

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

### **Decision notice**

**Date:** 11 August 2022

**Public Authority:** Department for Transport  
**Address:** Great Minster House  
Horseferry Road  
London  
SW1P 4DR

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

---

1. The complainant has requested the minutes of a meeting held in relation to speed limit exemptions.
2. The Department for Transport disclosed information that fell within the scope of the request and withheld the rest, citing section 35(1)(a) (government policy) of FOIA.
3. The Commissioner's decision is that the withheld information engages section 35(1)(a) and the public interest lies in maintaining the exemption.
4. The Commissioner does not require the public authority to take any steps.

#### **Request and response**

---

5. On 12 July 2021, the complainant wrote to the DfT and requested the following information:  

"Please will you provide a copy of the minutes of a meeting held on or around the 14th January 2014. This is one of a series of meetings relating to the public consultation on Section 19 of the Road Safety Act. The meeting in question specifically considered health activities."
6. The DfT responded on 27 July 2021 and disclosed a redacted copy of the minutes. It explained that the redactions had been made in line with section 35 and section 40(2).

7. The complainant requested an internal review on 15 September 2021 and on 11 October 2021 the DfT provided its outcome. It upheld its original position.

## **Scope of the case**

---

8. The complainant contacted the Commissioner on 18 October 2021 to complain about the way that their request for information had been handled.
9. During this investigation, the DfT disclosed further information to the complainant. Specifically, a single sentence that it had previously withheld which it no longer considered engaged section 35(1)(a).
10. The DfT has applied section 35(1)(a) to all of the information that it has withheld. The DfT has also applied section 40(2) to some of this information.
11. Since section 35(1)(a) has been applied to all of the withheld information, the Commissioner will first consider the DfT's application of section 35(1)(a). If he finds that section 35(1)(a) does not apply to specific information, he will then go onto consider section 40(2).

## **Background information**

---

12. The Commissioner understands that there are five main exemptions for emergency response driving. They are:
  - Speed exemptions (found in section 87 of the Road Traffic Regulation Act 1984<sup>1</sup>)
  - Keep left/right exemptions (found in The Traffic Signs Regulations and General Directions 2016<sup>2</sup>)
  - Red traffic signals exemptions (found in schedule 14 of The Traffic Signs Regulations and General Directions 2016)
  - Fitment of blue flashing lights (found in regulations 3 and 16 of the Road Vehicles Lighting Regulations 1989<sup>3</sup>)

---

<sup>1</sup> [Road Traffic Regulation Act 1984 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>2</sup> [The Traffic Signs Regulations and General Directions 2016 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

- Fitment of audible warning instruments (found in regulation 37 Road Vehicles (Construction and Use) Regulations 1986<sup>4</sup>).
13. The DfT has explained that ‘...some purposes like police, fire and rescue service, ambulance service have all the above exemptions. Some purposes have only some exemptions, for example NHS Blood Transfusion Service have all exemptions other than speed; Mountain Rescue has Blue Lights and Audible Warning Instruments but no moving traffic exemptions; human tissue movements have blue lights only.’
  14. The meeting minutes in question discusses extending the speed limit exemption for additional healthcare purposes. The minutes discusses: donated items (blood, tissue and human organs), breast milk, medical personnel and in relation to transplantation, test samples, medical equipment, paperwork, organ retrieval teams and ‘other ambulance purposes.’
  15. The complainant represents the National Association of Blood Bikes (NABB), a voluntary group that supports the NHS by transporting blood, platelets, samples, surgical instruments, human donor milk and other clinical products across the UK & Ireland via motorbike.
  16. The Commissioner understands that the complainant wishes to see an unredacted copy of the minutes to understand what the legality, from the DfT’s point of view, was in relation to a blood bike’s ‘fit and use of blue warning lamps’ at the time of the meeting and whether blood bikes represent ‘other ambulance purposes.’ The complainant has referenced an ongoing coroner’s inquest, and judicial review, as their motive behind the request.

---

<sup>3</sup> [The Road Vehicles Lighting Regulations 1989 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>4</sup> [The Road Vehicles \(Construction and Use\) Regulations 1986 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

## Reasons for decision

---

### Section 35(1)(a) – formulation or development of government policy

17. Section 35 of FOIA states:

“(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.”

18. Having looked at the withheld information, the Commissioner is satisfied that there is no statistical information contained within.

19. The Commissioner’s guidance ‘Section 35 – Government Policy’<sup>5</sup> states ‘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, it ensures a safe space to consider policy options in private.’

20. Section 35 is a class-based exemption; this means that information simply has to relate to the formulation or development of government policy; there is no requirement for disclosure to prejudice either of those policy processes.

21. Section 35 only applies to central government departments, such as the DfT.

22. Section 35 is also a qualified exemption which means that it is subject to the public interest test. A department may only withhold information if the public interest in maintaining the exemption outweighs the public interest in disclosure.

---

<sup>5</sup> [section-35-government-policy.pdf \(ico.org.uk\)](https://ico.org.uk/section-35-government-policy.pdf)

23. In line with Tribunal decisions the Commissioner considers that the term 'relates to' should be interpreted broadly. Information does not have to contain policy options, advice or decisions; any significant link between the information and the formulation or development of government policy is sufficient.
24. In order to extend any of the exemptions listed in paragraph 12, to cover more purposes, the government is developing two secondary pieces of legislation which will, in essence, underpin section 19 of the Road Safety Act 2009 (speed limit exemptions).
25. Section 19(6) of the Road Safety Act 2006 states:

"The regulations may make different provision—

  - (a) for different classes of vehicle,
  - (b) for different descriptions of persons, or
  - (c) otherwise for different circumstances."
26. These two secondary pieces of legislation will, in essence, outline what classes of vehicle, descriptions of persons and in what circumstances, would be covered by section 19.
27. The Commissioner understands that, as well as introducing new speed limit exemption purposes, these two secondary pieces of legislation will also make amendments to the other exemptions discussed in paragraph 12.
28. It is obvious that the information being withheld relates to government policy, specifically, the consideration of the secondary pieces of legislation that will accompany section 19 of the Road Safety Act 2006, and the purposes that this legislation will include.
29. However, the Commissioner notes that the minutes are from January 2014 and the request was made in July 2021. That is a six and a half year difference. In order to engage the exemption, the policy needs to still be in formulation or development rather than being implemented.
30. The Commissioner's guidance states 'the term 'formulation' of policy to refer to the early stages of the policy process where options are generated and analysed, risks are identified, consultation occurs, and recommendations or submissions are put to a minister who then decides which options should be translated into political action.'
31. The DfT has explained 'I do accept that the secondary legislation for s19 has taken an exceptionally long time to develop, but this is due to its complexity and number of different government bodies/agencies

involved. It therefore still remains incomplete at this stage and the policy formulation is still evolving and being negotiated every day. It is still very much a live policy process.'

32. The DfT has explained 'We consider government policy to be under development until it is formulated sufficiently robustly to achieve Ministerial approval, in this case for proposed secondary legislation by way of two regulations. Until that point the matter remains in flux, under continuing development, and liable to change.'
33. The DfT has elaborated 'The policy in question is still undergoing change, for example we received a request for change to the regulations under development from the National Fire Chief's Council and Fire Standards Board last week which will, if accepted, require additional stakeholder consultation, negotiation and additional regulation(s). Also, we are still in negotiations with various agencies as to who qualifies for 'blue light' status.'
34. The outcome of the policy is to write and pass the secondary legislation in relation to section 19 of the Road Safety Act 2006 and to review which purposes apply to the exemptions listed in paragraph 12. The outcome of the policy won't change with any decision made. However, there are still decisions being made which finalise the purposes, and the circumstances, in which the exemptions might be engaged.
35. These remaining decisions, about which exemptions will be extended to include which purposes, and the circumstances in which they can apply, will have differing outcomes in the wider world and the consequences of these decisions has the potential to be life and death in the most extreme of circumstances.
36. The DfT has elaborated 'We are still in the formative stages of developing this policy as consultation still has not been completed for the proposed regulations. The previous consultation is now out-dated because the policy has taken so long to develop. After meaningful consultation has happened there will be further iterations to the policy by stakeholders taking into account the views of the public. The policy will not be fully finalised until the regulations have passed through Parliament, as Ministers may debate the issue further and make further changes.'
37. The DfT has explained that 'With respect to blood and organ transportation issues, we are further behind, and waiting for DHSC to complete the next stage by providing us with initial policy details for negotiation.' Clearly, the formulation and development of the secondary pieces of legislation is a cross government piece of work, which involves other bodies outside of the DfT.

38. It is not the role of the Commissioner to comment on the policy making process, or the length of time that the policy in question has taken to finalise. As the DfT has indicated, the policy will not be final until the legislations have been passed through parliament and have had final approval from Ministers. The consequences of these decisions will have wide reaching consequences, hence why so many bodies and stakeholders require consultation and the consultation period is so extensive.
39. The DfT has provided the Commissioner with an annotated copy of the minutes which separates finalised decisions from those which are yet to be finalised. The Commissioner does not have a detailed technical knowledge of the legislation that is being written and what stage each decision is up to. He will have to be led, to a certain extent, by the DfT on this matter.
40. However, the Commissioner is satisfied that the DfT hasn't applied section 35(1)(a) in a blanket manner. Some decisions have already been made, for example, it has been decided that the speed limit exemption will not apply to therapeutic blood products and human organs/tissues for transplantation. It's also been decided that there are no circumstances in which breast milk would require transporting under blue lights. Any decision that has been finalised has been disclosed to the complainant in response to their request.
41. The DfT has explained that 'policy development and negotiation has continued since our first response to this FOI request, we now feel that it is appropriate for further parts of the document to be disclosed.' This is the further information referred to within paragraph 9.
42. Ultimately, the DfT has explained that 'Unfortunately the way the document in question is written, it is impossible to separate the resolved policy issues from those still under development' any further than the DfT has already done.
43. Taking all of the above into account the Commissioner is satisfied that the withheld information engages section 35(1)(a). As section 35(1)(a) is a qualified exemption the information can only be withheld if the public interest in doing so would outweigh the public interest in disclosure.

## **Public interest test**

### **Public interest arguments in favour of disclosure**

44. The DfT has explained to the Commissioner that it 'accepts that there is always a public interest in transparency, accountability and enabling informed public participation in the issues of the day.'
45. The DfT has also explained 'No specific details from [the complainant] on why the balance of the public interest favoured disclosure were given, so we were unable to consider any specific public interest arguments in favour of disclosure.'
46. To reiterate, the complainant wishes to understand what the legality, from the DfT's point of view, was in relation to a blood bike's 'fit and use of blue warning lamps' at the time of the meeting. The complainant has referenced an ongoing coroner's inquest, and judicial review, as their motive behind the request.
47. The focus of the minutes is the speed limit exemption. However, it does touch upon the other exemptions referred to within paragraph 12. Whilst the Commissioner is unsure as to the extent to which the requested information would answer the complainant's question, disclosure would certainly allow for further scrutiny of the formulation and development of the policy.
48. Disclosure would shed light on process of the formulation and development of policy and the type of stakeholder engagement that is ongoing. It would demonstrate to the public the type of considerations and decisions that the government must make when drafting new legislation.

### **Public interest arguments in favour of maintaining the exemption**

49. Section 35(1)(a) is designed 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. The DfT is concerned that, whilst the policy is live, the requested information must be withheld in order to avoid a 'chilling effect', which would discourage free and frank debate, and the provision of advice, during the development of policy.
50. The DfT has explained that 'Officials, advisers and key stakeholders would be reluctant to provide advice and their views if they felt that these would be routinely placed into the public domain. This would inhibit the policy making process.' The Commissioner accepts that ministers, officials or stakeholders may become more guarded in their discussions relating to the development or formulation of policy which could, in turn, hamper the effectiveness of the policy itself.



51. The DfT has emphasised that 'The policy has not been finalised and is still undergoing development, making the need for full and frank negotiations imperative. Ministers and officials need a safe space in which to formulate and develop policy on these issues without fear of premature disclosure. This is still very much a live policy issue, with discussions with various government departments and emergency service stakeholders undergoing.'

### **The balance of the public interest**

52. In this instance, the Commissioner believes the balance of the public interest is very fine. However, he considers the public interest favours maintaining the exemption.

53. The Commissioner's guidance states 'There is no inherent or automatic public interest in withholding all information falling within this exemption. 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.'

54. The DfT has explained that 'The policy has not been finalised and is still undergoing development, making the need for full and frank negotiations imperative. Ministers and officials need a safe space in which to formulate and develop policy on these issues without fear of premature disclosure. This is still very much a live policy issue, with discussions with various government departments and emergency service stakeholders undergoing.'

55. When considering the effects of disclosure, the public authorities must focus their arguments on the effects of disclosing the withheld information at the time that the request was made, rather than the effect of routine disclosure of that type of information. Again, the Commissioner notes that the minutes were drafted in 2014 and the request was made in 2021.

56. Whilst it is not a 'historical document' as defined for the purposes of FOIA<sup>6</sup>, the minutes are six and a half years old. This isn't a case of 'routinely' placing information into the public domain, the requestor is concerned with a specific document for a specific reason. However, the policy in question is still 'live'.

---

<sup>6</sup> [The Freedom of Information \(Definition of Historical Records\) \(Transitional and Saving Provisions\) Order 2012 \(legislation.gov.uk\)](#)

57. Whilst the Commissioner acknowledges and is sympathetic that the complainant is involved in an ongoing coroner's inquest and judicial review, this in itself is not a relevant factor when considering where the public interest lies. It would only be a factor if there were concerns about widespread maladministration or wrongdoing, in relation to blood bikes and the associated exemptions and legislation.
58. The DfT is concerned that there is a need 'for policy makers and stakeholders to be able to discuss developing policies openly and frankly, the need to avoid confusion by having incomplete, undeveloped, and unfinished policies wrongly thought of as agreed/lawful by the public.'
59. The DfT has elaborated that the minutes are 'outdated, preceding both DPP v Issler and Bamberger [2014] EWHC 669 (Admin) and section 50 Deregulation Act 2015, making it more difficult to see any public interest that could be achieved by sharing outdated and inaccurate information, sufficient to override the arguments in favour of protecting the formulation of government policies.'
60. The Commissioner understands that not all of the positions, or considerations, within the document are outdated. The DfT seem to be specifically referring to the transport of medical personnel under the speed exemption and this position has been disclosed to the complainant.
61. However, the Commissioner does not consider this public interest argument relevant, since FOIA provides a right to information that public authorities hold; it does not require that information to be complete, accurate or up to date. The information could always be disclosed alongside an explanation that certain positions have been superseded by caselaw.
62. As the Commissioner has previously stated, it is not his role to comment on the length of time it takes for government to develop a policy. He accepts that it is important to protect the policy-making process when a matter is ongoing and disclosure of any related information might result in a 'chilling effect' which is important to avoid.
63. The Commissioner assigns significant weight to protecting officials and ministers ability to formulate and develop live policies as robustly as possible. Therefore, he considers the public interest lies in maintaining the exemption.

## **Other matters**

---

64. The DfT has explained that 'Consultation is scheduled for later in the year and the policy will not be finalised until the regulations pass through Parliament.' It has indicated that, when the regulations have been passed, it will have no issue with disclosing the entire document, other than the personal details of stakeholders, with the cautionary note that a lot of it will be inaccurate or obsolete.
65. In the DfT's submission to the Commissioner, it helpfully separated out all of the finalised policy decisions, in relation to each of the exemptions listed in paragraph 12, and those that were still 'live.'
66. The DfT has explained to the Commissioner that, if there is something specific that the complainant wishes to know, the DfT will assist in any way possible. It also offered to explain to the complainant 'the current position in respect of legislation and policy development, as I have in this letter' and the Commissioner would urge the complainant to take this offer up.

## **Right of appeal**

---

67. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

68. 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.

69. 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**

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**