

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 September 2024

Public Authority: Department for Environment, Food and Rural Affairs

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested information about changes to minimum snake enclosure sizes. The above public authority (“the public authority”) disclosed some information but relied on section 35 of FOIA (formulation or development of government policy) to withhold the remainder
2. The Commissioner’s decision is that section 35 is engaged, but that the balance of the public interest favours disclosure.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose copies of the documents it identified to the Commissioner as Annex C and Annex F. The public authority may make appropriate redactions to comply with its data protection obligations.
4. The public authority must take these steps within 30 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

5. On 23 February 2024 the complainant requested information of the following description:

“we would like to request records of any communications between Defra and the Companion Animal Sector Council or any other reptile hobby or trade organisation over the last six months on the subject of snake enclosure sizes and the LAIA Regulations.”
6. On 20 March 2024, the public authority responded. It refused to provide the requested information and relied on section 35 of FOIA to withhold it – a stance it upheld following an internal review.
7. During the course of the investigation, the public authority informed the Commissioner that six documents fell within the scope of the request: Annexes A-F. It subsequently disclosed annexes A, B, D and E (with the exception of some personal information) but continued to withhold annexes C and F.

Reasons for decision

8. Section 35 of FOIA allows a public authority to withhold information if it relates to the formulation or development of government policy.
9. The public authority informed the Commissioner that it is currently carrying out a post-implementation review of the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, which it is required to do by law. This review is designed to consider how well the Regulations are working in practice and whether further changes are required.
10. The withheld material – which in this case comprises reports from two different organisations – clearly relates to the work of that review and that review forms part of the development of existing government policy. The Commissioner is therefore satisfied that section 35 of FOIA is engaged.

Public interest test

11. The complainant has outlined her concerns about the manner in which the review has been carried out (at least, in respect of snake enclosures) and, in particular the undue (in her opinion) weight the public authority has given to arguments put forward by organisations representing sellers of snakes. She argues that this is an animal welfare

matter of considerable public concern and that disclosure would shed light on the degree of lobbying by the industry.

12. In contrast the public authority highlighted the important of a safe space to discuss a live policy issue, evaluate the available evidence and make appropriate recommendations to ministers.
13. In the Commissioner's view the balance of the public interest favours disclosure.
14. Key to his consideration has been that the two withheld items have been provided by interest groups seeking to influence government policy.
15. As the Commissioner has noted on numerous occasions, there is nothing inherently wrong with any person or organisation seeking to influence government policy – indeed it can often improve the policy-making process. However, that influence needs to come with high levels of transparency to ensure that it is not being exercised improperly.
16. The Commissioner is not persuaded that either of the organisations involved would have been any less forthcoming in presenting its views if it had been aware that the information was likely to enter the public domain. The primary factor in making the submission is likely to be the need to provide the views of their members and those they represent – not the assumption that any correspondence was confidential.
17. Whilst the Commissioner accepts that this is a policy debate that remains live, he is not persuaded that disclosure would impinge on any safe space. The withheld information reveals nothing about the public authority's own internal thinking or discussions on the matter. The public authority's staff should be sufficiently robust that they will not easily be distracted from their task by any debate provoked by disclosure.
18. As the balance of the public interest favours disclosure, the information must be disclosed.

Right of appeal

19. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

20. 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.
21. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF