

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 6 December 2017

**Public Authority:** Department for Transport  
**Address:** Great Minster House  
Horseferry Road  
London  
SW1P 4DR

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to the THINK! Cycle Safety campaign.
2. The Commissioner's decision is that the Department for Transport (DfT) has correctly applied section 22 (intended for future publication) to the withheld information.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

#### Request and response

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4. On 14 October 2016, the complainant requested information in the following terms:

*Please could you provide me with:*

1. *The date this film was first proposed;*
2. *The names of the road safety and communication experts that you consulted;*
3. *The number of cyclists you tested the premise of this film with and the feedback they gave you;*
4. *The name of the independent research agency you have contracted with and the contracted fee;*
5. *The methods and measurements that will be used to assess its effects on people's attitudes and claimed behaviour;*

6. *The date and location (web url) where the results of the assessment will be published;*
  7. *The target for the effect this campaign will have on casualty numbers and what amount of a change constitutes success;*
  8. *The total costs to develop the film;*
  9. *The advertising costs to show the film and the places and dates where the advert was shown;*
  10. *The number of emails received after the launch of the film and how many of them expressed an opinion: in support of the film, against the film, or neutral.*
5. On 11 November 2016 the DfT responded. It stated that it was disclosing information in relation to parts 1, 2, 4, 5, 6, 8 and 9. However, it explained that it did not hold any information in relation to part 7 and section 12 (costs) applied to part 10 of the request.
6. The DfT went on to explain that section 22(1) was being applied to the information requested at part 3.
7. The complainant did not seek an internal review and appeared satisfied with the response. However on 4 March 2017 the complainant wrote to the DfT again stating:

*"The campaign evaluation will be published on the following page of GOV.uk in February 2017: <https://www.gov.uk/government/collection...>*

*It is now March and that webpage has not been updated since May 2016.*

*When will the answer be put there?"*

8. The Commissioner considers this constituted a new request. In the earlier request the complainant asked for the date and location of where the results will be published. This information was disclosed in full on 11 November 2016. The complainant's email of 4 March 2017 was chasing this publication. In light of the wording of the request the Commissioner has taken this to be a new information request for the actual results of the assessment. The DfT responded on 26 April 2017. It explained that it had experienced some delays in receiving the final evaluation report for the campaign and was unable to publish the document in February as anticipated. But it intended to publish it in the near future.

## **Scope of the case**

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9. The complainant contacted the Commissioner 2 July 2017 to complain about the way his request for information had been handled.

10. The Commissioner wrote to the complainant on 22 August 2017 to clarify that his complaint related solely to part 3 of the request dated 14 October 2016 and the publication of the campaign evaluation, which was requested on 4 March 2017. As stated above the DfT provided the information requested at part 6 in its response of 11 November 2016.
11. The complainant confirmed the same day that this was the basis of his complaint.
12. The Commissioner then wrote to DfT with her enquiries. The DfT responded on 24 August 2017 seeking advice as to whether it should now carry out an internal review. The Commissioner advised that this was not necessary at this point and awaited DfT's response. The DfT responded on 19 September 2017.
13. Therefore the Commissioner considers the scope of this case to be to determine if DfT has correctly applied section 22(1) to part 3 of the request dated 14 October 2016 (*The number of cyclists you tested the premise of this film with and the feedback they gave you*) and to the complainant's request of 4 March 2017.

## Reasons for decision

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### Section 22 – intended for future publication

14. Section 22(1) of the FOIA states that:

*Information is exempt information if –*

*a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),*

*b) the information was already held with a view to such publication at the time when the request for information was made, and*

*c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).*

15. The Commissioner has first considered whether the DfT was correct to cite section 22(1) in response to part 3 of the request dated 14 October 2016. In order to determine whether section 22 is engaged the Commissioner considered the following questions:

- When the complainant submitted the request, did DfT intend the information to be published at some date in the future?

- If so, in all the circumstances of the case, was it 'reasonable' that DfT should withhold the information from disclosure until some future date (whether determined or not)?

**Was the information held at the time of the request with a view to its publication at a future date?**

16. DfT has confirmed that at the time the request was received, the evaluation results were being collated and analysed by an independent research company which had been contracted to carry out this work on behalf of the DfT. Although the information was not physically held by DfT, they were held by a contractor on behalf of DfT and so it was considered it was held at the time for the purposes of FOIA.
17. Further, at the point the request was received, DfT explained it had an intention to publish at a future date. The exemption at section 22 FOIA does not require a set publication date to be in place, but simply for the intention to publish to be agreed.

**Was it 'reasonable' to withhold the information?**

18. For the exemption to be relied on section 22(1)(c) requires that the application is 'reasonable' in all the circumstances of the request.
19. DfT explained it had an intention to publish the requested information at the point the request was made. Furthermore, it made a public commitment to publish campaign evaluation results in February 2017. However, this publication was delayed for a number of reasons and still has not occurred.
20. The Commissioner's guidance<sup>1</sup> states that although a public authority must hold the information at the time of the request with a view to its publication, the exemption does not require a set publication date in place. A public authority may still be able to apply section 22 if:
  - there is a publication deadline, but publication could be at any date before then;
  - publication will take place once other actions have been completed;
  - publication will take place by reference to other related events; or

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1172/informationintendedforfuture-publication-and-research-information-sections-22-and-22a-foi.pdf>

- there is a draft publication schedule that has not been finalised.
21. Therefore as long as the public authority has decided that it or another person will publish the information at some time in the future, the exemption may apply.
  22. The Commissioner is satisfied that at the time of the request of 14 October 2016, the DfT held the requested information with an intention to publish the results at a future date, once ministerial approval had been received. The Commissioner therefore considers that section 22 is engaged in this case, however as this is a qualified exemption, she has gone on to consider the public interest test.

