

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 11 September 2023

**Public Authority:** Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4DF

#### **Decision (including any steps ordered)**

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1. The complainant made a four-part request for information on the findings of a consultation on a review of Section 24 of ASPA [Animals (Scientific Procedures) Act 1986]. For parts 1 and 2, the Home Office said that Section 24 of ASPA remains under active review and it provided the URL to the latest update. It said that part 3 of the request was not for recorded information under FOIA and, for part 4, that there was no committee in existence (as specified by the complainant) nor any application process for that committee.
2. As set out in the 'Scope' section of this notice, the complainant has not challenged that part 3 of her request was deemed invalid under FOIA so the Commissioner disregarded this aspect from any further consideration. He also accepts that part 4 has been addressed by the Home Office and warrants no further examination.
3. The Commissioner's decision is that, on the balance of probabilities, no further recorded information is held by the Home Office in relation to parts 1 and 2 of the request.
4. No steps are required as a result of this notice.

#### **Request and response**

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5. On 26 February 2023, the complainant wrote to the Home Office and requested information in the following terms:

"Re the Response, dated 14th January 22, to my FOI 67899:

I asked:

Could you please also advise when the findings of Consultation on the Review of Section 24 of ASPA 1986 will be made public. The Consultation ran from 01.05.14 to 13.06.14 and so there has now been 7.5 years to collate the responses. If the results have already been made public please can you send a link so that I am able to view them.

You replied:

There is no confirmed date for the publication of the findings of the consultation of the review of Section 24 of ASPA. A pressing issue has been the lack of a policy unit to manage this work. This Unit is being convened and we can expect publication by early summer [ie summer 2022].

**My questions now:**

1. Can you please provide an update as to when the results will be published?
2. Why there has been a 8.5 year delay?
3. If the results will actually be worthwhile and relevant over this delayed time-span?

Re the Response, dated 20th June 22, to my FOI 69000:

I asked:

Could you please explain the process of how an interested stakeholder can join the ASRU committee [Animals in Science Regulation Unit], [name redacted] from UAR [Understanding Animal Research] stated in an EMail that 'ASRU meets regularly with several stakeholder groups to scrutinise and improve how the legislation is working, including animal rights groups like PETA [People for the Ethical Treatment of Animals]. Cruelty free international, vets, academics, industry – absolutely everybody with an interest'.

You replied:

The Home Office is reviewing its stakeholder engagement framework and will provide more information to stakeholder groups in due course.

**My question now:**

4. Are you now in a position to let me know the application process to gain a seat on the ASRU committee, either as an individual or as a representative of a campaign such as Beagle Freedom Project."

6. The Home Office responded on 13 March 2023. For parts 1 and 2 of the request, it said that Section 24 of ASPA remains “under active review” and provided the URL to the latest update at that time.<sup>1</sup> The Home Office said that part 3 is not a request for recorded information under FOIA. For part 4 it said that the Home Office meets regularly with a range of stakeholders and confirmed that there is no ‘ASRU Committee’ or application process.
7. The complainant requested an internal review on 11 April 2023 which the Home Office provided on 11 May 2023. It maintained its original position.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 19 June 2023 to complain about the way her request for information had been handled.
9. On 1 August 2023, the Commissioner sought clarification from the complainant about her specific grounds of complaint, which was provided on 6 August 2023 and included the (now) nine year delay in publishing the findings of the consultation as well as her belief that further recorded information in scope of the request must be held by the Home Office.
10. In addition, for part 3 of the request (ie whether the Section 24 ASPA review results will be worthwhile and relevant after such a delay), the complainant submitted the following grounds of complaint:

“This must be something over a 9 year period that the Home Office have discussed, can they confirm if minutes were taken re any discussions re publishing the s24 consultation results, if so am I allowed to know what they say? This is important as clearly if they have made a decision that data is no longer relevant there would be no real intention to ever publish it.”

