

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 May 2022

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office seeking a copy of a feasibility study into the possibility of moving the House of Lords to York. The Cabinet Office withheld the information on the basis of section 35(1)(a) (formulation or development of government policy) of FOIA, or in the alternative, section 36(2)(b)(ii) (prejudice to the effective conduct of public affairs) of FOIA.
2. The Commissioner has concluded that the withheld information is exempt from disclosure on the basis of section 35(1)(a) and that in all the circumstances of the case the public interest favours maintaining the exemption.
3. No steps are required.

Request and response

4. The complainant submitted the following request to the Cabinet Office on 14 August 2020:

‘I understand the Cabinet Office has completed an "initial feasibility study" into the possibility of moving the House of Lords or another department to the York Central site.

Please see this report from a local democracy reporter for the leader of York City Council's comments on the matter:

<https://www.yorkpress.co.uk/news/18649596.government-completed-feasibility-study-house-lords-move-york/>

Please can you send me this feasibility study?

If it is not possible to provide the information requested due to the information exceeding the cost of compliance limits identified in Section 12, please provide advice and assistance, under the Section 16 obligations of the Act, as to how I can refine my request.'

5. The Cabinet Office responded on 12 October 2020 and confirmed that it held a copy of the feasibility study but considered this to be exempt from disclosure on the basis of section 35(1)(a) (formulation or development of government policy) of FOIA. The Cabinet Office explained that if this exemption did not apply, then in the alternative the feasibility study would be exempt from disclosure on the basis of section 36(2)(b)(ii) (prejudice to the effective conduct of public affairs) of FOIA.
6. The complainant contacted the Cabinet Office on the same day and asked it to conduct an internal review.
7. The Cabinet Office informed him of the outcome of the internal review on 6 November 2020. The internal review upheld the application of section 35(1)(a) of FOIA. The review did not refer to section 36(2)(b)(ii).

Scope of the case

8. The complainant contacted the Commissioner on 24 November 2020 in order to complain about the Cabinet Office's refusal to provide him with the information falling within the scope of his request. His grounds of complaint to support his position are set out below.

Reasons for decision

Section 35(1)(a) – formulation or development of government policy

9. The Commissioner has initially considered the Cabinet Office's reliance on section 35(1)(a) of FOIA which states that:

'Information held by a government department or by the Welsh Assembly Government is exempt information if it relates to-

(a) the formulation or development of government policy'

10. Section 35 is a class based exemption, therefore if information falls within the description of a particular sub-section of 35(1) then this information will be exempt; there is no need for the public authority to demonstrate prejudice to these purposes.

11. The Commissioner takes the view that the 'formulation' of policy comprises the early stages of the policy process – where options are generated and sorted, risks are identified, consultation occurs, and recommendations/submissions are put to a minister or decision makers

12. 'Development' may go beyond this stage to the processes involved in improving or altering existing policy such as piloting, monitoring, reviewing, analysing or recording the effects of existing policy.

13. Ultimately, whether information relates to the formulation or development of government policy is a judgement that needs to be made on a case by case basis, focussing on the precise context and timing of the information in question.

14. The Commissioner considers that the following factors will be key indicators of the formulation or development of government policy:

- the final decision will be made either by the Cabinet or the relevant minister;
- the Government intends to achieve a particular outcome or change in the real world; and
- the consequences of the decision will be wide-ranging.

15. In support of its position that the withheld information fell within the scope of the exemption contained at section 35(1)(a) the Cabinet Office explained that by way of background, the Parliamentary Works Sponsor Body ('the Sponsor Body') is a statutory body that acts as the single client accountable to Parliament for the programme to Restore and Renew the Palace of Westminster. In 2020, the Sponsor Body conducted

a strategic review of the Restoration and Renewal Programme ('R&R') to test whether anything had changed so significantly as to warrant a change in approach. This included re-examining the evidence behind previous decisions, including the plans to temporarily relocate all MPs and Peers while the R&R programme takes place.

16. The Cabinet Office also explained that through the Places for Growth Programme, it is exploring opportunities to relocate Civil Service roles across the whole of the UK to take advantage of untapped talent and expertise and better connect government to the communities it serves. The Cabinet Office explained that by relocating more Civil Service roles, including senior grades and decision-making roles out of London, the Government's intention was to create and distribute opportunity, jobs and investment across the whole of the UK.
17. The Cabinet Office explained that in that context the Government engaged with the York Central Partnership, and, as part of this, explored whether York could be a suitable location for Parliamentary activity, should it be required. The Cabinet Office explained that a firm of architects was commissioned to produce a feasibility study exploring the options for a temporary relocation (decant) of the House of Lords to York. The feasibility study was delivered in April 2020 and it is that study which falls within the scope of the request.
18. The Cabinet Office explained that it was important to note that whilst the legislature (Parliament) is separate from the executive (the Government), and R&R is a parliamentary project, any costs of the programme would need to be funded from general taxation which is a government responsibility. The Cabinet Office also emphasised that the Government is also represented in Parliament by the Leader of the House of Commons and the Leader of the House of Lords. Therefore, the Cabinet Office argued there is a direct role for the Government in advising on potential policy decisions on the R&R programme and that the R&R continues to be at a live planning stage (until 2023 when the Sponsor Body will deliver its plan to both Houses of Parliament for a decision) and therefore this matter is not closed for the Government.
19. Although the Places for Growth Programme is established government policy, and the final decision about moving the House of Lords is one for Parliament rather than Government, having taken into account the Cabinet Office's submissions, the Commissioner is satisfied that the withheld information falls within the scope of the exemption at section 35(1)(a) of FOIA. This is on the basis that there is a direct role for the government in advising the R&R programme given that any decisions will be funded by the government and that the impact of any such policy will clearly be significant.

