

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 July 2020

Public Authority: Department for Digital, Culture, Media & Sport

Address: 100 Parliament Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant has requested information concerning meetings between the Secretary of State for Digital, Culture, Media & Sport (DCMS) and Facebook in May and June 2018.
2. The Commissioner's decision is that DCMS misapplied section 36(2)(b)(ii)(prejudice to effective conduct of public affairs) to some of the withheld information, this information being instead exempt under section 35(1)(a)(formulation or development of government policy). While the Commissioner is satisfied that all of the withheld information is exempt under section 35(1)(a), she considers that the public interest favours disclosure of some of the information.
3. In addition, as DCMS responded to the request after 20 working days and failed to confirm that some information was held under 12 months after the request, they have breached section 10 and 1 of the FOIA.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the information contained in Annex A

5. The public authority 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

6. On 30 November 2018, the complainant wrote to DCMS and requested information in the following terms (the Commissioner has numbered the parts of the request for ease of reference):
 - 1) *'Notes of what was discussed between Matt Hancock MP and Facebook's Mark Zuckerberg during their meeting on 24/05/2018, and details about where the meeting was held and anyone else in attendance.*
 - 2) *Any subsequent documents or correspondence exchanged between Matt Hancock (or his staff) and Facebook following the meeting with Mark Zuckerberg.*
 - 3) *Details of who Matt Hancock met from Facebook on 20/06/2018 and where they met, along with notes of what was discussed at the meeting.*
 - 4) *Any subsequent documents or correspondence exchanged between Matt Hancock (or his staff) and Facebook following the meeting on 20/06/2018'.*
7. DCMS wrote to the complainant on 13 December 2018, requesting clarification of the request. The Department stated that, *'You have made reference to 'or his staff' in some of your questions, this could be interpreted a number of ways, for example, all employees within DCMS or merely the then Secretary of State's private office. It would be useful if you could clarify whether you wish your request to encompass Matt Hancock's private office, certain policy areas or all DCMS employees. I should inform you, should you wish your request to cover all DCMS employees, this is likely to contribute to your request exceeding the cost limit as set out by the Act'.*
8. The complainant responded on the same date and confirmed that he wished his request only to include the Secretary of State's private office staff and the DCMS staff responsible for overseeing internet safety and disinformation/fake news.
9. DCMS wrote to the complainant on 15 January 2019 and advised him that that they held information within scope of his request. DCMS

advised that they had determined that some of the information held may be exempt from disclosure under section 35 (formulation or development of government policy) and/or section 36 (prejudice to effective conduct of public affairs) and that there would be a delay to their response while they carried out a public interest test to the request. The complainant was advised that he would be provided with a substantive response by 11 February 2019.

10. Instead of receiving the expected substantive response, the complainant was contacted by the Department on 11 February 2019 and was informed that a large volume of correspondence that fell within the scope of his request related to administrative issues and would trigger an exemption under the FOIA. However, DCMS did not specify the exemption.
11. In his subsequent complaint to the ICO the complainant explained that as he did not have any interest in such administrative matters and that his intention had always been to focus upon substantive policy discussions between Facebook and the Department, he decided that the best course of action was to speak to one of the Department's FOI officers on the telephone to clarify what information he was seeking.
12. The complainant advised that on 13 February 2019 he had a telephone discussion with a DCMS FOI officer. Immediately after their conversation and based on her guidance, the complainant emailed DCMS with the following clarification of the correspondence which he was seeking:

'Correspondence between Facebook and Matt Hancock MP, Matt Hancock's private office, and the security and online harms team regarding subjects that are pertinent to policy and the discussion of internet safety, disinformation and fake news. Please disregard any correspondence relating to purely administrative matters'.
13. The FOI officer responded and asked the complainant if he was happy for the timeframe of the correspondence sought to be between 24 May 2018 (the date of the meeting between Mr Hancock and Mr Zuckerberg) and 9 July 2018 (the date Mr Hancock left the Department to become Secretary of State for Health and Social Care). The complainant agreed to this timeframe.
14. DCMS provided the complainant with their substantive request response on 13 March 2019. The response confirmed that the Department held information within scope of the request, but that it was exempt from disclosure under sections 35(1)(a) and 40(2)(third party personal data).
15. However, the response referred only to the complainant's clarification of 13 February 2019 and did not mention parts 1 and 3 of his original request, specifically:

- Notes of what was discussed between Matt Hancock MP and Facebook's Mark Zuckerberg during their meeting on 24/05/2018 and details about where the meeting was held and anyone else in attendance.
 - Details of who Matt Hancock met from Facebook on 20/06/2018 and where they met, along with notes of what was discussed at the meeting.
16. At no point in his communications with DCMS had the complainant advised that he no longer wanted the above information originally requested.
17. In the substantive response, DCMS stated that, *'it is our view that disclosure of the information requested, even the less detailed information, concerning the correspondence of the Security and Online Harms team with a key industry stakeholder such as Facebook, would significantly undermine the effectiveness of the ongoing policy making process by exposing the process to interference'*.
18. The Department stated that there is a public interest in preserving a 'safe space' around government officials, enabling them to communicate with industry stakeholders with confidence. DCMS advised that, *'it is imperative that officials and industry stakeholders have a space in which to develop their thinking and explore different options in communications and discussions on the matter at hand'*. The Department contended that it is vital that government are able to effectively work and cooperate with industry stakeholders as trends and issues affecting the sector change so the Government can be adaptive to the needs of the sector. Consequently, DCMS stated that they had concluded that *'at this stage'* releasing all of the information would not be in the public interest.
19. In addition, the Department contended that policy officials must be able to discuss policy in this area freely and frankly, exchange views on available options and understand their possible implications. They advised that it is crucial for industry stakeholders to feel able to contribute to the decision making process by expressing their opinions in an honest but protected manner.
20. DCMS stated that 'some' of the information within scope of the request was vital to the policy making process. They gave the generic example of early deliberation phases where the expert opinion of stakeholders is sought, to enable government to better understand the sector, which is vital to the policy formulation process. They provided the following further generic reasoning:

'If external stakeholders are fearful of discussing options in a candid manner then they would be less likely to broach any difficult or

controversial subjects. The result would be that government would not have the varied and crucial input from industry stakeholders and experts which is required to help form decisions. Less well informed decisions are likely to mean that these decisions do not meet the needs of its people. This is clearly not in the public interest. There must be a balance between providing the public with information and ensuring the government can continue to maintain candid relationships with industry stakeholders, who can offer important advice, views and information for consideration during, and post, policy formulation'.

21. The complainant requested an internal review on 18 March 2019. He later advised the Commissioner that at the time he was under the impression that DCMS were taking into consideration whether to disclose details of the meetings Mr Hancock held with Facebook on 24 May and 20 June 2018 (parts 1 and 3 of his request).
22. DCMS provided the complainant with their internal review on 15 April 2019. The review upheld the application of sections 35(1)(a) and 40(2) and advised that section 43(2)(prejudice to commercial interests) was also engaged to some of the information. The review provided the complainant with some of the information requested (mainly heavily redacted emails).
23. However, the review appeared to treat as a 'refined request' the complainant's clarification of 13 February 2019. As the complainant stated in his subsequent complaint to the ICO:

'The clarification I provided on 13 February was never designed to be a new or 'refined' request that solely focused on the correspondence information. I wish to reiterate that I have never asked the Department to disregard my original request for information regarding the meetings between Matt Hancock MP and Facebook. I do not know why they decided to disregard this information during the internal review. As a result, I believe this whole process has been mishandled'.
24. It was therefore not clear from either the Department's request response of 13 March 2019 or the internal review of 15 April 2019, whether they held any information concerning parts 1 and 3 of the request, as they were wrongly removed from the scope of the same.
25. The internal review noted that in respect of the safe space, the complainant had *'accepted that there is a need for this, especially around such sensitive areas as internet safety'*. DCMS contended that such free and frank conversations are vital to give the government a greater understanding of the issues surrounding the policies being worked upon. The review contended that, *'companies such as Facebook possess a wealth of knowledge that can only be obtained by working in an industry for a number of years. They operate across borders and as*

a result have a deep understanding of what works well for their sector. It is this knowledge that the government seeks to tap into when implementing different policies, such as those regarding internet safety and disinformation/'fake news'.

26. The Department advised the complainant that the government also engages in these free and frank discussions with numerous other social media companies and other experts in the field. The review stated that these discussions occur with a wide range of stakeholders and other interested parties across the sector to ensure that the government has a complete picture when making decisions and implementing policy.
27. DCMS advised that:
- 'All discussions with different stakeholders contribute to a greater understanding of the issues facing the specific industry and the challenges that are to be had in implementing policy on areas such as internet safety and disinformation/'fake news'. The broad range of stakeholders engaged with ensures that we have considered all arguments in favour of, or against, a particular decision. To make policy decisions without engaging with a range of different stakeholders would be remiss'.*
28. DCMS advised that they considered that the disclosure of 'some' of the requested information would be likely to result in the companies concerned not engaging with the department in a candid manner for fear that their contributions will be released to the wider public. The Department contended that this would result in a 'chilling effect' and that in the worst case scenario, *'important stakeholders would not engage with the department at all due to their fear of information being released'*. Alternatively, the review suggested that the stakeholders in question might continue their engagement with the department but the discussions would be less candid, or may not be recorded effectively.
29. The Department contended that such a 'chilling effect' would greatly impair decision makers when it comes to policy decisions. DCMS stated that a lack of engagement from the specific industries would result in less well informed decisions being taken, and these decisions would be more likely to miss their stated aims. The review stated that the same would apply if stakeholders were to engage in a less candid manner, and contended that *'each of these outcomes are clearly not in the public interest'*.

Scope of the case

30. The complainant contacted the Commissioner on 3 June 2019 to complain about the way his request for information had been handled.

31. Following intervention from the Commissioner, on 28 November 2019, DCMS provided the complainant with a revised copy of the correspondence previously provided. The Department removed the redactions made under sections 35 and 43 and applied only minor section 40(2) redactions for the names of junior officials within both DCMS and Facebook who were involved in the correspondence exchanges.
32. On the same date, DCMS wrote separately to the complainant and confirmed that they did hold information relating to the two meetings (parts 1 and 3 of the request). The Department informed the complainant that the meeting of 24 May 2018 had taken place at the Vivatech conference in Paris, with the Secretary of State Mr Hancock, Mr Zuckerberg and a junior official from DCMS in attendance, and the meeting of 20 June 2018 had taken place at the Houses of Parliament, with Mr Hancock, Sarah Connolly (Director Security and Online Harms) Gila Sacks (Director Digital and Tech Policy) and a junior official being in attendance from DCMS and Eliot Shrage (Vice President of Communications and Public Policy) and Karim Palant (UK Public Policy Manager) attending from Facebook.
33. DCMS advised the complainant that the names and contact details of the officials in the Department who are below Senior Civil Servant grade had been withheld under section 40(2) of the FOIA. DCMS stated that they held a note of the meeting on 24 May 2018 and a readout of the meeting that took place on 20 June 2018, and that both documents were exempt from disclosure in their entirety under section 35(1)(a) of the Act. The response provided details of the Department's consideration of the public interest test and confirmed that they considered that the public interest favoured withholding the notes of what was discussed at the two meetings.
34. In subsequent submissions to the Commissioner, DCMS revised their position to the extent that they advised that the note of the meeting with Mr Zuckerberg (Annex A) was exempt from disclosure under section 36(2)(b)(ii) and (c)(prejudice to effective conduct of public affairs). The Department confirmed that the note of the meeting of 20 June 2018 (Annex B) remained exempt under section 35(1)(a) but also under section 36(2)(b)(ii) and (c) in the alternative.
35. In correspondence with the Commissioner on 11 February 2020, the complainant confirmed that he was happy with the application by DCMS of section 40(2) to withhold the details of junior officials.
36. The scope of the Commissioner's investigation has therefore been the decision by DCMS to withhold the note and readout of the two aforementioned meetings (Annexes A and B) under the exemptions

applied. The Commissioner has had sight of the withheld information and detailed submissions from both parties.

Background

37. On 10 and 11 April 2018, in Washington DC, Mark Zuckerberg, founder and CEO of Facebook, testified before the Joint Senate Judiciary and Commerce Committees, after The Observer, together with The New York Times and Channel 4 News, revealed that data from millions of Facebook users had been harvested by UK firm, Cambridge Analytica and potentially used to target them with political adverts¹.
38. On 22 March 2018, The Guardian reported that the Secretary of State for Digital, Culture, Media and Sport, Matt Hancock MP, had appeared on ITV's Good Morning Britain, after being forced to change the settings on his own app following complaints that it was harvesting the data and photos of users². Mr Hancock said that the row about the data breach at Facebook highlighted the need for the public to have more control over their data. He stated that, *'the thing this really shows is the need for more transparency in the big tech companies, so we know what they are doing with our data and that in itself can bring more accountability'*. Speaking later on BBC Radio 4's Today programme, Mr Hancock said, *'Mark Zuckerberg has apologised and said they are going to make some changes but frankly I don't think those changes go far enough. And anyway, it should not be for a company to decide what is the appropriate balance between privacy and innovation'*. Those rules should be set by society, he added.
39. On 11 April 2018, The Guardian reported that Mr Hancock had warned Facebook that it was not above the law, as he threatened the social media firm with regulation if it failed to protect users data more effectively³. At what government sources said was a 'robust but constructive' meeting, Mr Hancock warned Facebook the relationship between government and social media firms would have to change. Attending the meeting from Facebook were its US-based Vice-President of Global Policy Management, Monika

¹ Researcher Dr Aleksandr Kogan and his company GSR used a personality quiz to harvest the Facebook data of up to 87 million people. Some of this data was shared with Cambridge Analytica, who used it to target political advertising in the US.

² <https://www.theguardian.com/world/2018/mar/22/minister-forced-to-change-his-own-app-after-data-mining-complaints>

³ <https://www.theguardian.com/technology/2018/apr/11/digital-secretary-threatens-facebook-with-regulation-over-data-breaches>

Bickert, and Global Deputy Chief Privacy Officer, Stephen Deadman.

According to the newspaper, sources said that the Secretary of State made clear to them that the company's current approach to safeguarding its users data was unacceptable, and he would be seeking clear evidence that its attitude had changed. Speaking after the meeting, Mr Hancock said *'Social media companies are not above the law and will not be allowed to shirk their responsibilities to our citizens. We will do what is needed to ensure that people's data is protected and don't rule anything out, that includes further regulation in the future'*.

40. On 27 November 2018, a Grand Committee took place in Westminster, led by the DCMS Select Committee but also attended by the Canadian Standing Committee on Access to Information, Privacy and Ethics. The hearing was to allow collaborative scrutiny by both the Westminster Parliament and the Parliament of Canada, in their examinations of digital policy, including disinformation and governance of the internet. Both Committees had previously called for Mark Zuckerberg to give evidence about Facebook's process failures and data breaches, but he had declined to attend. Nine countries were represented at the Grand Committee, with 24 official representatives and 447 million people represented. Mr Zuckerberg was empty chaired following his declining to attend, with Facebook being represented by Vice President of Policy Solutions, Lord Richard Allan.
41. On 18 February 2019, the DCMS Committee published its Final Report on Disinformation and 'Fake News'⁴. The report called for urgent regulation of Facebook, including an independent UK body to tackle harmful or illegal content, and criticised Mark Zuckerberg for refusing to give evidence to the Committee. *'By choosing not to appear before the Committee and by choosing not to respond personally to any of our invitations, Mark Zuckerberg has shown contempt towards both our Committee and the 'International Grand Committee' involving members from nine legislators from around the world'*, the report stated.
42. Addressing the Campaign Media360 conference in Brighton on 9 May 2019, DCMS Committee Chair, Mr Damian Collins MP, said that, *'a lot of the criticism that Mark Zuckerberg in particular has received over the last year is entirely justified and has come about because of the actions they've taken as a business to maximise their revenue from advertising, to gather more data, allow more sophisticated targeting, to avoid any disclosure or transparency'*⁵. Referring to the controversy of Russians buying US political

⁴ <https://publications.parliament.uk/pa/cm201719/cmselect/cmcmds/1791/1791.pdf>

⁵ <https://www.campaignlive.co.uk/article/senior-mp-damian-collins-mark-zuckerberg-criticism-entirely-justified/1584171>

advertises on Facebook in the run up to the 2016 US Presidential election (a US Federal crime), Mr Collins said that these had been approved by Facebook's ad check team and it had taken another year before action was taken. When challenged about this, Facebook said it would have checked for this if it had been asked to. *'Isn't this extraordinary'*, Mr Collins contended, *'in most other complex international organisations, there is a much higher level of scrutiny and regulation'*.

43. In October 2017 the Government published its Internet Safety Strategy (ISS) Green Paper⁶, the first publication under the Digital Charter, which contained proposals relating to tackling unacceptable behaviour and content online. A consultation on the proposals ran from October to December 2017. In the Government's response to the consultation of May 2018, they noted that *'since then, the use of the Internet to spread disinformation or 'fake news', the dangers of using AI to manipulate public opinion at scale, the mass misuse of personal data and the potential for data to be used for unethical or harmful purposes, have all gained prominence as serious and real problems, demonstrating the importance of a comprehensive strategic approach to improve online safety and restore citizens' confidence in technology'*.
44. In April 2019, the Government published its Online Harms White Paper⁷ (OHWP), which proposed the regulation of online content in the UK by a new internet regulator. Companies in scope included social media platforms such as Facebook and they would be required to combat both illegal content and activity as well as behaviour considered harmful but not necessarily illegal. This publication took place in a context of serious concern about online harms, and several high profile tragic cases, such as the death of teenager Molly Russell in 2017, who took her own life after viewing graphic material about self-harm and suicide on the Facebook owned app, Instagram, and the mass mosque shootings in Christchurch, New Zealand, on 15 March 2019, which left 51 people dead and 49 injured, the gunman live streaming the atrocity on Facebook.
45. The Executive Summary of the White Paper stated that:

'The government wants the UK to be the safest place in the world to go online, and the best place to start and grow a digital business. Given the

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/650949/Internet_Safety_Strategy_green_paper.pdf

7

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/793360/Online_Harms_White_Paper.pdf

prevalence of illegal and harmful content online, and the level of public concern about online harms, not just in the UK but worldwide, we believe that the digital economy urgently needs a new regulatory framework to improve our citizens' safety online. This will rebuild public confidence and set clear expectations of companies, allowing our citizens to enjoy more safely the benefits that online services offer'.

46. On 12 February 2020 the Government published its initial response to the public consultation on the White Paper, which confirmed that the 'duty of care' would only apply to companies that facilitate the sharing of user generated content, for example, through comments, forums or video sharing. The response advised that *'just because a business has a social media presence, does not mean it will be in scope of the regulation'*, with analysis suggesting that fewer than 5% of UK businesses would be in scope of the regulatory framework. On the question of who would taking on the role of the internet regulator, the Government advised that they were minded to appoint Ofcom, as this *'would allow us to build on Ofcom's expertise, avoid fragmentation of the regulatory landscape and enable quick progress on this important issue'*.

Reasons for decision

47. Section 36(1)(a) of the FOIA states that the Section 36 exemption applies to *'information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of Section 35'*. Therefore, where information is exempt under section 35(1)(a)(formulation or development of government policy) of the Act, section 36 cannot apply to that information. The Commissioner notes that in their response of 28 November 2019, DCMS applied section 35(1)(a) to the information held concerning both meetings, but later revised their position in submissions to the Commissioner, advising that the information concerning the meeting between the Secretary of State and Mr Zuckerberg was exempt under section 36(2)(b)(ii) and (c)(prejudice to effective conduct of public affairs). The Commissioner is considering DCMS arguments regarding section 35(1)(a) first and will only go on to consider section 36 if section 35 is not engaged.

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

48. Section 35(1)(a) states that:

'Information held by a government department or by the National Assembly for Wales is exempt information if it relates to

(a) The formulation or development of government policy'

49. 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 a public authority to demonstrate prejudice to these purposes.
50. 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. '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.
51. It is only necessary for the withheld information to 'relate to' the formulation or development of government policy for the exemption to be engaged. In accordance with the Information Tribunal decision in *DfES v Information Commissioner & the Evening Standard* (EA/2006/006, 19 February 2007) the term 'relates to' is interpreted broadly. Any significant link between the information and the process by which government either formulates or develops its policy will be sufficient to engage the exemption.
52. 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 content of the information in question and its context.
53. 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.
54. In submissions to the Commissioner, DCMS explained that the two meetings with Facebook occurred sometime after the department

published the ISS⁸. DCMS noted that this paper described a great number of online harms which the UK Government was concerned about, *'many of which fall squarely within the remit of social media companies such as Facebook. Therefore, it is logical that the department would want to meet with such interested parties to understand their take on the announcement and proposals'*.

55. Having seen the withheld information concerning the two meetings, the Commissioner is satisfied that the information clearly relates to the formulation and development of the Government's policy on internet safety and the Digital Charter, these meetings having taken place as part of that ongoing policy formulation and development. The consequences of the Government's decisions in respect of this matter will be of widespread public import and impact, such decisions being taken by relevant Ministers and the Cabinet as a whole.
56. As section 35(1)(a) is engaged to the withheld information concerning **both** meetings, section 36 does not apply to Annex A and this information is exempt from disclosure under section 35(1)(a), as originally contended by DCMS.

Public interest test

57. 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

58. In his correspondence with the Department of 13 February 2019, the complainant stated, *'I believe there is huge public interest in knowing exactly what was discussed with Facebook and what actions were proposed, considering the well documented issues Facebook has been wrestling with lately and the significant impact Facebook and social media has on the lives of UK citizens'*.
59. In his request for an internal review of 18 March 2019, the complainant contended that, *'the public interest in revealing discussions between government and Facebook far outweighs any threat to effective policy making. Indeed, I believe full disclosure could benefit policy decisions and lead to better policy'*. He noted that the role that social media has played in shaping modern democracy had been well documented and *'it*

⁸ <https://www.gov.uk/government/consultations/internet-safety-strategy-green-paper>

is of the utmost importance that there is full transparency regarding Facebook's influence over policy'.

60. The complainant contended that of particular public interest was what occurred during the meeting between Facebook's Mark Zuckerberg and Matt Hancock on 24 May 2018, and any subsequent impact it had had on policy decisions. Only a few days before this meeting, the complainant noted that Mr Hancock had stated on the BBC's The Andrew Marr Show that the difficulties getting Mr Zuckerberg to answer MP's questions showed that the UK did not have sufficient power to police social media⁹. The complainant noted that, *'as far as I'm aware, there had been no public disclosure of what emerged as a result of the meeting between Mark Zuckerberg and Matt Hancock, and I believe this is to the huge detriment of the public interest'.*
61. The complainant noted that the Cambridge Analytica controversy had shown *'the potentially huge influence Facebook has over a well-functioning UK democracy'.* He contended that the non-disclosure of the requested information *'would threaten accountability and transparency in a vital area of policy making, and raises the threat of select groups such as Facebook having an unduly privileged position in the shaping of the future of British democracy'.*
62. Whilst acknowledging that a full and frank discussion was required for such a sensitive area of policy making, the complainant stated his view that *'this is too important an area to refuse to disclose the key points of discussion'.* He referenced the criticisms of Facebook by DCMS Committee Chair, Damian Collins MP. The complainant contended that disclosure of what occurred during and after the meeting between Mr Zuckerberg and Mr Hancock *'is vital to reassure the British public that Facebook is not dodging its responsibilities'.*
63. The complainant stated that:
- 'In my view, there is an undeniable public interest in understanding how technology firms with privileged access to government are lobbying their case. Greater transparency will allow supporting or counterbalancing views to be put to government to help ministers and civil servants make the best policy'.*
64. In his submissions to the Commissioner, the complainant noted that Facebook's huge influence over society and democracy had been well documented in recent years, with politicians around the world, including

⁹ <https://www.bbc.co.uk/news/uk-politics-44188805>

the UK, making it clear that they believe Facebook potentially poses a risk to democracy and society, and that there has been a failure of corporate governance at the company. The complainant explained that it was for these reasons that he requested the information about the meetings in question.

65. The complainant contended that it is *'vital there is transparency over the lobbying efforts of Facebook'*, noting that the company's efforts to persuade ministers to lobby on their behalf were a matter of public record. The complainant referenced an article in Computer Weekly 2 March 2019, entitled, *'Facebook asked George Osborne to influence EU data protection law'*¹⁰. The article reported that Facebook Chief Operating Officer, Sheryl Sandberg, at a meeting during the World Economic Forum (WEF) in 2013, asked then Chancellor of the Exchequer, George Osborne, to be *'even more active and vocal'* in his concerns about European data protection legislation, and to *'really help shape the proposals'* during a lobbying campaign to influence EU policy.
66. The complainant referenced ICO guidance which states that, *'where lobbyists have been involved in the discussions then they are even less likely to be inhibited in their contributions by the possibility of disclosure as they are trying to further their own agenda by influencing departments'*¹¹. For this reason, the complainant submitted that 'chilling effect' arguments do not apply in this case.
67. The complainant advised that it was his understanding that *'the high-level policy objective has now been announced through the publication of a White Paper in which DCMS propose an independent watchdog for tech companies'*. The complainant therefore refuted the Department's argument that a 'safe space' argument favoured the withholding of the requested information *'now that the government has set out its policy position and framed the debate'*.
68. The complainant contended that it was *'imperative'* that the public knows what was discussed between the Secretary of State and Mr Zuckerberg on 24 May 2018. He noted that both Mr Hancock and the DCMS Committee had been vocal regarding Mr Zuckerberg's refusal to appear in front of the Committee and so he therefore found it surprising

¹⁰ <https://www.computerweekly.com/news/252458229/Facebook-asked-George-Osborne-to-influence-EU-data-protection-law>

¹¹ <https://ico.org.uk/media/for-organisations/documents/1200/government-policy-foi-section-35-guidance.pdf>

that DCMS were withholding this information. The complainant also stated his belief that the public interest favoured the disclosure of the information concerning Mr Hancock's subsequent meeting with Facebook on 20 June 2018.

69. The complainant noted that the correspondence disclosed by the Department had revealed that *'Elliot Schrage, Facebook's top lobbyist at the time, was involved in the discussions'*. The complainant noted that Mr Schrage had left Facebook after it emerged that *'he had hired a PR firm to run a smear campaign against vocal Facebook critic George Soros¹². Any dealings Mr Schrage has had with the UK government must be made public'*. The complainant contended that *'the involvement of Facebook's lobbyists and chief executive is an additional argument in favour of disclosure because it will provide transparency over policy decisions that have a significant impact on the public'*. He submitted that Mr Zuckerberg, in his role as CEO of the company, *'is unlikely to have been inhibited in his contributions because his discussions will have centred around furthering the company's own agenda'*.
70. Noting that on 2 February 2020 the Government had published its response to the public consultation on the White Paper, the complainant submitted that *'there is now a significant public interest in allowing public scrutiny of Facebook's influence on the final policy before it is implemented'*. The complainant stated that it was revealed that there were over 2,400 responses to the consultation, *'but it appears Facebook has had undue influence on policy due to its lobbying efforts, which are being kept secret from the public. It would be in the highest public interest to release this information'*.
71. The complainant stated that Mark Zuckerberg's lobbying for a light-touch regulator has already been heavily criticised by EU officials, with the EU being forthright in its views that Facebook has no right to tell it how to regulate the market. The complainant noted that EU Industry Commissioner, Thierry Breton, has recently (February 2020) stated, following a meeting with Mr Zuckerberg, that *'It's not for us to adapt to this company, it's for this company to adapt to us'¹³*. The complainant submitted that the secret meetings the UK Government has been having with Facebook suggest that the company is exerting too much influence on what shape the UK regulator will take. The complainant noted that Mr Breton had dismissed a discussion paper issued by Facebook which

¹² <https://www.bbc.co.uk/news/technology-51545591>

¹³ <https://venturebeat.com/2020/02/18/industry-chief-tells-facebook-to-adapt-to-eu/>

rejected what the company called intrusive regulations and suggested looser rules whereby companies would periodically report content and publish enforcement data. The complainant contended that *'the UK has a right to know whether this is what Facebook has also been lobbying the UK Government for behind closed doors'*.

72. The complainant noted that Mr Zuckerberg had been given an opportunity to publicly lay out his vision for a regulator in an article in The Financial Times on 16 February 2020¹⁴ and so *'it is now of the utmost importance that we know the lobbying he and his employees have been carrying out in private'*.
73. The complainant observed that following the £500,000 fine issued against Facebook by the ICO in October 2018 for the company's role in the Cambridge Analytica scandal, the Commissioner had stated that *'there are still bigger questions to be asked and broader conversations to be had about how technology and democracy interact and whether the legal, ethical and regulatory frameworks we have in place are adequate to protect the principles on which our society is based'*¹⁵. The complainant contended that with the Government now considering a regulatory framework that would govern Facebook, the public *'must know the lobbying Mr Zuckerberg has been carrying out. Technology is now inextricably linked with our democracy, and the utmost transparency is needed when it comes to Facebook's influence over regulation and government policy'*.
74. In submissions to the Commissioner, DCMS stated that there is always *'a general public interest in governmental transparency'*. The Department noted that the government works for the benefit of the taxpayer, and there is a requirement that the government should act with this in mind. The Department noted that this general public interest in transparency *'increases somewhat when concerned with our engagements with big corporations'*. In respect of Annex B, DCMS recognised that *'transparency would expose the department's interactions with important stakeholders and ensure that they do not have an overly privileged position when it comes to engaging with the department'* *'To that end, complete transparency would provide the public with information about a meeting the department has held with stakeholders'*.

¹⁴ <https://www.ft.com/content/602ec7ec-4f18-11ea-95a0-43d18ec715f5>

¹⁵ <https://ico.org.uk/facebook-fine-20181025>

75. DCMS acknowledged that Facebook is a large organisation '*who many feel exert a lot of power across the globe*'. The Department submitted that complete transparency in respect of Annex A would '*allay any fears that Facebook are lobbying government to help protect their own interests*'. The Department acknowledged that there was '*a more intense public interest*' in understanding of the context of the Secretary of State's discussion with Mr Zuckerberg in May 2018, as a result of the Cambridge Analytica scandal and Mr Zuckerberg's declining to attend the DCMS Select Committee when requested to do so. DCMS recognised that '*these public interest arguments could provide a clear public interest in the release of the information concerning this specific meeting*' (Annex A).

Public interest arguments in favour of maintaining the exemption

Annex A

76. However, DCMS advised the Commissioner that whilst they could see '*the strong public interest*' in the contents of the specific meeting (Annex A) it was their contention that there is a stronger public interest in ensuring that the department can have robust and effective discussions with stakeholders at all times. DCMS contended that '*this is particularly the case for very senior people within significant organisations such as Facebook*'.
77. DCMS advised that engagements with various stakeholders such as Facebook, play a vital role in the workings of government and the Department. They explained that, '*it is imperative for the department to understand the thoughts, positions and state of play according to stakeholders, who are often experts in their field, particularly on high profile issues*'. DCMS stated that future policy decisions and directions need to be made with a great understanding of all the issues present, and part of this includes having a greater understanding of the stakeholders in the relevant sector. DCMS explained that this enabled the Department and government to make effective decisions based upon free and frank discussion with senior individuals in major companies. DCMS advised that it is for this reason that the Department, and government more widely, meets with such stakeholders, and DCMS had engaged with many stakeholders in the social media sector, and the online sphere more generally.
78. For this reason, the Department contended that there is a strong public interest in protecting these discussions from outside influence. DCMS stated that if those with whom the Department met were concerned that any aspect of the meeting would be made public, then this would be likely to reduce the quality of the discussions by making them less candid. DCMS explained that '*meetings that are less candid are not as effective in helping the department understand the views of the*

stakeholders with whom we are engaging and the sectors in which we work'.

79. DCMS contended that, *'it is not in the public interest that we do not have the greatest possible understanding of issues which could affect our policy direction, particularly on technical complicated issues that will affect the public at large'.* The Department submitted that the knowledge that such discussions would be made public, in itself reduces the likelihood of them happening, or the usefulness of them if they happen.
80. Along with the need for such meetings to be candid, DCMS contended that there is also *'a strong public interest that such meetings are recorded in explicit detail'.* The Department advised the Commissioner that *'it is clear from the information in question that the drafter was writing with the greatest degree of detail, uninhibited by the FOI Act or fear that information would be released'.* DCMS noted that *'it is evident that the drafter had to convey the tone of the meeting which would help facilitate greater understanding within the department of Facebook's position and in particular the views of their CEO. This detail has allowed the department and its officials to understand Facebook's position towards the UK Government and the policies under development, in a way that is not possible through public statements'.*
81. DCMS noted that some of the views *'clearly represent the subjective opinion of the individual taking the notes'.* DCMS contended that if they were to release their free and frank thoughts on important stakeholders, this would have several significant ramifications. Firstly, those whom the Department meet would not feel able to be candid in such meetings, for fear that their actions, thoughts and feelings would be critically assessed publicly by the Department, building up a picture that may or may not be correct. DCMS acknowledged that *'it would be remiss not to consider that stakeholders would expect their contributions to be critically assessed, however, the public nature of such assessment would not be expected or wanted'.* DCMS stated that the disclosure of such subjective opinions could cause significant damage to the relationship between the department and important stakeholders.
82. Secondly, DCMS contended that *'those who are recording such discussions will not feel able to give their free and frank thoughts on such meetings, again for fear that their thoughts would be made public'.* DCMS stated that this would result in the records of such meetings being of a reduced quality, which would mean that those who need to understand the outcomes of the meetings would not have all the information to hand. DCMS advised that, *'first hand assessment of the situation is of great benefit to the department in policy making and it is imperative that those present at the meeting can give their unfettered thoughts on the meeting'.*

83. DCMS contended that both of the above outcomes would not be beneficial to the department or government more widely, and it is not in the public interest that discussions with important stakeholders, or the recording of such meetings, are inhibited by the fear of information disclosure if it causes worse policy or advice to the Minister as a result.

Annex B

84. As with Annex A above, DCMS contended that there is *'a strong public interest in ensuring that the policymaking process is protected from undue external influence that the release of this information would bring'*. The Department stated that the policymaking process needs to be informed by robust, candid discussions on the topics under discussion – in this case potential legislative measures on online harms and protecting vulnerable people online.
85. DCMS stated that the policy decisions to be made in this area will have an impact on wider society and therefore need to take into account the thoughts and feedback of important stakeholders such as Facebook, amongst many others. DCMS advised that they meet with such stakeholders on a regular basis to help inform decisions and to obtain views from across the relevant sector. The Department stated that *'it will be clear that many of the future policies that emanate from our work on the ISS and OHWP will affect, in part, companies such as Facebook and other social media firms. As a result of that it is therefore imperative that we meet with such stakeholders to get their engagement on the matter'*.
86. DCMS contended that this *'safe space'* is vital to the policymaking process, and that if stakeholders such as Facebook were concerned that their contributions in meetings with the department would be disclosed then future engagements are likely to be less candid. The Department stated that the loss of candour *'would greatly impact on the quality of the discussions with important stakeholders, which would prejudice the quality of decision making'*. DCMS suggested that as decisions made would not be able to take account of the candid thoughts of stakeholders, it was more likely that they would be met with resistance by such companies.
87. The Department advised the Commissioner that these discussions help provide balance to debate on the issues at hand and ensure a wide range of views contribute to the policymaking process. DCMS contended that, *'it is in the interests of the policy in question and good government that these discussions take place. Therefore, it is in the public interest that the policy in question and the discussions around it are robust and candid'*.

88. DCMS submitted that the disclosure of any of the information contained in Annex B (as with Annex A) would be likely to make Facebook and other stakeholders more reticent to meet with the Department in the future. *'If they do meet with us, there is likely to be more discussion considered 'off the record' and therefore not recorded, for fear of potential disclosure. It is not in the public interest that future discussions with stakeholders are inhibited by fear of the FOI Act'.*
89. DCMS contended that to disclose the specific information concerned, *'which relates to our engagements on potential future policy direction, would be likely to impact the policymaking process'.* The Department stated that with decisions still to be made on a raft of policies from the OHWP/ISS and relating to the online sphere, the disclosure of this information *'could have the impact of forcing change on a decision not for the benefit of the policy, but due to a swell of adverse public reaction'.* DCMS stated that decisions which are made to avoid adverse publicity as opposed to furthering the policy's aims are not in the public interest.
90. The Department stated that they considered that to disclose details of this free and frank discussion would be likely to impact on the 'safe space' that is required to enable these discussions to take place with candour. DCMS contended that the disclosure of the information would create a 'chilling effect', which would reduce the frankness of future discussions or might make stakeholders and other parties more reticent to engage with the department for fear of release of their thoughts.
91. DCMS acknowledged that *'whilst there is a public interest in understanding the conversations the department has with stakeholders, we argue that intense scrutiny of this process at this stage in the policy formulation process is not in the public interest'.* The Department was clear in confirming to the Commissioner that they considered that the whole meeting of 20 June 2018 concerned discussion around ongoing policy formulation and that therefore they considered that the public interest favoured maintaining the exemption.

Balance of the public interest arguments

92. Before addressing the respective public interest arguments, it is important to be clear that the Commissioner's consideration is confined to the circumstances and background that prevailed at the time of the complainant's request (30 November 2018). As detailed earlier in this notice, in the time that has elapsed since the request, there have been significant developments with regards to the Government's policy concerning internet safety, most notably the publication of the White Paper in April 2019 and the Government's February 2020 response to the public consultation which followed the same. However, the

Commissioner cannot take these into account when determining the public interest balance in this case.

