

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

### **Decision notice**

**Date:** 15 December 2014

**Public Authority:** Department for Environment, Food and Rural Affairs

**Address:** Nobel House  
17 Smith Square  
London  
SW1P 3JR

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

---

1. The complainant has requested a list of all the private interests that ministers' special advisers have declared since August 2012.
2. The Department for Environment, Food and Rural Affairs (DEFRA) sought to rely on section 40(2) and 41 of the FOIA in refusing to disclose the information requested.
3. The Commissioner's decision is that DEFRA has complied with the FOIA.
4. The Commissioner does not require the public authority to take any steps.

### **Request and response**

---

5. On the 13 December 2013 the complainant contacted the Department for Environment Food & Rural Affairs (DEFRA) and requested information of the following description.

*"a list of all the private interests that ministers' special advisers have declared since August 2012."*

6. On 17 December 2013 DEFRA responded and advised the complainant that the information he had requested was being withheld by virtue of section 40(2) and section 41 of the FOIA.
7. On 20 December 2013 the complainant contacted DEFRA to request an internal review.

8. On 29 January 2014 DEFRA provided its internal review decision. It upheld the application of both exemptions cited in its initial response stating that the disclosure of the information would constitute a breach of confidence and breach the first principle of the Data Protection Act 1998 (DPA).

## **Scope of the case**

---

9. The complainant contacted the Commissioner on 22 April 2014, to complain about the way his request for information had been handled.
10. The scope of this case has been to determine whether DEFRA handled the complainants request dated 13 December 2013, in accordance with the requirements of the FOIA. Specifically whether DEFRA is correct in relying on sections 40(2) and 41 of the FOIA to withhold the information requested.

## **Reasons for decision**

---

### **Section 40(2)**

11. Section 40(2) sets out an exemption for information which is the personal data of a third party, the disclosure of which would be in breach of the principles of the DPA. In this case DEFRA sought to rely on the first principle of the DPA which states that personal data must be processed fairly and lawfully.
12. Personal data is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller. In this matter the requested information is clearly personal data as it relates to the private interests of ministers' special advisors.
13. Having identified that the requested information is personal data consideration has to be given to whether its release would be fair. In considering whether disclosure of the requested information would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
  - the consequences of disclosure to the data subject;
  - the data subject's reasonable expectations of what would happen to their personal data; and

- the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

DEFRA has argued that the information should be withheld as it concerns special advisors private interests and those individuals would have no reasonable expectation that the information would be disclosed to the world at large. Indeed the public authority has argued that not only would disclosure be beyond their reasonable expectation but the information has been provided in confidence. DEFRA argued that the disclosure of the information would therefore be distressing to those individuals concerned.

14. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to provide the information if there is an overriding legitimate interest in disclosure to the public.
15. The complainant argued that it is in the public interest to know the financial interests of policy makers so that the electorate can keep a check on what might be influencing policy, and given that special advisors have a close relationship to ministers there is a public interest in details of their private interests being disclosed to the public.
16. DEFRA advised the Commissioner that special advisors have the status of temporary civil servants and as such are required to declare any potential conflicts of interest in accordance with the Civil Service Code/Civil Service Management Code. As special advisors are required to declare any potential conflicts of interest DEFRA argues that these controls ensure that the question of whether the financial interests of special advisors would potentially have any influence on policy is scrutinised and therefore private information regarding special advisors private interests does not need to be disclosed to the public in order for this analysis of any potential conflicts of interest to take place.
17. DEFRA also considered whether the information was likely to reveal iniquity or fraud or if disclosure was necessary to protect the public from harm but concluded that it did not. It also argued that the information was the private personal information of special advisors and there was an overriding public interest in protecting the privacy and confidentiality of individual's personal information.
18. The Commissioner is satisfied that the information constitutes the personal data of ministers' special advisors who would have no reasonable expectation that their information would be disclosed to the world at large. This is because the information is provided in confidence. The Commissioner is also satisfied that there is no wider legitimate

public interest in the disclosure of the information which is sufficient to outweigh the rights of the individual's concerned.

19. The Commissioner's view is that DEFRA is entitled to rely on section 40(2) in refusing to disclose the information as any such disclosure would be unfair and breach the first principle of the DPA.
20. As the Commissioner's has found that section 40(2) applies to the withheld information there is no requirement to consider DEFRA's application of section 41.

## Right of Appeal

---

21. 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)

22. 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.
23. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**