

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 April 2025

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

Decision (including any steps ordered)

1. The complainant submitted a five-part request to the Home Office about data errors made by the Animals in Science Regulation Unit following publication of its Annual Report. The Home Office responded to each part of the request. Ultimately, the complainant was only concerned with the Home Office's response to **part 2** of her request for the audit reports. The Home Office relied on section 36(2)(b)(i) – prejudice to the free and frank provision of advice and 36(2)(b)(ii) of FOIA – prejudice to the free and frank provision of views for the purposes of deliberation, to withhold the requested reports.
2. The Commissioner's decision is that the Home Office has properly relied on sections 36(2)(b)(i) and (ii) of FOIA for **part 2** of the request, and that the public interest favours maintaining the exemptions.
3. No steps are required as a result of this notice.

Background

4. The purpose of the Animals in Science Regulation Unit ('ASRU') is to protect animals in science by maintaining compliance with the Animals (Scientific Procedures) Act ('ASPA'). This is done by focusing on governance of ASRU itself and the regulated community.
5. ASRU is a part of the Home Office Science Directorate and is responsible for the regulatory delivery of ASPA in England, Scotland and Wales. In

Northern Ireland, this responsibility is devolved to Northern Ireland's Department of Health, which reports its activities separately.

6. The use of animals in science is regulated through a 3-tier system of licensing which licenses each establishment, project, and individual involved in undertaking regulated procedures on animals. All establishments are required to have dedicated individuals, including veterinary surgeons, with legal responsibilities for the care and welfare of animals, and an ethical review body, which reviews any proposals for the use of animals and promotes the '3Rs' (replacement, reduction and refinement) of animal use in science.
7. ASRU assesses the compliance of all licence holders through compliance assurance activities that include on-site inspections. ASRU has published and enforces standards for the care and accommodation of all animals bred, supplied or used for scientific purposes.
8. During the Covid-19 pandemic ASRU had to adapt from on-site inspections to remote inspections. It resumed on-site inspections from May 2021.
9. The ASRU Annual Reports for 2019-2021 were originally published as one report in October 2022. In March 2024, this report was revised to correct errors in the data. The reasons for the errors and the subsequent actions taken by ASRU, are set out in a separate explanatory note, which can be found here.¹

Request and response

10. On 29 April 2025, the complainant wrote to the Home Office and requested information in the following terms:

'Please can I have:

- 1) An explanation why NTS [non-technical summaries] were not reviewed for 2018, this year was included in my original FOI and I have since found that cosmetics NTS were not correctly included in this year. Infact [sic] out of the 7 cosmetics project licences approved 3 NTS had not been published at the

¹ https://assets.publishing.service.gov.uk/media/662a65dfe8c75df17da7e577/2019-2021_annual_report_explanatory_note_final.pdf

end of 2023, despite them being granted in 2018 and 2021.
Please see [earlier FOIA request] and in particular:
Rodent toxicity, tumorigenicity and safety studies Dec 2018 2
Due to be published by end of 2023.

- 2) Please can I have copies of the external and independent audit reports as follows:
Commissioned an external review and validation of ASRU's QA [quality assurance] by Home Office analysts; and ASRU 2019-21 Annual Report Explanatory Note 2 3. Invited independent audit by the Government Internal Audit Agency (GIAA) to review the adequacy and effectiveness of ASRU's current information management practices, quality assurance controls and governance arrangements.
- 3) Please can I have a full list of the corrected and duplicated NTS with detailed explanations as to how the errors occurred and why they had not been identified, 2019 it is obvious even by a quick glance that there was a problem.: [sic] This resulted in the duplication of 327 NTS in 2019, the omission of 7 NTSs in 2020 and the omission of 4 NTSs in 2021.
- 4) Has 2022 project licences approved been reconciled to NTS published?

Your explanatory note concludes with "I trust that the actions taken demonstrate ASRU's commitment to a high standard of delivery, accountability and transparency of its work to protect animals used in science by maintaining compliance with the ASPA." Absolutely not, personally I have no confidence at all in the data published and therefore ASRU ability to protect Animals in Science.

- 5) On another note I am still waiting for the promised update on s24 ASPA [Animals (Scientific Procedures) Act] 1986 – in June it will be 10 years waiting. I have asked to be included as a stakeholder many times, I would be very keen as a member of the public to have some input into the workings of ASRU.'

11. The Home Office responded late on 25 June 2024 as follows:

For **part 1**, it provided a URL to some published information, and included a table and amended date.

For **part 2**, the Home Office cited sections 36(2)(b)(i) – prejudice to the free and frank provision of advice and 36(2)(b)(ii) of FOIA

– prejudice to the free and frank provision of views for the purposes of deliberation.

For **part 3** of the request, the Home Office provided a list of the NTSs and a URL to the ASRU's explanatory note.

The Home Office said: "In response to **question [part] 4**, the number of project licence granted in 2022 is equivalent to the number of NTS published for that year."

For **part 5**, the Home Office stated that there was no further update.

12. The complainant requested an internal review on 31 July 2024 in relation only to **parts 2 and 5** of her request.
13. The Home Office sent the outcome of its internal review, late, on 3 October 2024. It upheld its original position in relation to its reliance on section 36 of FOIA for **part 2** of the request. For **part 5**, the Home Office said that this did not constitute a request for recorded information under FOIA, but reconfirmed that no further update was available.

Scope of the case

14. The complainant contacted the Commissioner on 9 November 2024 to complain about the way her request for information had been handled. She objected only to the Home Office's handling of **part 2** of her request and its reliance on section 36 of FOIA.
15. The Commissioner has considered whether the Home Office was entitled to rely on sections 36(2)(b)(i) and (ii) of FOIA in relation to **part 2** of the request. He has viewed the two withheld reports.

Reasons for decision

Section 36 - Prejudice to the effective conduct of public affairs

16. The Home Office has applied section 36(2)(b)(i) (inhibition to the free and frank provision of advice) and section 36(2)(b)(ii) (inhibition to the exchange of views for the purposes of deliberation) to withhold the two audit reports in their entirety.

17. The Commissioner's guidance on section 36² explains that information may be exempt under section 36(2)(b)(i) and (ii) if its disclosure could inhibit the ability of public authority staff, and others, to express themselves openly, honestly and completely, or to explore extreme options when providing advice or giving their views as part of the process of deliberation. The reason for this is that inhibiting the provision of advice or the exchange of views may impair the quality of decision-making.
18. These exemptions are concerned with protecting the processes that may be harmed by the disclosure of the information. The issue to be considered is, therefore, whether disclosure might, in future, inhibit the processes of providing advice and exchanging views.
19. The exemptions at section 36 can only be engaged on the basis of the 'reasonable opinion' of a 'qualified person'. The Home Office provided the Commissioner with a copy of its submissions to the qualified person, which show that the opinion was sought on 11 June 2024. The qualified person's opinion was provided by the then Permanent Under Secretary for the Home Office, Lord Sharpe.
20. The Commissioner is satisfied that the qualified person in this case meets the requirements of section 36(5) of FOIA and is therefore authorised to act as the qualified person and give his opinion.
21. The Commissioner acknowledges that the qualified person gave his opinion on 12 June 2024, after reviewing the submissions and withheld reports, that sections 36(2)(b)(i) and (ii) of FOIA were engaged.
22. As set out in the Commissioner's guidance, the opinion must be 'reasonable'. In this context an opinion either is or is not reasonable. In deciding whether an opinion is reasonable, the plain meaning of that word should be used, rather than defining it in terms derived from other areas of law. The most relevant definition of 'reasonable' in the Shorter Oxford English Dictionary is: "in accordance with reason; not irrational or absurd". Therefore, if it is an opinion that a reasonable person could hold, then it is reasonable.
23. This is not the same as saying that it is the only reasonable opinion that could be held on the subject. The qualified person's opinion does not become unreasonable simply because other people may have come to a different (and equally reasonable) conclusion. It does not even have to

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-36-prejudice-to-the-effective-conduct-of-public-affairs/>

be the most reasonable opinion that could be held; it only has to be a reasonable opinion. It is only unreasonable if it is an opinion that no reasonable person in the qualified person's position could hold.

