



Neutral citation number: [2024] UKFTT 00110 (GRC)

Case Reference: EA-2022-0425P

**First-tier Tribunal
General Regulatory Chamber
Information Rights**

Heard in GRC Remote Hearing Rooms, Leicester

Heard on: 09 January 2024

Decision given on: 06 February 2024

Promulgated on: 07 February 2024

Before

**TRIBUNAL JUDGE A. MARKS CBE
TRIBUNAL MEMBER P. MANN
TRIBUNAL MEMBER M. SAUNDERS**

Between

MARTINA HOGG

Appellant

and

THE INFORMATION COMMISSIONER

First Respondent

and

**THE DEPARTMENT FOR ENVIRONMENT,
FOOD AND RURAL AFFAIRS**

Second Respondent

Representation:

The Appellant: represented herself

The First Respondent: Nicholas Martin, Solicitor

The Second Respondent: Matt Lewin, Barrister

Decision: The appeal is **dismissed**.

REASONS

Introduction

1. This is an appeal against the Information Commissioner's decision notice IC-176668-X1C0 dated 1 November 2022.
2. The Appellant ('Ms Hogg') had requested from The Department for Environment, Food and Rural Affairs ('Defra') information relating to All-Party Dog Advisory Welfare Group's contact with the head of animal welfare at Defra or predecessors from 30 April 2020 onwards. Defra provided some information but refused to disclose the remainder of the requested information citing sections 35(1)(a) and 40 of the Freedom of Information Act 2000 ('FOIA').
3. The Commissioner decided that Defra was entitled to rely on section 35(1)(a) FOIA and therefore did not require any further action to be taken.
4. The parties agree to the Tribunal making its decision based on all the papers in the case rather than requiring an oral hearing. The Tribunal is satisfied, in accordance with Rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended) (the 'GRC Rules'), that it can properly determine the issues in this case without an oral hearing.

The request for information, internal review and response

5. On 26 March 2022, Ms Hogg emailed Defra and requested information as follows:

"Please provide me with the following:

- 1. Any briefing notes or other documents prepared by or for Zac Goldsmith in relation to the meeting with Marc Abraham on 30 April 2020*
- 2. All notes relating to the 30 April 2020, for the avoidance of [doubt] this includes notes prepared prior to, contemporaneously or after the meeting*
- 3. If there have been any subsequent meetings between Zac Goldsmith, or any other minister or official at DEFRA, and Marc Abraham, or PupAid or any member of the [All-Party Parliamentary Dog & Animal Welfare Group ('APPG')], please confirm the date of the meetings and the attendees. Please also provide the information outlined at points 1 and 2 above in respect of any subsequent meetings. For the avoidance of doubt, this question relates all meetings and is not restricted to meetings to discuss Lucy's Law.*
- 4. All correspondence between Zac Goldsmith and Marc Abraham since 30 April 2020 in relation to any matter, not just Lucy's Law.*
- 5. All correspondence between Zac Goldsmith and PupAid or any member of the APPG referred to above since 30 April 2020 in relation to any matter, not just Lucy's Law.*
- 6. All correspondence between any DEFRA minister (other than Zac Goldsmith) or official and Marc Abraham since 30 April 2020 in relation to any matter, not just Lucy's Law."*

6. Defra responded on 30 March 2022. It refused to provide the information requested, relying on section 12 FOIA (Exemption where cost of compliance exceeds appropriate limit). However, in accordance with section 16 FOIA (Duty to provide advice and assistance), Defra advised Ms Hogg how she might refine and narrow her request.

7. On 3 April, Ms Hogg submitted a revised request as follows:

“Taking your points in order:

- *The FOI request relates to the All-party Parliamentary Dog Advisory Welfare Group “APDAWG” only. I do not require information in relation to any other APPG.*
- *I will not be removing point 2. This is already limited to one specific meeting and includes information before, during and after the meeting. Points 3 to 6 cover information after 30 April 2020 only. For the avoidance of doubt, I will not require you to provide information more than once.*
- *With regards to points 3 to 6, I am prepared to refine the request as follows:*

“The request is limited to Marc Abraham, Secretary of APDAWG, and the officers of APDAWG, currently listed as Dr Lisa Cameron, Sir Roger Gale, Jane Stevenson, Rosie Duffield, Kerry McCarthy and Tommy Sheppard, and their contact with Zac Goldsmith and Marc Casale (head of animal welfare at DEFRA in November 2020) or his predecessor/successor if he was not in post for the entire period covered by this request.

