

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 May 2025

Public Authority: Ministry of Housing, Communities & Local Government (MHCLG)

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information relating to the Leasehold and Freehold Reform Act 2024 ("LFRA") from MHCLG. MHCLG refused to provide the requested information, citing section 35(1)(a) of FOIA (formulation or development of government policy).
2. The Commissioner's decision is that MHCLG was entitled to withhold the requested information under section 35(1)(a) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 9 July 2024, the complainant wrote to MHCLG and requested information in the following terms:

"RE: Freedom of Information Act 2000 regarding the Leasehold and Freehold Reform Act 2024 ("2024 Act")

I would like to ask when the Leasehold and Freehold Reform Act 2024 will come into force?

The Commencement of this Act of Parliament comes into force "...on such day...as the Secretary of State may by regulations appoint." (clause 122(3), 2024 Act)"

5. MHCLG responded on 14 August 2024. It refused to provide the requested information, citing section 35(1)(a) of FOIA (formulation or development of government policy).
6. Following an internal review MHCLG wrote to the complainant on 22 November 2024. It maintained its original position.

Reasons for decision

Section 35 – formulation and development of government policy

7. Section 35(1)(a) states:

“Information held by a government department or by the Welsh Assembly Government is exempt information if it relates to the formulation or development of government policy.”

8. The Commissioner considers 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’ of policy 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.
9. The Commissioner considers that the term ‘relates to’ in section 35 can be interpreted broadly. This means that the information itself does not have to be created as part of the activity. Any significant link between the information and the activity is enough.
10. To be exempt, the information must relate to the formulation or development of government policy. These terms broadly refer to the design of new policy, and the process of reviewing or improving existing policy. However, the exemption does not cover information relating purely to the application or implementation of established policy. It is therefore important to identify where policy formulation or development ends and implementation begins. This is not to say that policy design and implementation are always entirely separate. If implementation issues are actively considered as part of the policy design (ie before a policy decision is finalised) and feed into that process, they will also relate to the formulation of the policy.
11. The Commissioner’s [guidance on section 35](#) also notes that, “in some cases the government announces a high-level policy, or passes a ‘framework’ bill into law, but leaves the finer details of a policy still to be

worked out. The high-level policy objective has been finalised, but detailed policy options are still being assessed and debated. Later information about the formulation of the detailed policy will still engage the exemption."

12. It goes on to state that, "whether such decisions on detail remain formulation of policy, or are really about implementation, is a matter of degree. (...) decisions on detail are more likely to constitute policy formulation if they need Ministerial approval, there are a range of options with differing outcomes in the wider world, and the consequences of the decisions are wide-ranging".
13. MHCLG provided detailed arguments to the Commissioner as to why it considers the exemption to be engaged, including the following statement regarding why it does not consider the commencement date to be simply an implementation decision:

"Section 124 of the Act covered commencement. It states that some provisions related to rentcharge arrears, building safety legal costs and the work of professional insolvency practitioners were to come into force two months after the Act was passed, and that other provisions would come into force "on such day or days as the Secretary of State may by regulations appoint."

As such, following the general election, Ministers had decisions to make on whether to commence, the pace for and priorities for implementing the Leasehold & Freehold Reform Act [reference to withheld information redacted]. It is important to note that whilst this relates to implementation of the Act, this implementation question is being considered as part of wider policy decisions and was feeding into the wider policy process. Whilst the LFRA set out the overarching framework for reform, some measures in the Act still required (and require) specific policy options to be decided (and in various cases consulted) upon by Ministers, thus giving significant inbuilt flexibility on how the LFRA can be delivered."

14. The Commissioner considers the circumstances described by MHCLG to be an example of the type of scenario described in the guidance quoted in paragraph 11 of this notice. He therefore considers that the decision to be made about the commencement date to relate to the formulation of the detailed policy. He also notes that this decision was to be made by a Minister, there were a range of options with differing outcomes in the wider world, and the consequences of the decisions were wide-ranging. These factors further support the withheld information relating to the formulation, rather than merely the implementation, of government policy.

15. The Commissioner is therefore satisfied that the exemption is engaged as the withheld information relates to the formulation of government policy, specifically to the commencement of the LFRA.

Public interest test

16. MHCLG's position is that, at the time of the request, the public interest in maintaining the exemption outweighed that in disclosing the withheld information.
17. In its submissions to the Commissioner, MHCLG stated it had taken the following public interest arguments in favour of disclosing the information into account:

"There was likely to be significant public interest in allowing public scrutiny of the policy details surrounding the commencement of the LFRA, including outstanding policy questions that the primary legislation did not cover but which could have significant financial impacts on leaseholders (such as valuation rates for enfranchisement, buildings insurance reform measures etc). This is particularly true given that the issue was live in the public consciousness at the time of the FOI, given that the LFRA had recently received Royal Assent in May 2024."

18. MHCLG stated it had taken the following public interest arguments in favour of maintaining the exemption into account:

"That, following the general election, new Ministers needed to consider their options in full about whether and how to commence the LFRA, including how these decisions related to their wider leasehold reform ambitions as set out in their manifesto. This was about protecting the policy making process. The minister had a wide range of policy options available regarding whether to commence, the pace for and priorities for commencing the Act. Putting details into the public domain might have proven an external interference or distraction, particularly given that some decisions (for example, related to valuation rates for enfranchisement) were high profile, controversial and could have significant financial impacts on impacted stakeholders"

19. MHCLG also provided further details regarding why it considers that, on balance, the public interest in maintaining the exemption outweighs that in disclosing the withheld information. It stated that:

"The LFRA requires an extensive programme of consultation and then secondary legislation to commence it, including a mix of affirmative, negative and no procedure statutory instruments. Some of the areas in the Act will also require transition periods,

following making of the secondary legislation, before the effects of the Act will be felt. Commencement of many of the measures in Wales will require Welsh Ministers to make separate secondary legislation and we are working with the Welsh Government to help facilitate this.

When we received the FOI asking for the release of information pertaining to the commencement of the LFRA, we had advised Ministers that they had decisions to be taken on whether to commence, the pace for and priorities for implementing the Leasehold & Freehold Reform Act [reference to withheld information redacted]. There are a number of measures in the Act which Ministers need to take individual policy decisions on and this will result in the commencement of different measures at different points in time (subject to those decisions).

We believe that it was important that ministers had a "safe space" reserved within which they could take outstanding policy decisions related to the shape and purpose of the secondary legislation and the commencement of the Act, given the controversial nature of some of the outstanding policy decisions. Where there were examples of measures in the Act where there was no outstanding policy development, we disclosed these measures in our responses on 16 August and 22 November."

20. MHCLG provided a copy of the withheld information to the Commissioner during the course of his investigation. The Commissioner notes that the information held within the scope of the request is not in the form of a specific date that had been decided, rather it is information that relates to the possible timescales for implementation for various measures, including information on dependencies on the passing of other related legislation.
21. The Commissioner notes that at the time of the request the formulation of policy regarding the commencement of the LFRA remained ongoing. This is supported by the submissions of the MHCLG and by the content of the withheld information itself.
22. The Commissioner therefore accepts the "safe space" argument put forward by MHCLG. He accepts that while the formulation of policy regarding the commencement of the LFRA remained ongoing there was a public interest in allowing ministers a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction.
23. The Commissioner acknowledges that there was also a public interest in the disclosure of information about the possible timescales for

implementation and about dependencies on the passing of other related legislation. However, having viewed the withheld information, the Commissioner's view is that the public interest in maintaining the exemption outweighed that in disclosure of the withheld information.

24. The Commissioner's decision is therefore that MHCLG was entitled to withhold the requested information under section 35(1)(a) of FOIA.

Right of appeal

25. 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

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Victoria James
Senior Case Officer
Information Commissioner's Office
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Water Lane
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