11. The Commissioner notes that the complainant has not disputed that part 3 of her request is not valid under FOIA because it does not seek recorded information. The grounds raised above question whether any minutes are held in relation to “any discussions” about publishing the Section 24 results. Whilst the Commissioner relayed all the complainant’s concerns to the Home Office for it to consider as part of

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<sup>1</sup> <http://www.gov.uk/government/publications/animals-in-science-committee-ministerial-commission/letter-from-baroness-williams-to-chair-of-the-animals-in-science-committee-accessible>

its investigation response, he has disregarded part 3 of the request from formal consideration as it is seeking an opinion of results which have not yet been published and is clearly not a request for recorded information. However, as set out at the end of paragraph 20 of this notice, the Home Office confirmed it had undertaken searches for the complainant's subsequent query about the minutes (raised in her grounds of complaint).

12. In addition, the Home Office advised that no searches had been undertaken in relation to part 4 of the request because no such ASRU committee or application process exists. The Commissioner has therefore not considered part 4 of the request any further.
13. In this case, the Commissioner has considered whether, on the civil standard of the balance of probabilities, any further recorded information is held in respect of parts 1 and 2 of the request.
14. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA.
15. FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

## **Reasons for decision**

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### **Section 1 – general right of access**

16. Section 1(1) of 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.”

17. The Commissioner is mindful that when he receives a complaint alleging that a public authority has stated incorrectly that it does not hold any further requested information, it is seldom possible to prove with absolute certainty whether the requested information is held. In such

cases, the Commissioner will apply the normal civil standard of proof in determining the case and will decide on the 'balance of probabilities' whether more information is held.

18. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check whether any further information is held and any other reasons offered by the public authority to explain why no further information is held. He will also consider any reason why it is inherently likely or unlikely that additional information is not held. For clarity, the Commissioner is not expected to prove categorically whether any further information is held; he is only required to make a judgement on whether further information is held on the civil standard of proof of the balance of probabilities.
19. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, the Home Office holds any further recorded information within the scope of the request. Accordingly, he asked the Home Office to explain what enquiries it had made in order to reach the view that it did not hold any further information.
20. In reply, the Home Office said:

"Home Office officials are currently undertaking a review of Section 24 and are therefore familiar with the information that is available on this subject. Home Office officials have additionally searched all recorded information regarding Section 24 held on Home Office systems, including SharePoint file storage and emails of key officials working on the review, and have found no recorded information that would answer questions 1, 2 and 3\*.

This is policy in development and this work has to be managed against competing priorities. As the consultation took place in 2014 the situation has moved on and Home Office officials are undertaking a review of the policy this year.

In our response to [the complainant] the Home Office provided the latest information on Section 24, which is published on gov.uk: ([www.gov.uk/government/publications/animals-in-science-committee-ministerial-commission/letter-from-baroness-williams-to-chair-of-the-animals-in-science-committee-accessible](http://www.gov.uk/government/publications/animals-in-science-committee-ministerial-commission/letter-from-baroness-williams-to-chair-of-the-animals-in-science-committee-accessible)).

(\*Although part 3 of the request is not under formal consideration here, the Home Office confirmed that it had undertaken searches for any minutes (as raised by the complainant in her grounds of complaint) and that none had been located.)

21. The Home Office confirmed it had used the search term "Section 24" and said that if information were held, it would be held electronically rather than in manual records.
22. It said, to the best of its knowledge, that no records have been deleted or destroyed.

## **Conclusion**

23. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it must hold, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in the paragraphs above, the Commissioner is required to make a finding on the balance of probabilities.
24. The Commissioner acknowledges that the delay from the review consultation having been undertaken in 2014 seems excessive, but it is not his place to rule on such matters. He can only consider whether recorded information is held relevant to the complainant's request.
25. Having considered the explanation provided by the Home Office, whilst taking account of the points raised by the complainant, the Commissioner is satisfied, on the civil standard of the balance of probabilities, that no further recorded information within the scope of parts 1, and 2 of the request is held.

**Right of appeal**

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26. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

27. 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.

28. 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 .....**

**Carolyn Howes  
Senior Case Officer  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**