme which stated that Board minutes are to be published. She stated that these minutes have always appeared on the website in the past, until around three years ago.
41. The complainant reiterated these points when bringing her complaint to the ICO. She added that, *"the wool price has dropped over 50% (while the objective was to double the price) and I am keen to find out more on how the Board operates, controls its costs and keeps its focus on the massive wool value problem."* The complainant also stated British Wool *"are clearly a public body and they have a near 100% legal monopoly on wool sales in the uk."*
42. The complainant also made the point that the *"information is very useful to members of the public, mainly sheep farmers and businesses that are related to the wool industry."* She expressed her view that the Board:

"have become somewhat secretive, which I believe is wrong (as they are a public body). I believe the minutes should be published for this public body, and back dated to when they stopped. Then we may not be so shocked when we find out they are closing 4 of their 12 depots as announced earlier this month. They seem to be in financial trouble. The finances are important as we do not get paid by them for our wool until 12 months after sending it in, so they are indebted to the sheep farmers for a long time, and we hear nothing.

There is genuine public interest in the activities and current sorry state of the Board, as evidenced in the BBC article linked below. This article attracted a lot of public comments and concerns, as you will be able to read. It provoked a lot of discussion at ground level as well. The minutes might help answer some of these concerns and provide a basis for further public discussion/comments especially around the viability of the Board

going forward. Farmers don't get paid for their wool for 12 months, so this is important."⁵

43. The Commissioner recognises that there is a significant public interest in the disclosure of information because of the decline in the price for wool, and the impact on wool farmers, as detailed in the news article referred to by the complainant.
44. The Commissioner also acknowledges that this information is also of public interest because of the way in which British Wool operates. British Wool sells wool on behalf of its producers, and therefore does not operate like a typical public authority. As stated above, British Wool is owned by 35,000 sheep farmers in the UK and as an organisation, it collects, grades, markets and sells the wool on behalf of its producers. It states that it aims to create a quality mark, recognised by consumers for superior product performance while creating a fairer deal for producers. British Wool states that it works, *"on behalf of producers to maximise the returns they receive for their wool, adding value through grading and minimising the risk of price volatility by selling wool on behalf of producers at auctions throughout the year."*⁶ The Commissioner recognises that there is a public interest in the disclosure of the information because the public authority is owned by members of the public and markets and sells a product on behalf of the those individuals.

Public interest arguments in favour of maintaining the exemption

45. In response to the complainant's point about its publication scheme, British Wool stated that *"during the last 5 years and in the financial interests of the producers the company has operated more commercially and therefore the minutes of Board meetings are particularly sensitive"*.
46. In its fresh response to the complainant, during the course of this investigation, British Wool reiterated that it, *"does not operate as a public sector body and does not receive any public sector funding. Our activities are of a purely commercial nature collecting, marketing and selling wool in the interests of our 35,000 members."*
47. In response to the Commissioner, British Wool stated that it had weighed the harm that disclosure could cause to its business, in

⁵ <https://www.bbc.co.uk/news/business-53421546>

⁶ <https://www.britishwool.org.uk/producer>

particular the advantage that disclosure would give its competitors in relation to buying wool. It stated that it had recently carried out a significant restructuring exercise to reduce costs following the impact of Covid-19 and the reduction of wool into its depot network. It argued that further losses of wool to third party competitors would damage the business further and result in additional potential redundancies which it wishes to avoid wherever possible. British Wool therefore concluded that, on balance, maintaining the exemption outweighs that in disclosure of the withheld information.

48. In favour of maintaining the exemption, the Commissioner recognises that there is a public interest in protecting British Wool's ability to get the best prices possible without informing competitors of its financial or stock position. As detailed at paragraph 44 above, British Wool is owned by farmers and markets and sells a product on behalf of them. The Commissioner recognises that there is a public interest in protecting British Wool's financial ability to maximise the returns it can make to its producers.
49. The Commissioner also recognises the fact that British Wool have carried out a significant restructure following the impact on Covid-19 and reduction of wool in its depot network. The Commissioner notes that British Wool has published an account report from 2020 which provides its financial summaries⁷. She notes British Wool's arguments that further losses of wool to third party competitors would damage the business further at this time. Therefore, the Commissioner considers that this is a valid factor in favour of maintaining the exemption which carries significant weight.

Balance of the public interest arguments

50. The Commissioner accepts that there is a strong and legitimate public interest in the openness and transparency of public authorities with regard to decision-making processes and finances. This is because it promotes the aims of transparency and accountability, which in turn promotes greater public engagement and understanding of decisions taken by public authorities.
51. However, British Wool has to some extent demonstrated its openness and accountability in publishing its annual report which contains details regarding its financial position. This report includes the Chairman's

⁷<https://www.britishwool.org.uk/ksupload/userfiles/British%20Wool%20Annual%20report%202020.pdf>

statement, information about the Board, the Board's report, and detailed financial summaries and statements⁸.

52. In view of British Wool's financial position, following the impact of Covid-19 on wool prices, the view of the Commissioner is that the balance of the public interests favours maintaining the exemption.

Conclusion

53. The Commissioner's conclusion is that the public interest in disclosure of the withheld information is outweighed by the public interest in maintaining the section 43(2) exemption. Therefore, British Wool was not obliged to disclose the requested information.
54. However, British Wool is required to disclose to the complainant all of the information it had not highlighted as withheld under section 43(2) within the withheld information provided to the Commissioner.

Section 40(2) – Personal Information

55. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
56. In this case the relevant condition is contained in section 40(3A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ("the DP principles"), as set out in Article 5 of the General Data Protection Regulation ("GDPR").
57. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ("DPA"). If it is not personal data then section 40 of the FOIA cannot apply.
58. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

⁸<https://www.britishwool.org.uk/ksupload/userfiles/British%20Wool%20Annual%20report%202020.pdf>

Is the information personal data?

59. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

60. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

61. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

62. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

63. During the course of this investigation, British Wool issued a fresh response to the complainant within which it stated that the requested minutes, *"contain information of a personal nature with reference to our employees and their employment. Our employees are not classed as public sector workers."* In responding to the Commissioner's section 43(2) investigation, British Wool stated that some of the minutes, *"explicitly refer to the employment status of an individual employee and his role within the business which would breach GDPR"*. The Commissioner therefore wrote to British Wool and asked for its submissions in respect of section 40(2) of the FOIA (personal data). British Wool declined to provide these further submissions and instead stated, *"we feel that we have already given sufficient evidence to support our decision in relation to both Commercial Sensitivity, Section 43 (2) and Personal Information, Section 40 (2)."*

64. By way of background, the withheld information contains the names of the members of the Board present at each meeting, including the Chairman and also the Minutes Secretary. It also contains names of other staff members at British Wool and some third party names from other organisations or producers. The Commissioner notes that the Board member names are published on British Wool's website⁹. They are also published within the annual report, although the members appear

⁹ <https://www.britishwool.org.uk/board-members>

to vary slightly due to the requested information dating from 2017 to 2020.

65. Although British Wool declined to provide submissions regarding section 40(2), the Commissioner has considered whether British Wool were correct to withhold the one paragraph which it highlighted within the withheld information as withheld under section 40(2). As explained above, the Commissioner has also considered whether British Wool were correct to withhold the names of employees.
66. The paragraph that British Wool highlighted under section 40(2) contained details of an individual employee's employment status and their role within the business.
67. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the highlighted paragraph both relates to and identifies the individuals concerned, that is the employees of British Wool, and their employment status. She is also satisfied that the names of members of the Board, names of employees at British Wool and names of employees who work for third party organisations or producers relate to and identify the individuals concerned. The Commissioner is satisfied that all of this information is personal data of the individuals named. This information therefore falls within the definition of "personal data" in section 3(2) of the DPA.
68. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
69. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

70. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

71. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
72. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

73. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that *"processing shall be lawful only if and to the extent that at least one of the"* lawful bases for processing listed in the Article applies.

74. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"¹⁰

75. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-

- i. Legitimate interest test: Whether a legitimate interest is being pursued in the request for information;
- ii. Necessity test: Whether disclosure of the information is necessary to meet the legitimate interest in question;
- iii. Balancing test: Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

76. The Commissioner considers that the test of "necessity" under stage (ii) must be met before the balancing test under stage (iii) is applied.

¹⁰ Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

Legitimate interests

77. In considering any legitimate interest(s) in the disclosure of the requested information under the FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.
78. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
79. The Commissioner accepts that that there is a legitimate interest in knowing the identities of the appointed Board Members and some members of staff at British Wool. She also accepts that there is a legitimate interest in the names of the individuals from third party organisations or producers that are contained within the minutes. She also acknowledges that there may be some legitimate interest in the employment status of some individual employees. The Commissioner understands that British Wool publishes a list of its Board members on its website. The complainant has not submitted any specific reasons why the information withheld under section 40(2) should be disclosed.
80. The Commissioner has been unable to identify a specific legitimate interest in disclosure of this information. However, she accepts that, in the interests of transparency and accountability, there is a limited legitimate interest in disclosure of information about employees and their employment, and the third party individuals referred to in the minutes.

Is disclosure necessary?

81. "Necessary" means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
82. The Commissioner notes that the individual names do not form a substantial part of the content of the meeting minutes and could be easily redacted in any disclosure.
83. The complainant made the wider point that British Wool's previous publication scheme stated that board meeting minutes were to be published. However this also stated, that it would published approved

minutes of board meetings, "*excluding any details relating to specific individuals or cases*". It would therefore appear that even when publishing these minutes previously, British Wool did not disclose the personal data of any individuals.

84. The Commissioner considers that any legitimate interest to a large extent has been satisfied through the information published on British Wool's website, that is the list of Board members. The complainant has not provided any arguments to support a position that any of their own interests can only be satisfied through release of this third party personal data. Although the names of the Board members are in the public domain, the information relating to any individual Board members contained within these minutes are not. In addition, the Commissioner's view is that employees not at a Board member level, would not consider it reasonable to have their information disclosed. The third party individuals identified in the information who either do not work for British Wool or are a producer for British Wool, would also, in the Commissioner's opinion, not expect for their information to be disclosed in response to a request. The Commissioner therefore considers that disclosure of this information would be disproportionately intrusive to the data subjects as it would reveal information about these third parties which is not otherwise in the public domain.
85. The Commissioner has therefore decided in this case that disclosure is not necessary to meet any legitimate interest in disclosure and she has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a).
86. The Commissioner has therefore decided that British Wool was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

Right of appeal

87. 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,
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88. 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.
89. 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

Sarah Clouston
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Information Commissioner's Office
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