Public interest test

20. Section 35 is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption contained at section 35(1)(a) outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the withheld information

21. The Cabinet Office acknowledged that there was a general public interest in openness and that the decisions ministers make may have a significant impact on the lives of citizens. Furthermore, it recognised that there is a public interest in knowing how government communicates its developing policy, in this case around studies into the temporary relocation of the House of Lords. The Cabinet Office also acknowledged that there is a wider public interest in being well-informed, at the time of the request, about whether the government was exploring the potential for parliamentary activity to take place outside of London. (Although, as the article cited by the complainant in his request reports, the government had apparently been looking at such options.)
22. The complainant argued that there is a strong public interest in this requested feasibility study being released, and that there was a clear need for transparency and accountability in government. The complainant stated that the Prime Minister had stated that he wanted to move the House of Lords to York, but politicians appear to have privately blocked this idea.
23. The complainant also noted that since his request, the R&R Sponsor body said moving the House of Lords to York would not form part of its review. In light of this, the complainant argued that the public has a right to know why, and what the feasibility study said.¹

Public interest in maintaining the exemption

24. The Cabinet Office argued that there is a public interest in ensuring that the policy-making process is protected from undue external influence that the release of this requested information would bring. This was because the policy-making process needs to be informed by robust and candid discussions on the topics or options – in this case the decant location for the House of Lords. The Cabinet Office argued that policy decisions to be made on the location may have an impact on wider society and therefore need to consider the views of key stakeholders.

¹ <https://www.bbc.co.uk/news/uk-politics-53837718>

25. The Cabinet Office argued that to release the requested information, which represents York as a potential location, would be premature. It emphasised that R&R continues to be at a live planning stage: The Sponsor Body is developing costed plans that are due to be considered and voted on by Parliament in 2023. Therefore, the Cabinet Office explained that ahead of this point, government's policy thinking on R&R, including on decant locations for both Houses, remains an open matter and that the release of this information would be likely to negatively impact the ability of government to consider these matters.
26. The Cabinet Office argued that there is a strong public interest in maintaining the effective process of policy formulation. Participating stakeholders need freedom to test possible options such as those given in the feasibility study with regard to York. This has to take place without fear of the potential for premature public discussion of options discussed in this type of planning environment - such as the media interest and speculation prompted by article quoted in the request. The Cabinet Office argued that disclosure would be likely to invite judgements and opinions about whether the options presented are realistic and proportionate. It considered that a department's arrangements for managing communication on a particular policy area are in the safe space protected by section 35, where the integrity of the policy-making process is dependent on effective negotiation and decision-making. There would be greater focus on public perception than on the options themselves if the withheld information were disclosed.
27. In the circumstances of this case the Cabinet Office argued that there was no strong countervailing public interest in disclosure. It did recognise that exploring options for temporarily relocating the House of Lords may raise expectations in a proposed locality (and indeed on any discounted locality). Other than that, there is little overall public interest in disclosure. In contrast it considered there to be a strong public interest that policy formulation and development is of the highest quality and that premature disclosure of information relating to the relocation of the House of Lords would be likely to damage future policy making.
28. Given the sensitive nature of any House of Lords relocation, the Cabinet Office argued that it could see no clear, compelling and specific justification that outweighs the obvious interest in protecting the safe space within which policy development is managed. It believed that, as planning is ongoing and evolving (given that no decision has been taken and no lease has been signed for suitable accommodation), the public interest in maintaining the exemption is strong and that the risk of prejudicing the policy development process outweighs the public interest in disclosure.

Balance of the public interest arguments

29. With regard to the arguments advanced by the Cabinet Office for maintaining the exemption, the Commissioner notes that these refer to the need for a 'safe space'. That is to say, the concept that the government needs a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction - where the policy making process is live and the requested information relates to that policy making.
30. In the context of this case, the Commissioner accepts that the policy making process in respect of the R&R programme is ongoing as costed plans in respect of the project are not due to be considered and voted on by Parliament until 2023. The Commissioner appreciates that the complainant has identified a press article in which the R&R sponsor body explained that moving the House of Lords to York would not form part of its review. However, the Commissioner understands that this was on the basis that such a decision was one for politicians; in other words the R&R did not reject this a potential and option, and therefore in theory it could still be a matter discussed as part of the future policy making.
31. Furthermore, the Commissioner recognises the sensitive nature of the decision to potentially relocate the House of Lords, and the fact that any potential options are very likely to attract external attention, demonstrated as the Cabinet Office suggests by the press article cited in the request, and indeed in the press article referred to by the complainant in his submissions. Having considered the content of the withheld information the Commissioner accepts the rationale of the Cabinet Office's argument that disclosure of it, and the external examination of it that would follow, would be detrimental to the policy making process. The safe space arguments therefore need to be given significant weight.
32. With regard to the public interest in disclosure of the information, the Commissioner accepts that there is a public interest in the government being open and transparent about its policy making in respect of the R&R project. The project is one that will ultimately involve significant expenditure of public funds. As a result of this the Commissioner considers the public interest in disclosure of the information to be greater than suggested by the Cabinet Office. Furthermore, there is an understandable interest from local communities which could be a possible decant option, in this case York. Disclosure of the withheld information would provide the public with some insight into the policy making in relation to that location, albeit that the information in question is only a feasibility study and any such any insight would arguably be a limited one.

33. However, on balance the Commissioner has concluded that the public interest favours maintaining the exemption contained at section 35(1)(a) given the significant weight that he thinks should be attributed to the safe space arguments in the particular circumstances of this case.

Right of appeal

34. 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

35. 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.

36. 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

Jonathan Slee
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