24. The submissions that were put to the qualified person summarised the reasons for applying sections 36(2)(b)(i) and (ii) of FOIA and he had access to the withheld information. The Commissioner is satisfied that the submissions included a clear overview of the request and relevant arguments for, and against, the application of the exemptions.
25. The Commissioner finds that it was reasonable for the qualified person to reach the view from the submission that there was a need to protect the confidentiality of free and frank discussions and deliberations between officials and those they consult with for advice. He is further satisfied that the qualified person's opinion - that inhibition 'would be likely to' occur through disclosure of the withheld information - was reasonable.
26. The Commissioner is therefore satisfied that sections 36(2)(b)(i) and (ii) of FOIA are engaged in this case.

Public interest test

27. Section 36 is subject to the public interest test, as set out in section 2 of FOIA. This means that although sections 36(2)(b)(i) and (ii) of FOIA are engaged, the withheld information must be disclosed unless the public interest in maintaining the exemption is stronger than the public interest in disclosure.

Public interest arguments in favour of disclosure

28. The complainant submitted the following in favour of disclosure:

"The original non-technical summaries (NTS) for 2019 showed that licences had been granted for (mainly over a 5 year period) circa 15,286,000 live animals to be used in scientific procedures, the revised publication was 7,706,000 this is a [sic] error of approx. 7.6 million live animals. It should have been obvious to anyone preparing figures that there was something very wrong, yet it took me to come along years later to query.

I have found many other data errors over a multitude of publications, even data tables issued with annual statistics that did not even add up. ASRU is the Regulator to uphold ASPA 1986 which seeks to 'protect' laboratory animals. If a Regulator is not fit for purpose it is essential that licence holders and the public are made aware and can challenge however appropriate.

To say that s36 applies because a) officials of ASRU might not be open/transparent ('would dissuade officials from engaging with present and future internal audits or investigative services') or that b) an investigator could not write the truthful facts if it were to know that these would be made public is absolutely not in the spirit of the FIOA [sic] 2000. Reports against Regulators should always be publicly published, it is essential that both the public and their members (in this case licence holders) are made aware of their failures.

A simple internet search finds many full reports re investigations of Regulators for example 'Report of the Independent Investigation into the Financial Conduct Authority's Regulation of London Capital & Finance plc' what if the FCA were to say we refuse this report to be presented to Parliament as then are staff may not engage with investigators? There would be public uproar.

My own experience has also shown that the qualified person's opinion is not something carefully considered at all, in fact it doesn't go beyond saying 'agreed' to leading questions.

As for public interest I would suggest this should override any exemption in these circumstances as a Regulator is attempting to hide their failings (reminder the error was 7.6 MILLION estimated live animals)".

29. In its substantive response, the Home Office told the complainant that:

"The Home Office works with a presumption to openness and transparency and recognises that there is an inherent public interest in the transparency of information regarding the Animals in Science Regulation Unit's current information management practices, quality assurance controls and governance arrangements."

Public interest arguments in favour of maintaining the exemptions

30. As part of its substantive response to the request, the Home Office said:

"Since disclosing the information would be likely to inhibit the free and frank exchange of views for the purpose of deliberation, Section 36 is engaged. Releasing this information would or would be likely to inhibit the free and frank exchange of views and prejudice the effective conduct of public affairs, compromising effective provision of independent assurance."

31. In its submissions to the Commissioner, the Home Office made the following arguments:

Section 36(2)(b)(i)

“Internal audit and quality control services must be able to offer advice free from concern that disclosure would dissuade officials from engaging with present and future investigative services. Disclosure is likely to inhibit the giving of free and frank advice by audit and quality control services, to the detriment of delivering and continuously improving public services.”

Section 36(2)(b)(ii)

“An effective independent and objective internal audit service is essential to the provision of assurance over the adequacy and effectiveness of a government organisation’s risk management, control and governance. The disclosure of detailed findings and assessments would substantially inhibit the willingness of officials to fully engage with and support their internal audit and/or investigative services, and the unrestrained, frank and candid exchanges required for the process to remain effective would be likely to be impaired throughout their reviews and/or investigations.

Similarly, effective quality control services rely on the open exchange of sensitive information from establishments, which if subsequently disclosed to the public is likely to inhibit the free and frank exchange of views for deliberation, undermining the ability of officials to deliver and continuously improve public services. Moreover, this would impede delivery of the intent of the Animals (Scientific Procedures) Act, which is an Act for the protection of the use of animals in science.”

32. Additionally, as part of its submissions, the Home Office said:

“The public interest in releasing the reports is not compelling and is outweighed as releasing this information would or would be likely to inhibit the free and frank exchange of views and prejudice the effective conduct of public affairs, compromising effective provision of independent assurance.

The Animals in Science Regulation Unit published details of the errors and what actions had been taken in its Explanatory Note published on gov.uk.”

Balance of the public interest

33. The Commissioner considers that there is a presumption running through FOIA that openness is, in itself, to be regarded as something which is in the public interest. The disclosure of official information assists the public in understanding how public authorities make their decisions and carry out their functions, and this, in turn, fosters trust in them.
34. Disclosure in this case would allow the public to scrutinise the Government Internal Audit Agency's and the Home Office's Analysis and Insight's quality assurance frank observations on the data errors made by ASRU, and the recommendations as to how these areas identified, could be addressed. The question to be considered is whether the public interest is better served by permitting such public scrutiny, or by protecting the integrity of high level advisory and decision-making processes.
35. The Commissioner has taken account of the complainant's view as set out in paragraph 28 above.
36. When considering the application of section 36(2)(b), where the Commissioner finds that the qualified person's opinion was reasonable he will consider the weight of that opinion when applying the public interest test. In this case, the Commissioner considers that the opinion of the then Permanent under Secretary for the Home Office that inhibition would be likely to occur, carries considerable weight when balancing the public interest. The qualified person had access to the withheld reports, the requisite knowledge of the information in scope and the likely consequences of any disclosure, to make that assessment.
37. The Commissioner is mindful of his section 36 guidance which states:

"Note that these exemptions are about the **processes that may be inhibited**, rather than what is in the information. The issue is whether disclosure would inhibit the processes of providing advice or exchanging views. To engage the exemption, the information requested does not necessarily have to contain views and advice that are in themselves notably free and frank. On the other hand, if the information only consists of relatively neutral statements, then it may not be reasonable to think that its disclosure could inhibit the provision of advice or the exchange of views."
38. In the Commissioner's view, a particular aggravating factor in this case is that the reports are concerned with identifying internal errors – officials have to be able to speak frankly and the quality and

effectiveness of internal audit would be likely to be undermined if officials are more circumspect in their comments and analysis, due to concerns about public disclosure under FOIA. On that basis, the Commissioner considers it was reasonable for the qualified person to conclude that disclosure of the reports would be likely to have an inhibiting effect on the future willingness of Audit and other officials to provide free and frank advice and exchange views.

39. The Commissioner also accepts that the disclosure of candid observations and recommendations, obtained as a result of free and frank discussions the authors have had with particular stakeholders, would be likely to have a knock-on chilling effect on the willingness of stakeholders to engage openly and honestly in future. As a result, the quality of advice received by the Home Office would likely be diminished and the quality of its decision-making, impaired.
40. Finally, the Commissioner has considered the severity and extent of the envisioned inhibition. In carrying out this exercise, appropriate weight must be afforded to the public interest in avoiding harm to deliberation and decision-making processes. There is a clear public interest in Home Office officials having the freedom and space to thoroughly explore all options when considering recommendations on important matters.
41. When reaching a decision in this case, the Commissioner has taken all the above into account. He is particularly mindful of the purpose of the exemption as set out above. On balance, the Commissioner considers the public interest in protecting good decision-making by the Home Office to be more compelling than permitting public scrutiny of the two reports. While he acknowledges that the general public interest in openness and transparency would be served if the reports were disclosed, he finds the public interest in protecting the Home Office's access to unfiltered and frank advice, and the integrity of the decision-making process, to be stronger. He has also taken the published explanatory note into account, which goes some way towards serving the transparency aspect. It has been publicly acknowledged that data errors were made and the actions to be taken as a result.
42. Therefore, the Commissioner's decision is that the Home Office was entitled to apply section 36(2)(b)(i) and (ii) of FOIA to refuse **part 2** of the request.

Right of appeal

43. 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

44. 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.
45. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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