The request is limited to any matter relating to dogs.”

8. Defra replied on 3 May 2022, disclosing some information but refusing to disclose the remainder requested citing sections 35(1)(a) and 40 FOIA.

9. On 3 May 2022, Ms Hogg requested an internal review.

10. Defra carried out an internal review and notified Ms Hogg of the outcome on 21 June 2022. Defra upheld its previous decision.

Complaint to the Commissioner

11. On 18 June 2022, Ms Hogg complained to the Commissioner about Defra’s handling of her request.

12. Ms Hogg disputes that the requested information is exempt under section 35(1)(a) FOIA: she does not challenge the redaction of the names, roles and contact details of individuals under section 40 FOIA.

The Decision Notice

13. On 1 November 2022, the Commissioner issued Decision Notice IC-176668-X1C0 (the DN) which in summary concluded, having seen the withheld information and received additional submissions from Defra, that:

- (a) the information withheld falls within the exemption in section 35(1)(a) FOIA (formulation or development of government policy) and therefore the exemption is engaged; and
- (b) the balance of the public interest favours maintaining the exemption rather than disclosing the information; and
- (c) no further steps are required in this case.

Appeal to the Tribunal

14. On 10 December 2023, Ms Hogg sent a Notice of Appeal to the Tribunal challenging the DN.

15. Although the appeal was lodged out of time, on 15 December 2022 the Tribunal Registrar issued Case Management Directions stating that he considered it fair and just in the circumstances to permit an extension of time to lodge the appeal.

16. In her Notice of Appeal, Ms Hogg's grounds of appeal were, in summary:

- (a) It is inconceivable that every single contact between government and the named individuals (in the request) was for the purpose of the formation and development of policy. Applying the exemption so widely would effectively mean that it could be applied to every contact any government department received from any person or body with an interest in any policy. That would clearly not be in the public interest;
- (b) Maintenance of a regulatory safe space where views can be expressed in a full and frank manner is important. This is not the same as keeping details of all contact secret;
- (c) One of the individuals included in the FOIA request is Marc Abraham (MA), the secretary of an All-Party Parliamentary Dog Advisory Welfare Group. In a video published on the APPG website in 2021, he referred to a meeting with Zac Goldsmith (ZG) (then a Minister at Defra) to discuss an amendment to animal welfare legislation colloquially referred to as Lucy's Law. The amendment passed into law prior to that meeting so it is hard to see how that discussion and related correspondence would be covered by section 35 FOIA, the policy already being formulated, developed and legislated on;
- (d) Before the implementation of Lucy's Law, a FOIA request was made to Defra for responses to the proposal for a ban on third party sales of puppies and kittens. In response, Defra disclosed details of responses received, including from some charities who opposed the ban. It appears that Defra has adopted the opposite approach to this request;
- (e) In a number of other cases, ICO has reverted to me for comment once it has received a response from the public body concerned. In this case, the ICO did not do so. If it had, the above points could have been put to Defra and considered by the ICO before reaching a decision. The ICO did not question the fact that section 35 had been applied to all information, with apparently no attempt to identify what information was held and whether it would all have come under section 35;
- (f) As for the public interest, the ICO has failed to set out fully in its decision how the public interest test was applied. The ICO failed to identify what information related to live issues and which related to policy matters that had already been decided.

(g) Even where the policy is still under development, the public interest may still favour disclosure e.g. Department of Health v Information Commission (EA/2018/0001 and 0002 22 February 2019).

(h) The ICO has not explained why the regulatory safe space was still required at the time of the request or how it reached the conclusion that the balance of the public interest weighed against disclosure.

17. Ms Hogg asked for the Tribunal to consider the information held by Defra covered by the request and identify what information is covered by section 35 FOIA and what is not. Any information not covered – where the Tribunal considered it in the public interest to disclose that information – should be ordered to be disclosed.

The Law

Section 1(1) FOIA: general right of access to information held by public authorities

18. Public authorities' duty to disclose information is set out in section 1(1) FOIA:

'Any person making a request 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 this is the case, to have that information communicated to him.'

...

Section 2 FOIA: Effect of the exemptions in Part II

....

'(2) In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that—

(a)...

(b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information...'

Section 35 FOIA: Formulation of government policy, etc.

(1) Information held by a government department... is exempt information if it relates to—

(a) the formulation or development of government policy...,

(2) Once a decision as to government policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded—

(a) for the purposes of subsection (1)(a), as relating to the formulation or development of government policy, or

(b)...

(3)...

(4) In making any determination required by section...2(2)(b)... regard shall be had to the particular public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to decision-taking.

The role of the Tribunal

19. The powers of the Tribunal in determining appeals against the Commissioner's decisions for the purposes of FOIA are as follows:

s.57 Appeal against notices...

'(a) Where a decision notice has been served, the complainant or the public authority may appeal to the Tribunal against the notice...

s.58 Determination of appeals

(1) If on an appeal under section 57 the Tribunal considers -

(a) that the notice against which the appeal is brought is not in accordance with the law, or

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.'

Evidence

20. Before the hearing, the parties had submitted written evidence. This comprised an Open Bundle of 153 pages (including an Index). The panel also had access to a Closed Bundle.

Submissions

Submissions on behalf of the Commissioner dated 23 January 2023

21. In summary, the Commissioner invites the Tribunal to dismiss the appeal for the following reasons:

- (a) The grounds of appeal do not disturb the Commissioner's decision.*
- (b) It is clear from Defra's submissions and the withheld information itself that the withheld information relates to the formulation of detailed policy options and the review and improvement of existing policy. The public interest favours non-disclosure for the reasons set out in those submissions and the DN.*
- (c) The Commissioner is unable to provide further details in open at this time but will so far as possible include a copy of Defra's submissions in the open bundle, subject to any necessary redactions.*

- (d) The grounds of appeal do not identify any error of law or incorrect exercise of discretion.

Submissions on behalf of Defra dated 3 March 2023

22. In summary, Defra's submits that the DN was correct, and the appeal should be dismissed because:

A. Background

- (a) In England, the selling of pets as a business activity requires a licence from the local authority under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 ('the 2018 Regulations').
- (b) "Lucy's Law" was the result of a 10-year grassroots campaign by various groups and animal welfare organisations to ban third-party puppy and kitten dealers. One such group, PupAid, was founded by a veterinary surgeon, author and broadcaster, MA.
- (c) Lucy's Law was brought about by the Animal Welfare (Licensing of Activities Involving Animals) (England) (Amendment) Regulations 2019 ('the 2019 Amendment Regulations'). These introduced to the 2018 Regulations a new requirement that puppies can only be lawfully sold by the person that bred them.
- (d) The policy objective of the amendment was to disrupt the supply of low-welfare, high-volume puppies ('puppy-farming') which, mostly via third-party sellers, distributes to unsuspecting new owners often sick, traumatised and unsocialised puppies, many of which have been prematurely separated from their mothers and have suffered long-distance transportation. This was to be achieved by removing the third-party trader by permitting only the breeder to sell puppies.
- (e) In March 2020, MA contacted the then Minister for Animal Welfare, the Rt. Hon. Lord Goldsmith of Richmond Park (ZG).
- (f) Defra officials briefed ZG how to respond to MA. ZG and MA subsequently met on 30 April 2020.
- (g) Following that meeting, ZG wrote to MA to confirm the action that Defra intended to take.
- (h) The information in paragraphs (e) to (g) is the remaining information falling within the scope of Ms Hogg's request which Defra wishes to withhold.

B. The review

- (i) The 2018 Regulations include a duty to '*carry out a review of the regulatory provision...*' and '*publish a report setting out the conclusions of the review*' before 1 October 2023.
- (j) The report must address the objectives which the 2018 Regulations intended to achieve and '*assess whether those objectives remain appropriate*'.
- (k) That review was underway at the time Ms Hogg's request was received and remained the case at the date of the submissions.
- (l) Depending on the outcome of that review, significant further policy development work may be required.

C. The Commissioner's investigation

(m) Defra's response to the Commissioner in October 2022 provided detailed reasons for relying on section 35(1)(a) FOIA. It explained that although the 2019 Amendment Regulations had come into effect on 6 April 2020, the policy development process was ongoing. The operation of Lucy's Law was subject to monitoring as part of the statutory review process which would consider whether further legislation is required to ensure that high animal welfare standards are maintained.

D. Defra's response to the appeal

(n) The section 35 exemption applies to information held by a government department which relates to '*the formulation or development of government policy*'. In the *Department of Health* case, the Tribunal held that:

'...the purpose of s 35 is to protect good government. It reflects and protects some longstanding constitutional conventions of government. It reserves a safe space to consider policy options in private – civil servants and subject experts need to be able to engage in free and frank discussion of all the policy options internally, to be able to expose their merits and demerits and possible implications.'

(o) The Commissioner's guidance defines '*formulation or development*' of government policy as broadly referring to '*the design of new policy, and the process of reviewing or improving existing policy*'. In particular, the '*development*' of policy is said to include '*the process of reviewing, improving or adjusting policy*'.

(p) Whether the formulation or development of a particular policy is complete is a question of fact: *Department for Education and Skills v Information Commissioner (EA/2006/0006)*.

(q) In this case, the high-level policy was settled by the enactment of the 2019 Amendment Regulations which brought Lucy's Law into effect. However, Defra is subject to a statutory duty to review the operation and effectiveness of the 2018 Regulations (including Lucy's Law) and therefore is subject to an ongoing process of review, improvement and adjustment.

(r) The information within the scope of Ms Hogg's request relates to that process and therefore clearly relates to the development of government policy.

E. Public Interest

(s) In the *Department for Education and Skills* case, the Tribunal set out principles to be applied when considering the public interest test in the context of section 35 FOIA including:

"The timing of a request is of paramount importance to the decision. ... Ministers and officials are entitled to time and space, to hammer out policy by exploring safe and radical options alike.... We note that many of the most emphatic pronouncements on the need for confidentiality... are predicated on the risk of premature publicity."

(t) The Commissioner's guidance recognises that:

"The exact timing of a request is very important. If the information reveals details of policy options and the policy process remains ongoing at the time of the request, safe space and chilling effect arguments may carry significant weight."

- (u) At the time Ms Hogg's request was received (on 26 March 2022), the process of reviewing the operation and effectiveness of the 2018 Regulations was very much ongoing with a view to completing the initial review by 1 October 2023 (as provided by the Regulations themselves). There is therefore significant public interest in allowing Defra ministers, officials and external stakeholders a safe space in which to carry out that review. Even publication of the report will not mark a definitive endpoint of the review process because there is an ongoing duty of review every five years under the 2018 Regulations.
- (v) The requested information touches on sensitive matters relating to animal welfare and there is a strong public interest in withholding that information from disclosure into the public domain.

Submissions on behalf of Ms Hogg in her witness statement dated 17 July 2023

23. Very briefly summarised, Ms Hogg says:

- (a) She is one of the co-founders of a campaign to end puppy farming.
- (b) The 2019 Amendment Regulations lulled puppy buyers into a false sense of security, leading people to believe that puppy farming no longer exists. This is not true.
- (c) Defra's response to the information request fails to properly explain that the 2019 Amendment Regulations enable puppies to be bred anywhere in the world and sold by a licensed pet seller in England.
- (d) The 2019 Amendment Regulations have not stopped puppies being bred in one location, out of sight of the puppy buyer, and then transported for sale at other premises. These were all key components raised in the initial petition and the subsequent Parliamentary debate.
- (e) There is overwhelming public interest in disclosing all information relating to the formulation and implementation of this policy so that lessons can be learnt.
- (f) There is currently a crisis in canine welfare in this country due to the pandemic puppy boom and the rising cost of living. The Defra Select Committee has opened an inquiry on pet welfare. The disclosure of all the information will assist in looking at ways to address the current concerns around canine welfare.
- (g) Given that MA has put some information in the public domain, it is entirely appropriate for a full account [of his meeting with the Minister] to be put in the public domain.

Discussion

Possible unfairness of information being withheld from Ms Hogg

24. The panel first went on to consider the possible unfairness of withholding certain information from Ms Hogg.

25. Ms Hogg has been provided with only some of the information falling within the scope of her request. Other information was permitted to be withheld by the Tribunal pursuant to GRC Rule 14 from both Ms Hogg and the public. For the purposes of the hearing, however, the panel was provided with a Closed Bundle containing the withheld information.

26. The panel takes account of the Tribunal’s Practice Note on Closed Material. This explains that, where disclosure of the disputed information would defeat the object of the exercise, the law permits the Tribunal to deviate from the normal rule about all material seen by the Tribunal being available to all parties. However, such deviation is permissible only so far as is necessary to ensure that the purpose of the proceedings is not defeated.

27. The panel accepts that there is inevitably *some* prejudice in material being withheld from a party requesting it, but considers that this prejudice is mitigated by:

- (a) the Tribunal’s expertise, and exercise of an investigatory rather than adversarial function;
- (b) the Commissioner being an independent, expert regulator who does not take sides. On the contrary, the Commissioner’s role is to point out the strengths and weaknesses of both parties’ cases in assessing the correct application of the law and regulations;
- (c) informing parties excluded from ‘*closed*’ information as much as possible with maximum possible candour in the written reasoned decision; and
- (d) in this case, the withheld information includes redacted individuals’ names, signatures and other identifying details (all personal data which Ms Hogg says she does not seek) and sensitive information about animal welfare which Ms Hogg wishes to be disclosed.

28. Having considered all these matters and having carefully read the withheld information, the panel is satisfied that the withholding of the requested information was and remains necessary to ensure the purpose of the proceedings is not defeated. Moreover, the prejudice to Ms Hogg’s position – mitigated as described above – is justified in the interests of justice overall.

The facts

29. The panel went on to consider the relevant facts of this case. On the basis of all the evidence the panel has seen, the panel has made the following findings of fact as emboldened below. Where a fact is disputed, the reasons for the panel’s findings are set out in unemboldened text:

- (a) **Some information was provided in response to Ms Hogg’s request.**
- (b) **As explained above, during the proceedings the remainder of the requested information was withheld under GRC Rule 14.**
- (c) **At the date of Ms Hogg’s request (March 2022), there was a live policy process in progress.**
 - (1) Ms Hogg argues that as the legislation had been passed, any information arising in relation to the meeting on 30 April 2020 between ZG and MA must relate to implementation rather than formulation or development of policy and therefore falls outside the scope of section 35(1)(a).
 - (2) The panel does not accept this argument. While ‘government policy’ is not defined by FOIA, nor is there any standard form of government policy. The ICO’s guidance indicates that the process of reviewing or improving existing policy is included in the term ‘government policy’.
 - (3) Moreover, while policy design and implementation are not always entirely separate, the risks and realities of implementation may – and in the panel’s view, in this case, are – an important factor when assessing policy options.

- (4) Even after a policy decision has been made – as it was in the case of Lucy’s Law by passing the 2019 Amendment Regulations – issues arising during implementation may then feed back into a policy improvement process.
- (5) As the ICO guidance says, whether decisions on detail remain formulation of policy, or are really about implementation, is a matter of degree. However, key indicators of policymaking are (a) if they require ministerial approval; (b) there are a range of options with differing outcomes in the wider world, and the consequences of the decisions are wide-ranging.
- (6) The panel considers it significant in this case that, as stated in Defra’s internal review response to Ms Hogg dated 21 June 2022, Defra was ‘*currently monitoring the effectiveness of Lucy’s Law*’ and was considering ‘*potential future policy reforms relating to a tightening of Lucy’s Law*’.
- (7) The panel is therefore satisfied that a range of policy options were still being assessed and debated; the materials sought involved the relevant Minister, signifying that they would require ministerial approval; and the consequences of the decisions would be wide-ranging rather than case specific. The panel therefore concludes that, at the time of Ms Hogg’s request and the period leading up to it, rather than mere implementation of fixed policy, matters of policy were still live.

Error of law or wrongful exercise of discretion in balancing the public interest

Error of law?

30. Having made the above findings of fact, the remaining issues for the panel in this case are (a) whether the Commissioner made any error of law in the DN and (b) whether the Commissioner wrongly exercised his discretion.

31. In the panel’s view, the only issue of law in this case is whether the exemption in section 35(1)(a) FOIA is engaged.

32. The panel recognises that the purpose of section 35(1)(a) is to protect the integrity of the policymaking process, and to prevent disclosures which would undermine this process and result in less robust, well-considered or effective policies. In particular, the exemption ensures a safe space to consider policy options in private.

33. Ms Hogg says Lucy’s Law was passed long before the April 2020 meeting about which she sought information so the policy had already been formulated, developed and legislated on.

34. The ICO guidance cites *DfES v Information Commissioner & the Evening Standard (EA/2006/0006, 19 February 2007)*, a case where the Information Tribunal considered whether minutes of meetings about a funding crisis in schools were exempt. In that case, the Tribunal decided that if a significant element of a document is about section 35(1)(a) activities such as reviewing, improving or adjusting policy, minute dissection of the document is not necessary because the whole document will be covered.

35. Since the section 35(1)(a) exemption covers information which ‘relates to’ the formulation or development of government policy, and this is interpreted broadly, information which relates to any significant extent to the formulation or development of policy will be covered, even if it also relates to policy implementation or other issues. Policy formulation or development does not have to be the sole or main focus of the information, as long as it is one significant element of it. For this reason,

we do not accept ground (f) in paragraph 16 above since neither the Department nor the Commissioner nor we are required to identify exactly what information relates to live issues and which relates to policy matters that have already been decided.

36. For the reasons stated in paragraph 29(c) above, the panel considers that, notwithstanding the enactment of the 2019 Amendment Regulations, there was ongoing policy development at the date of Ms Hogg's request in accordance with Regulation 28 of the 2018 Regulations which expressly requires a review. That review was ongoing at the time of the request.

37. The panel does not consider that any other of Ms Hogg's submissions demonstrate that the Commissioner has made any error of law.

Wrongful exercise of discretion in balancing the public interest?

38. The panel acknowledges that if the section 35(1)(a) exemption is engaged, government departments must go on to apply the public interest test. Departments can only withhold the information if the public interest in maintaining the exemption outweighs the public interest in disclosure.

39. The panel recognises that, in general, there is often likely to be significant public interest in disclosure of policy information, as it is likely to promote government accountability, increase public understanding of the policy in question, and enable public debate and scrutiny of both the policy itself and how it was arrived at.

40. The panel notes the ICO's guidance that the relevance and weight of the public interest arguments will depend entirely on the content and sensitivity of the particular information in question and the effect its release would have in all the circumstances of the case. Each case must be considered on its facts. Thus even if disclosure is ordered in one particular case, this does not mean that similar information must be disclosed in future.

41. For this reason, the panel does not accept appeal grounds (d) and (e) in paragraph 16 above have any relevance to the balance of the public interest because they relate to other cases rather than this one.

42. In this case, the panel considers that it was legitimate for the Commissioner to consider the timing of the request because, as we have already said, we are satisfied that at that time the policy process was still ongoing so 'safe space' and 'chilling effect' arguments carry significant weight.

43. Even where a high-level policy position has been settled, the need for a safe space can arise again if the government is reconsidering its options ([Department of Health v Information Commissioner, Healey & Cecil \(EA/2011/0286 & 0287, 5 April 2012\)](#)). Here, as Defra's submissions make clear, it was '*currently monitoring the effectiveness of Lucy's Law*' and was considering '*potential future policy reforms relating to a tightening of Lucy's Law*'. In these circumstances, we consider the 'safe space' arguments are strong.

44. By contrast, we do not accept that the factors in favour of withholding the information sought were outweighed at the time of Ms Hogg's request by the public interest factors (b) to (f) of her submissions dated 17 July 2023.

45. Nor do we accept that because some issues have been placed in the public domain (Ms Hogg's submission summarised in paragraph 23(g) above) that this either undermines engagement of the exemption in section 35(1)(a) or adds weight to the public interest in disclosure.

46. Overall, the panel agrees with the Commissioner's conclusion that, bearing in mind the timing of the request and the nature of the information withheld, the public interest in maintaining the exemption in section 35(1)(a) outweighs the public interest in disclosing the information.

Conclusion

47. For the reasons set out above, the panel finds that the Commissioner's DN was neither wrong in law nor did he wrongly exercise his discretion. Accordingly, the DN is confirmed.

48. The appeal is dismissed.

Signed:

Date: 6 February 2024

A handwritten signature in black ink that reads "Alexandra Marks". The signature is written in a cursive, slightly slanted style.

Alexandra Marks CBE
(sitting as a First-tier Tribunal Judge)