93. It is also important to note that as a qualified exemption, there is no inherent or automatic public interest in maintaining section 35(1)(a). In some cases the public interest will lie in the disclosure of the information concerned into the public domain, despite the exemption being engaged.
94. The Commissioner is therefore concerned by the DCMS statement that the withheld information in this case was created on the understanding that it would not be released into the public domain and '*uninhibited by the FOI Act*'. As the Department and its officials should be aware, all recorded information subject to a qualified exemption such as this one is potentially disclosable under the FOIA. Whether specific information is considered appropriate for public disclosure will depend on the individual facts and circumstances of each case. Section 35(1)(a) was designed to protect the policy formulation and development process and where the public interest factors in favour of disclosure of such related information are outweighed by the public interest case for maintaining the exemption, such information will not be disclosed into the public domain. The '*fear*' of the FOIA suggested by DCMS is therefore misplaced, as is clear from the caselaw on this exemption.
95. The Commissioner is similarly concerned by the Department's suggestion that disclosure may result in stakeholder discussions taking place '*off the record*' and not recorded, for fear of potential disclosure. The Commissioner would hope and expect that Ministers and officials would conduct and record such discussions professionally and appropriately, irrespective of any future disclosures. Moreover, she believes that the public has a right to expect that government Ministers and officials will fulfil their responsibilities in the proper manner and maintain appropriate records. '*Access to information rights depends on public authorities documenting their key activities and decisions. Failure to do this can undermine public accountability, the historical record and public trust*'¹⁶.
96. DCMS have advanced both safe space and chilling effect arguments in respect of the withheld information in this matter. The weight that should be attributed to both of these arguments depends upon the timing of the request and whether, at the point the request is submitted,

¹⁶ https://ico.org.uk/media/about-the-ico/documents/2615190/openness_by_-design_strategy_201906.pdf

the policy making remained live and ongoing. In assessing this, as the Commissioner's guidance makes clear, she does not accept that there is inevitably a continuous process or 'seamless web' of policy review and development. Rather, in most cases, the formulation or development of policy is likely to happen as a series of discrete stages, each with a beginning and end, with periods of implementation in between. However, the Commissioner also accepts that there are no universal rules and it is not necessarily the case that a policy development process is completed the moment a policy is publicly announced.

97. The Commissioner accepts that significant weight should be given to safe space arguments, the concept that 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.
98. The Commissioner's guidance on section 35 recognises the importance of the timing of a request when considering the public interest balance. The Commissioner considers that *'if the information reveals details of policy options and the policy process is still ongoing at the time of the request, safe space and chilling effect arguments may carry significant weight'*.
99. In this case the Commissioner recognises that whilst the Government's broad intentions and purpose of its proposed legislation on internet safety and regulation were publicly known at the time of the request, the ISS Green Paper having been published in October 2017, the policy remained at the formulation and development stage. The meetings with Facebook which comprise the withheld information, took place within a context and process of seeking the views of sector stakeholders towards the announcement and proposals in that Paper. The complainant is correct in his observation that the high-level policy objective of an independent regulator for companies which facilitate the sharing of user generated content was announced in the subsequent White Paper of April 2019 but this, and other more recent firming up of the policy position, post-dated his request.
100. In any case, at the time of the request and at the present time, the policy development process remained live and ongoing, as recognised by the complainant in his contention that *'there is now a significant public interest in allowing public scrutiny of Facebook's influence on the final policy **before it is implemented**'* (Commissioner's emboldening). The Commissioner accepts that at the time of the request the Government had already framed the debate and made clear the direction of travel in this policy area, but the policy itself clearly remained at the formulation and development stage rather than implementation.

101. Since the policy making remained live and ongoing at the time of the request, the Commissioner considers that significant weight should be attributed to the safe space arguments. Indeed, the need for the safe space is augmented in this case because of the trailblazing nature of the policy, its seismic scope and the critical importance of achieving the most effective policy to successfully tackle the serious online harms and abuses which are of widespread public concern. The Commissioner recognises of course, that such factors also provide strong public interest grounds for disclosure.
102. There is a strong public interest in not revealing discussions on yet to be finalised policy options as it may distract Ministers and officials from focusing on the actual task of formulating and developing the Government's policy towards internet safety and the Digital Charter. The Commissioner shares the view expressed by the Information Tribunal in *Department for Business, Enterprise and Regulatory Reform v The Information Commissioner* [EA/2007/0072] that '*there is a strong public interest in the value of government being able to test ideas with informed third parties out of the public eye and knowing what the reaction of particular groups of stakeholders might be if particular policy lines/negotiating positions were to be taken*'.
103. The Commissioner considers that given Facebook's influence and dominance as a social media platform, it is entirely reasonable and legitimate that DCMS should seek to canvass their views on policy ideas and proposals for regulation of such online activity. The Commissioner recognises that like any company, Facebook will have its own agenda and interests but this does not disqualify or negate their involvement and views as a key stakeholder in this area, or the need for confidentiality in respect of the same.
104. In the Commissioner's view, the disclosure of the withheld information in this case would present a significant risk of undermining the confidential space needed by DCMS to discuss policy making in this area, and moreover presents a genuine risk of encroaching on the candour of any future discussions in respect of such policy making. The Commissioner considers that this risk is greater in respect of Annex B, which contains more detailed information on the relevant policy development.
105. With regard to the chilling effect arguments contended by DCMS, the Commissioner recognises that civil servants are expected to be impartial and robust when giving advice, and not easily deterred from expressing their views by the possibility of future discussions. The Commissioner also acknowledges, as stated in her guidance as cited by the complainant, that where lobbyists are involved in discussions with government they are even less likely to be inhibited in their contributions by the possibility of disclosure as they are trying to further

their own agenda by influencing departments. Nonetheless, chilling effect arguments cannot be dismissed out of hand and are likely to carry some weight in most section 35 cases.

106. If the policy in question is still live, the Commissioner accepts that arguments about a chilling effect on those ongoing policy discussions are likely to carry significant weight. Arguments about the effect on closely related live policies may also carry weight. However, once the policy in question is finalised, the arguments become more and more speculative as time passes. It will be difficult to make convincing arguments about a generalised chilling effect on all future discussions. As noted above, the Commissioner accepts that at the time of the request the policy making in relation to the relevant issues remained live and ongoing.
107. The Commissioner would also note that whilst she recognises the complainant's concern about Facebook's lobbying ability and influence, the meetings in question took place as part of the Government actively seeking the views of sector stakeholders such as Facebook in respect of their policy proposals and objectives. In light of the sensitive nature of the matters under discussion and the ongoing nature of the policy making, the Commissioner considers that the chilling effect arguments in this case should be given considerable weight in relation to the withheld information, particularly Annex B.
108. However, whilst the Commissioner entirely recognises and accepts that there is a strong public interest in ensuring that DCMS can have robust and effective discussions with stakeholders at all times, and providing the appropriate safe space for the same, she considers that the withheld information in this specific case carries a very strong public interest in disclosure, for the reasons advanced by the complainant.
109. As the world's dominant social media platform, Facebook has an unrivalled position and ability to influence government policy and regulation in this area and affect the effectiveness and success of the same. Technology is indeed, as contended by the complainant, inextricably linked with the democratic process and the social media giant's record in this fundamentally crucial area has been extremely controversial and a cause of international concern. Social media has an ever increasing impact on society and the lives of UK citizens, with no company being more influential than Facebook¹⁷.
110. The Commissioner considers that concomitant with that influence and impact is a necessarily high degree of transparency and openness about

¹⁷ The social media giant also owning WhatsApp and Instagram.

Facebook's contact and discussions with government. In the Commissioner's view the requirement for due transparency and openness is particularly acute in the present case given Mr Zuckerberg's absence in the UK public domain.

111. The Facebook founder and CEO has given public testimony to US lawmakers but has repeatedly refused to provide such cooperation and personal accountability to their UK counterparts. As the complainant has noted, that failure has been subject to strong criticism from the DCMS Select Committee, with the then Secretary of State, Mr Hancock, stating that the difficulties in getting Mr Zuckerberg to answer MP's questions and the fact that only four of the 14 biggest social media firms invited to government talks actually attended, had given him '*a big impetus*' to legislate to tackle online behaviour¹⁸.
112. Given the unwillingness of Mr Zuckerberg to provide such public personal and corporate accountability, and the Cambridge Analytica controversy, the Commissioner considers that there is a very strong and compelling public interest in his meeting with the Secretary of State on 24 May 2018 as the disclosure of this information would go some way to rectifying a serious transparency shortfall.
113. Whilst the Commissioner would agree that there is a strong public interest in ensuring that DCMS (and other government departments) can have robust and effective discussions with very senior people within significant organisations such as Facebook, such senior individuals, given their level of control and influence in the public sphere, cannot reasonably expect to exempt themselves from all public transparency and openness. In view of the high level of personal control which the Facebook founder and CEO enjoys over some of the most influential and powerful social media platforms in the UK, the Commissioner considers that the demand for such transparency is correspondingly high.
114. The scale and dominance of Facebook in the area of online activity for which the Government is seeking to regulate, means that there must be a high level of transparency in relation to their discussions and involvement in the policy formulation and development process. The Commissioner accepts the complainant's contention that the withholding of all of the withheld information in this case would seriously undermine accountability and transparency in a hugely important area of policy making. It would encourage the perception, if not the reality, that powerful stakeholders such as Facebook have privileged and protected

¹⁸ Interviewed on The Andrew Marr Show on 20 May 2018

positions in respect of influencing and potentially shaping, government policy and legislation.

115. That said, the Commissioner does not agree with the complainant's contention that the public interest in discussions between government and Facebook '*far outweighs*' any threat to effective policy making which disclosure of the information may present. Rather, the Commissioner considers that the respective public interest arguments in this case are very finely balanced.
116. In respect of Annex B, the Commissioner considers that whilst there is clearly a strong and legitimate public interest in transparency and openness of this information (as recognised by the Department in their submissions to the Commissioner), that public interest is outweighed, albeit by a narrow margin, by the strong public interest in providing DCMS with the appropriate and necessary safe space to engage effectively with Facebook in this hugely important area. Given that the policy formulation and development process was still live and ongoing at the time of the request, the Commissioner considers that the public interest would not have been best served by premature disclosure of this information.
117. In respect of Annex A, whilst the same public interest arguments in favour of maintaining the exemption apply as above, the Commissioner considers that these are outweighed, to a narrow but decisive degree, by the strong public interest (acknowledged by the Department as a 'clear public interest') in disclosure of this specific information. The Commissioner has reached this determination for two key reasons.
118. Firstly, and most importantly, the fact that this information provides the only available insight and understanding into Mr Zuckerberg's position and views as regards the Government's proposed legislation. Had Mr Zuckerberg attended the Select Committee hearings to provide such public accountability, the public interest weight of this information would have been reduced. As it is, in the absence of any such transparency, and given the exceptionally influential and powerful role which Mr Zuckerberg and Facebook have in this policy area, the Commissioner would agree with the complainant that it is imperative, if the public interest is to be appropriately met, that this information is disclosed.
119. Secondly, in reaching this decision, the Commissioner has been mindful that whilst this information (Annex A) was recorded in a candid and informal style, its broad brush and generalised nature does not disclose the degree of detail and sensitive policy related information which would seriously undermine or impinge upon the policy making process. Nor does the information disclose the identity of the note-taker. For this reason the Commissioner considers that the public interest case for maintaining the exemption carries less weight than that in respect of

Annex B. The Commissioner is therefore satisfied that the strong public interest in maintaining the exemption to Annex A is outweighed by the exceptionally strong public interest case for disclosure of this specific information.

120. For the reasons explained above, the Commissioner considers that the public interest in maintaining section 35(1)(a) to Annex A does not outweigh the public interest in disclosure of the information.

Section 1 – General Right of Access

121. Section 1 of the FOIA states that:

'Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him'.

122. The Department's substantive response of 13 March 2019 failed to confirm whether they held the meeting information requested and it was not until the revised response of 28 November 2019 (a year after the complainant's request) and following intervention from the Commissioner, that DCMS finally confirmed that they held this information and that it was considered exempt from disclosure. The Commissioner therefore finds that the Department is in breach of section 1(1) of the FOIA.

Section 10 of the FOIA – Timeliness of response

123. Section 10 of the FOIA states that response to requests made under the Act must be provided *'promptly and in any event not later than the twentieth working day following the date of receipt'*.

124. The complainant submitted his very clear and concise request on 30 November 2018. DCMS did not provide a substantive response until 13 March 2019 and even that was defective for the reason noted in paragraph 122 above.

125. In submissions to the Commissioner, the complainant has described the process of making his request as a *'tortuous process'* with DCMS having delayed and misinterpreted information throughout. The complainant considers that the principles of transparency required by the FOIA have been damaged by the Department's delays and has expressed his concern that these may have been deliberate.

126. Whilst the Commissioner considers that the poor handling of this request is attributable to error rather than design, and acknowledges that DCMS has apologised to the complainant for what they described as a '*misunderstanding*', she is concerned that this was a serious breach of section 10 of the FOIA, and one which could clearly have been avoided had the Department applied proper care and attention when processing the request. The Commissioner would emphasise to DCMS that she would not expect to see such delays and poor handling in future.

Right of appeal

127. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

128. 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.

129. 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

**Gerrard Tracey
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Wycliffe House
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SK9 5AF**