### **Public interest test**

23. In its initial response the DfT provided the following arguments with regard to balance of public interest test:

#### **Arguments in favour of disclosing the requested information**

24. There is a broad public interest in the Government's work and disclosure would be consistent with the Government's wider transparency agenda. This makes the Government more accountable to the electorate and increases trust in the democratic process.

#### **Arguments in favour of maintaining the exemption**

25. It is an important principle that public authorities should be able publish information in a manner, form and timing of their own choosing. DfT official's time would be better spent compiling, verifying and preparing for publication so that everyone gets to see the report at the same time as opposed to dealing with individual requests for the report. The additional time sought by the Department prior to publication is necessary to enable the proper analysis of the campaign to be prepared and then scrutinized through a process of internal review. It is in the public interest that the effectiveness of the campaign is presented in its entirety to ensure that maximum value is achieved from the public investment.

#### **Balance of the public interest**

26. The Commissioner accepts that there is a public interest in disclosure insofar as this would promote transparency about the outcome of the campaign. However, the Commissioner also takes the view that this public interest is significantly reduced by the fact that DfT has always planned to publish the results once ministerial approval has been granted.

27. As regards the arguments for maintaining the exemption there is some overlap between the factors to consider when deciding what is reasonable, and those which are relevant to the application of the public interest test. At the time of the request the results were still being collated and a final report had not yet been finalised. The Commissioner accepts that it is important for the DfT to ensure that all the information is correctly verified and collated and to have ministerial approval before publication.
28. The Commissioner therefore finds that the DfT was correct to apply section 22(1) in response to the request of 14 October 2016.

### **Request dated 4 March 2017**

29. On 4 March 2017 the complainant contacted the individual at the DfT who had responded to previous correspondence stating:

*Your answer to my question 6 stated:*

*6. The campaign evaluation will be published on the following page of GOV.uk in February 2017: <https://www.gov.uk/government/collection...>*

*It is now March and that webpage has not been updated since May 2016.*

*When will the answer be put there?*

30. As he received no response he wrote again on 22 April 2017 and received an 'out of office' email. On 25 April 2017 the complainant again contacted the DfT asking *"are you now able to tell me when the evaluation will be published as you promised it would be?"*.
31. On 26 April 2017 DfT responded explaining that it had experienced some delays in receiving the information from its contractors and had been unable to publish the document as anticipated. It also explained that as a General Election had been called, the department was now in Purdah and the document would be published sometime after the General Election.
32. On 26 June 2017 the complainant wrote to the DfT stating: *"Still the information that you promised has not been delivered. Purdah is long over. I kindly ask that the information be published by this Friday, 30th June"*.
33. The DfT responded on 28 June 2017 advising that it was still the intention to publish the results. However, following the election a new Parliamentary Under Secretary of State for Transport had been appointed. It explained that the findings needed to be shared with him

before publication but that there was a backlog of departmental business to review.

34. DfT confirmed in subsequent correspondence with the Commissioner that a submission has been drafted requesting approval to publish the evaluation results and is now with the Minister for consideration. Subject to approval, the next step will be for the publication to secure a slot in central government's grid for planned publications. This is subject to 10 Downing St clearance and will depend on other government business priorities. For these reasons, a specific publication date is not known at this time.
35. It also confirmed that it also planned to publish the results from the creative testing although not necessarily at the same time as the evaluation information. The results from the creative testing will be published but the intention was to prioritise the publication of the evaluation information.
36. DfT's intention is still to make all of the research available to the public including creative testing and evaluation information. However, all information has to be cleared through a formal process and this can sometimes take time. It further stated that it is also important to choose a publication date that doesn't clash with other important government announcements.
37. DfT also stated that it was willing to try and get the creative testing information cleared for release earlier and secure a publication date for both documents. It may be able to publish them on the same day, possibly at the same time the results from a separate cycling review are due to be published in the New Year.
38. Based upon DfT's submissions above, the Commissioner is satisfied that the information to which section 22 had been applied was held by DfT at the time of the request with a plan to publish once ministerial approval was received.
39. The Commissioner is satisfied that it was reasonable for DfT to withhold the information from disclosure until some future date. The Commissioner therefore considers that section 22 is engaged in this case, however as this is a qualified exemption, she has again gone on to consider the public interest test.

### **Public interest test**

40. DfT acknowledge that there is a public interest in disclosing information in order to be helpful, and to promote accountability and transparency of government.

41. However, it also argued that in this case, there are strong arguments to support the use of the future publication exemption on the basis that the best use of public resources would be directed to pulling this information together, ensuring the information is accurate and published in a consistent and comprehensive format, in line with ministerial and wider governmental priorities.

**Balance of the public interest**

42. The Commissioner considers there is a general public interest to disclose information, as it increases transparency and accountability of public authorities.
43. In this instance the Commissioner is satisfied that there is no overriding public interest argument for the information to be provided in advance of publication.
44. Having considered the DfT's submission the Commissioner is satisfied that there was and still is a settled intention to publish the requested information, at the time of the request, once the results have been approved.
45. In this case the circumstances that have delayed publication are unusual and beyond the DfT's control. The Commissioner finds that DfT has correctly applied section 22 to this part of the withheld of the information.



## Right of appeal

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46. 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: 0300 1234504  
Fax: 0870 739 5836  
Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

47. 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.
48. 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** .....

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
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**Water Lane**  
**Wilmslow**  
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