

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 July 2012

Public Authority: The Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps)

1. The complainant has requested information related to the development of the statutory register of lobbyists. This was initially all withheld under section 35(1)(a), but during the Information Commissioner's investigation some information was provided to the complainant; the public authority also introduced the exemptions at sections 40(2) and 41(1)(b). The Information Commissioner's decision is that the public authority correctly cited section 35 for all of the remaining information and that the public interest in maintaining this exemption outweighs that in disclosure. He does not require the public authority to take any steps.

Request and response

2. On 2 March 2011, the complainant wrote to the public authority and requested information in the following terms:

"This is a request for information under the FOI Act for the following:

Details of all correspondence between those listed below and Mark Harper, and/or his advisors, and/or any other relevant Cabinet Office staff involved in the development of the statutory register of lobbyists and the associated government consultation, with regard to the development of the statutory register of lobbyists and the associated government consultation, from 5 August 2010 to now:

*Elizabeth France, UK Public Affairs Council
Mark Ramsdale, UK Public Affairs Council;
Sir Philip Mawer, formerly chairman of the implementation
team for the UK Public Affairs Council;
Any representatives of the following industry bodies: APPC,
PRCA, CIPR*

*Details of meetings between those listed below and Mark
Harper's advisors, and/or any other relevant Cabinet Office staff
involved in the development of the statutory register of lobbyists
and the associated government consultation, with regard to the
development of the statutory register of lobbyists and the
associated government consultation, from 5 August 2010 to now:*

*Elizabeth France, UK Public Affairs Council
Mark Ramsdale, UK Public Affairs Council;
Sir Philip Mawer, formerly chairman of the implementation
team for the UK Public Affairs Council;
Any representatives of the following industry bodies: APPC,
PRCA, CIPR".*

3. Outside the statutory time limit for compliance, the public authority responded on 25 July 2011. It stated that some information was already available and therefore exempt under section 21, some would be published in the future and was therefore exempt under section 22 and that the remainder was exempt under section 35(1)(a).
4. On 23 September 2011 the complainant sought an internal review. This was provided on 24 October 2011. The public authority removed reliance on sections 21 and 22 but continued to rely on section 35(1)(a) for all information held.
5. During the course of the investigation, the Information Commissioner found it necessary to issue an information notice as the public authority failed to provide the information he required in a timely manner. Following late compliance with this notice, the public authority provided a small amount of information to the complainant. It also introduced reliance on the exemptions at sections 40(2) and 41(1)(b) of the FOIA. It went on to disclose another small amount of information.

Scope of the case

6. On 25 October 2011 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He specifically asked him to consider whether or not the public interest was best served by maintaining the exemption.
7. The Information Commissioner will not consider disclosure of the information which has now been provided to the complainant, albeit he notes that this was outside the statutory time limit for compliance.

Reasons for decision

Section 35 – formulation of government policy

8. The Information Commissioner was provided with a copy of the withheld information to assist with his investigation. As this exemption has been applied to all of the withheld information he has considered this first.
9. Section 35(1) of the Act states that:

*“Information held by a government department or by the Welsh Assembly Government is exempt information if it relates to-
(a) the formulation or development of government policy”.*
10. Section 35(1)(a) of the Act is a class-based exemption, meaning that it is not necessary to demonstrate prejudice or harm to any particular interest in order to engage the exemption. Instead, it is only necessary to show that the information falls within a particular class of information.
11. In correspondence with the Information Commissioner the public authority has explained:

“The information relates to the development of policy on introducing a statutory register of lobbyists. Development of this policy began in May 2010 and has continued since that time. It is likely to continue for some months, as the Government intends to publish a consultation paper in the next weeks, and draft legislation in the second parliamentary session. As such, this policy is clearly still being discussed and continues to be developed. The information mostly consists of communications

between policy officials and the then secretary of the UK Public Affairs Council, an independent body tasked with producing a voluntary register of lobbyists... Also within the scope of the request are some documents, two draft versions of the consultation paper and a paper on funding provided by UKPAC".

12. As stated above, the Information Commissioner has viewed the information. It consists of four emails with three documents as attachments. Having read them the Information Commissioner is satisfied that they all clearly relate to formulation and development of government policy and he therefore finds the exemption is engaged for these items.

Public interest test

13. Section 35(1)(a) is a qualified exemption and is therefore subject to the public interest test. Accordingly, the Information Commissioner has gone on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

Public interest arguments in support of maintaining the exemption

14. The public authority has submitted that disclosure of the information:

- *would have a detrimental effect on the development of policy in the future, not only in this area but across government*
- *would also have a detrimental effect on the further development of this policy*
- *would prejudice any public consultation on a statutory register of lobbyists, legislative proposals and parliamentary debates*

15. It has also stated that:

"Ministers, their officials and advisers, require a neutral space in which to develop their thinking around the formulation of policy, considering advice and correspondence both from officials and external parties".

And:

"Those who correspond with government to express their view on policy consideration may be more reluctant to do so in future if their views are disclosed. This could inhibit a wider expression of views from interested parties being received".

16. The public authority is also of the opinion that experienced lobbyists would not expect that their correspondence might be released under FOIA whilst the policy they are commenting on is still in development.
17. It further advised the Information Commissioner that the meetings, emails and documents which are within scope of this case were: *"passed with a clear expectation of confidence"*. The Information Commissioner does not consider this to be a valid argument in support of section 35 (rather than section 41, for example) so it has not been considered.

Public interest arguments in favour of disclosure

18. The public authority has referred to: *"the general public interest in greater transparency in how Government operates and uses information to inform its decision making"*. This is its only argument in favour of disclosure.
19. The complainant has also stated the following to the public authority:

"The government has made a commitment to transparency in lobbying in its coalition agreement. The withholding of information on the issue of transparency in lobbying, therefore, cannot be reasonably justified. I would direct you to statements made by the Prime Minister in February last year on the corrosive effect on public trust from 'covert lobbying': http://www.conservatives.com/News/Speeches/2010/02/David_Cameron_Rebuilding_trust_in_politics.aspx).

*I would also highlight one of many articles written by Cabinet Office Minister, Francis Maude, on this government's stance on transparency:
'Opposition parties are always remarkably keen on greater government transparency, but this enthusiasm mysteriously tends to diminish once they actually gain power. Not so in this case. Both the Conservatives and the Liberal Democrats campaigned for greater government transparency in opposition and today we are setting out the latest step we are taking to achieve this... The UK government is now the world's most open administration, but our ambition stretches far further. We are starting to transform the access British people have to the information that matters to them. It may lead to difficult questions – but more importantly it will lead to better decisions and better government.'*

There is a strong public interest in knowing who is influencing whom in the development of transparency regulations for lobbyists.

It is well known that parts of the commercial lobbying industry have long been opposed to the introduction of transparency measures in the form of a statutory register of lobbyists, as witnessed throughout the 2008/09 Parliamentary inquiry into lobbying by the Public Administration Select Committee (PASC).

The withholding of information regarding contact between the Minister's office and the industry's lobby groups, adds to public mistrust of politics. As the Prime Minister said: 'Secret corporate lobbying, like the expenses scandal, goes to the heart of why people are so fed up with politics'."

Balance of the public interest arguments

20. The Information Commissioner has accorded weight to the public interest arguments in favour of disclosure. He recognises the importance of transparency in decision making related to policy making, the particular public interest in understanding the development of a policy related a statutory register of lobbyists and the role of third parties in the development.
21. Whilst he understands that there is a significant public interest in the openness of the government in releasing the requested information, especially to demonstrate its impartiality and alleviate any concerns expressed by the complainant, the Information Commissioner also realises that the process does require sufficient time to be properly considered and implemented by the parties concerned. He accepts the need for a "safe space" to develop the policy was relevant at the time of the request and this adds to the weight in maintaining the exemption.
22. The public authority has argued that disclosure would be detrimental to policy development not only in this area but also across government as a whole. Whilst the Information Commissioner affords the argument some weight in respect of this particular policy, he also notes that the spirit of the FOIA is to be open and transparent wherever possible and he does not accept that disclosure of information in one area of policy will necessarily mean that disclosure will be in the public interest in a different field.

23. The public authority has also argued:

“Those who correspond with government to express their view on policy consideration may be more reluctant to do so in future if their views are disclosed. This could inhibit a wider expression of views from interested parties being received. In particular, the Government will launch a consultation on proposals for a statutory register shortly, asking for information on the content and scope of a register, as well as suggestions for the management and financing of a register. Although some of those who respond to a consultation may do so without the expectation of confidentiality, others would prefer that their response remains confidential may [sic] hesitate to respond if they believe their request for confidentiality may be overruled by a freedom of information request”.

24. The Information Commissioner accepts that parties may be generally reluctant to express a view if they believe this could be disclosed whilst the process is on-going. He has therefore accorded this argument some weight but it is limited to some extent as the third parties will often see a benefit in presenting their views, even if disclosed.

25. In this particular case the Information Commissioner affords the greatest weight to the argument that: *“Ministers, their officials and advisers, require a neutral space in which to develop their thinking around the formulation of policy, considering advice and correspondence both from officials and external parties”*. This is because, at the time of the request, the ideas were still very much in draft form and had not been finalised; this can be verified by the fact that the public consultation has only been launched during the late stages of this investigation.

26. Whilst he accepts there is a significant public interest in the public being able to understand the information being considered by Ministers during the policy process, in this case, the Information Commissioner concludes that the greater public interest is served in maintaining the exemption.

27. As he has concluded that the information is exempt from disclosure by virtue of section 35, the Information Commissioner has not gone on to consider sections 40 and 41.

Right of appeal

28. 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: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

29. 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.
30. 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

Steve Wood
Head of Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF