

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 March 2021

Public Authority: Department for Health and Social Care
Address: 39 Victoria Street
London
SW1H 0EU

Decision (including any steps ordered)

1. The complainant has requested the Department of Health and Social Care (DHSC) to disclose any written correspondence or advice Matthew Hancock received about his plans to introduce genome sequencing for all new-born babies in the UK. The DHSC refused to disclose the requested information citing section 35(1)(a) of the FOIA.
2. The Commissioner's decision is that the DHSC is entitled to refuse to disclose the requested information in accordance with section 35(1)(a) of the FOIA. She does not require any further action to be taken.

Request and response

3. On 13 December 2019, the complainant wrote to the DHSC and requested information in the following terms:

"...I am writing to make a Freedom of Information request regarding information held by the Department of Health and Social Care. On 4 November 2019 Matt Hancock announced plans that all newborn children would have their genome sequenced at birth, while at the Genomics England Research Conference in London. Please could you send me any written correspondence or advice that Mr Hancock has received about this plan, from July to the present day."
4. The DHSC responded on 7 January 2020. It refused to disclose the requested information citing section 35(1)(a) of the FOIA.

5. The complainant requested an internal review on 7 January 2020.
6. The DHSC carried out an internal review and notified the complainant of its findings on 10 February 2020. It upheld its previous application of section 35(1)(a) of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 11 February 2020 to complain about the way her request for information had been handled. The complainant does not agree that section 35(1)(a) of the FOIA applies. She stated that she is not asking for written material relating to ongoing discussions of policy. Instead she is asking for written correspondence or advice that Mr Hancock received that contributed to announcing in November 2019 his ambition for genome sequencing for all babies. The complainant believes she is asking about a past policy announcement.
8. The Commissioner considers the scope of her investigation to be to determine whether the DHSC is entitled or not to refuse to disclose the requested information in accordance with section 35(1)(a) of the FOIA.

Reasons for decision

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

9. So far as is relevant, section 35(1)(a) of FOIA states that information held by a government department is exempt information if it relates to the formulation or development of government policy.
10. For information to be exempt under section 35(1)(a) it simply has to relate to the formulation or development of government policy; there is no requirement for the disclosure of the information to be in any way prejudicial to either of those policy processes.
11. In line with Tribunal decisions the Commissioner considers that the term 'relates to' should be interpreted broadly. This means that any significant link between the information and the policy process is sufficient to engage the exemption.
12. The DHSC advised that the policy to which the requested information relates is the DHSC Secretary of State's (SoS) stated ambition to apply whole genome sequencing as a screening test in every new-born child in the UK. It confirmed that the ambition mentioned by the SoS was not an announcement, formal or otherwise, but rather a point in his speech. It

stated that this policy development is still ongoing. Preliminary consideration of this ambition was paused during COVID and is only now restarting. The DHSC went on to say that significant work is required on public engagement and on the underlying economic rationale for this policy intervention before decisions are taken. It stated that it is its intention to carry out public engagement on any potential new-born genomics policy in the coming year.

13. The Commissioner has reviewed the withheld information and she is satisfied that it relates to the formulation and development of ongoing government policy – the SoS's ambition to apply whole genome sequencing as a screening test in every new-born child in the UK. She is therefore satisfied that section 35(1)(a) is engaged.

Public interest test

14. It stated that it recognises the general public interest in promoting openness and transparency in government. However, it considers the public interest rests in maintaining the exemption to ensure that the full, candid and proper deliberation of policy formulation and development, including discussions between policy officials and stakeholders, is not influenced or impacted by the possibility of public exposure.
15. The DHSC advised that civil servants and subject experts need to be able to engage in the free and frank discussion of all the policy options internally, to expose their merits and demerits and their possible implications as appropriate. It stated that their candour in doing so would be affected by their assessment of whether the content of such discussion will be disclosed in the near future. It argued that premature disclosure of the withheld information would be likely to prejudice good working relationships. The DHSC said that given the potential controversy of any screening policy, any prior release of material through the FOIA could prejudice public opinion and unduly influence public engagement.
16. The Commissioner recognises the public interest in openness and transparency and in providing the public access to information to enable them to understand more clearly the basis of government ideas and policy discussion. She accepts that disclosure of information enhances public debate. The Commissioner is also aware that the SoS's ambition to apply whole genome sequencing as a screening test in every new-born child in the UK will require significant work and public engagement. It will attract significant public interest and opinions for and against its application.
17. However, as the DHSC has pointed out, at the time of the request it was only an ambition; something that was touched on in the SoS's speech. It

was not an announcement, formal or otherwise. The development and formulation of this policy option was at a very early stage and therefore very much live. Significant work and engagement was still required and this has only just restarted after the effects of the COVID pandemic. While the Commissioner accepts there is a public interest in disclosure, she considers the DHSC should be afforded the safe space to formulate, discuss and debate this policy option (its advantages, disadvantages, potential implications and the economic rationale) before any public engagement takes place. She accepts that disclosure at this stage would be likely to hinder the policy development process and weaken the candour and frankness of the advice and deliberation of its policy colleagues and relevant stakeholders.

18. For these reasons, the Commissioner has concluded that the public interest in favour of disclosure is outweighed by the public interest in maintaining the exemption in this case.

Right of appeal

19. 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: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

20. 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.
21. 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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF