

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 February 2024

Public Authority: **Animals in Science Committee**
14 Floor Lunar House
40 Wellesley Road
Croydon
CR9 2BY

Decision (including any steps ordered)

1. The complainant has requested information relating to the Animals in Science Committee and its work. The Animals in Science Committee ("the public authority") disclosed some information but withheld other information under section 36(2)(b)(ii) (prejudice to the effective conduct of public affairs) of FOIA.
2. The Commissioner's decision is that the public authority was correct to withhold the information it did under section 36(2)(b)(ii).
3. The Commissioner does not require further steps.

Request and response

4. On 20 June 2023 the complainant wrote to the public authority and requested:

"1) a copy of the letter from the Chair to Professor Rubin on the issues surrounding the Leadership in Animals in Science' work.

- 2) a copy of the response from Professor Rubin that was circulated to ASC members.
 - 3) an explanation as to why their (sic) is a lack of co-ordinated strategy or overall policy lead amongst government departments.
 - 4) a copy of the paper summarising the responsibilities of the regulator, for which the ASC will use to identify policy gaps provided to you by the ASRU.”
5. On 14 September 2023 the public authority responded and:
- In response to parts 1 and 2, it disclosed information with redactions made under section 40(2) (personal information).
 - In response to part 3, it confirmed it wasn't a valid request for information.
 - In response to part 4, it refused to disclose any information, citing section 36(2)(b)(ii).
6. The complainant requested an internal review on 16 September 2023.
7. The public authority provided the outcome to its internal review on 24 October 2023, it upheld its previous positions.

Scope of the case

8. In their internal review request, the complainant didn't raise any concerns about the public authority's handling of parts 1 – 3 of the request. They only raised concerns about the public authority's decision to withhold information that would fall within part 4 of the request.
9. Therefore, the Commissioner considers the scope of his investigation is to consider whether the public authority was correct to withhold the information it did under section 36(2)(b)(ii).

Reasons for decision

10. Section 36(2) of FOIA states:

“Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of this information under this Act –

(b) would, or would be likely to inhibit-

(ii) the free and frank exchange of views for the purposes of deliberation.”

11. Section 36 differs from all other prejudice based exemptions in that the judgement about prejudice must be made by the legally authorised, qualified person ('QP') for that public authority. The QP's opinion must also be a 'reasonable' opinion.
12. It's not necessary for the Commissioner to agree with the opinion of the QP and it doesn't need to be the only reasonable opinion, or the most reasonable opinion, that could be held. The Commissioner only needs to satisfy himself that it's an opinion that a reasonable person could hold.

Who is the qualified person and how was their opinion sought?

13. The public authority has confirmed its QP is Home Office Minister Lord Sharpe. The QP's opinion was sought on 24 August 2023. In order for the QP to form a reasonable opinion on the case they were provided with the background and context of the request and arguments in support of the section 36 exemption. The Commissioner notes the withheld information wasn't actually provided to the QP but it was described to them.
14. The QP's opinion was provided, via their private secretary, on 13 September 2023.

Is the qualified person's opinion reasonable?

15. The QP has provided an opinion that disclosure would be likely to inhibit the free and frank exchange of views for the purposes of deliberation.
16. The information that is being withheld is a briefing paper which discusses the Animal in Science Committee's interactions with other government departments, including the Home Office, and discusses its regulatory responsibilities.
17. The Commissioner understands that the briefing paper was circulated at a meeting between the public authority and the Home Office. The Commissioner understands that the minutes¹ of this meeting are in the public domain. The complainant believes all information discussed at the meeting, including the briefing paper, should be in the public domain as well.

¹ [ASC meeting minutes, 13 September 2021 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

18. The public authority has explained to the Commissioner:

“Disclosure of this information would be likely to have an adverse effect on the ability of the ASC to perform its public duty under the Animals (Scientific Procedures) Act 1986 to provide fully informed and independent advice to the Government, as ASC and the Home Office must be able to share information that is not intended for the public domain to enable free and frank discussion. This particularly applies to policy issues that are currently under active consideration, as in this case.”

19. Looking at the briefing paper, section 36(2)(b)(ii) and the explanation above, the Commissioner is satisfied that the QP’s opinion is a reasonable one. Therefore, the exemption is engaged. Since section 36(2)(b)(ii) is a qualified exemption, the Commissioner will now go onto consider the public interest test.

The public interest test

Arguments in favour of disclosure

20. The complainant hasn’t put forward any specific public interest arguments in favour of disclosing the withheld information, except what’s already been outlined in paragraph 17.
21. The public authority acknowledges ‘there is an inherent public interest in transparency and accountability regarding information about the use of animals in science, and the ASC works with a presumption of openness and transparency.’
22. The Commissioner notes there’s also a public interest in helping the public understand how the public authority interacts with other government bodies, which is what the briefing paper explains.

Arguments in favour of maintaining the exemption

23. The public authority has explained:

“The disclosure of this information would reveal sensitive information to the public about the ongoing work regarding cross-government policy gaps in the use of animals in science. It would undermine the trust between the Home Office and the ASC and so would inhibit the free and frank exchange of information between the Home Office and the ASC, preventing the ASC from providing the Home Office with fully informed advice and thereby preventing the effective conduct of public affairs.” This is what is known as the chilling effect.

24. It's expanded that:

"The information contained in the briefing paper was provided to assist the ASC in identifying cross-government policy gaps in the use of animals in science. First raised by the ASC in June 2020, this topic remains under active discussion between the ASC and the Home Office. Departmental responsibilities for animals in science is also an active policy issue between the Home Office and other government departments, which is coming to a head with recent correspondence between Ministers on the issue."

Balance of the public interest

25. The Commissioner has determined that the public interest lies in maintaining the exemption.
26. When it comes to section 36, it's the role of the QP to express a reasonable opinion that prejudice would, or would be likely, to occur. However, the Commissioner will go on to consider the severity, extent and frequency of that prejudice in forming his own assessment of whether the public interest test favours disclosure.
27. Civil servants and other public officials are expected to be impartial and robust when giving advice, and not be easily deterred from expressing their views by the possibility of future disclosure. However, arguments about the chilling effect can't be dismissed out of hand and are likely to be strongest if the issue in question is still live.
28. If the briefing paper was disclosed, this would require a diversion of resources to deal with enquiries relating to policy options that are being discussed but have not yet been finalised.
29. The Commissioner believes that the public interest identified in paragraphs 21 and 22 has largely been met by the accompanying meeting minutes² which are in the public domain.
30. Whilst the Commissioner acknowledges the withheld information would add to this understanding, he recognises that the withheld information actively relates to live policy issues. He also accepts that animal welfare and the use of animals for science is a very divisive and emotive issue. He agrees that disclosure would be likely to inhibit discussions between the public authority and other government bodies, most notably, the

² [ASC meeting minutes, 13 September 2021 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

Home Office. Significantly, the Home Office was consulted during the handling of this request and strongly advised against disclosure.

31. Ultimately, disclosure has the potential to dilute these discussions, and lead to less-robust related policy decisions being made, which isn't in the public interest. The Commissioner is satisfied that the information should be withheld.

Right of appeal

32. 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

33. 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.
34. 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

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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