

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

### **Decision notice**

**Date:** 24 January 2023

**Public Authority:** Department of Health and Social Care (DHSC)  
**Address:** 39 Victoria Street  
London  
SW1H 0EU

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

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1. The complainant has requested the DHSC to disclose copies of information between Matt Hancock and Chris Whitty regarding Covid-19. The DHSC refused to comply with the request, citing section 12 of FOIA.
2. The Commissioner's decision is that the DHSC is entitled to refuse to comply with the request in accordance with section 12 of FOIA. He does not require any further action to be taken.

#### **Request and response**

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3. On 17 January 2022, the complainant wrote to the DHSC and requested information in the following terms:  
"... all email and written correspondence between Secretary of State for Health Matt Hancock and Professor Chris Whitty in entirety, from October 2019 and the end of Mr Hancock's tenure as Secretary of State for Health."
4. The DHSC responded on 15 February 2022. It refused to comply with the request under section 12 of FOIA.
5. The complainant requested an internal review on 2 March 2022.

6. The DHSC carried out an internal review and notified the complainant of its findings on 10 June 2022. It upheld its application of section 12 of FOIA.

### **Scope of the case**

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7. The complainant wrote to the Commissioner on 13 June 2022 to complain about the way their request for information had been handled. They believe that due to the seriousness of the medical situation at the time and the overwhelming effect it had on the UK, this information should and must be made available to the public.
8. The Commissioner has proceeded to a decision based on the DHSC's refusal notice and internal review. He did not feel it was necessary to make further enquiries to the DHSC.
9. The Commissioner is satisfied that section 12 of FOIA applies in this case. The following section of this notice will explain why.

### **Reasons for decision**

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10. Section 12 of FOIA states that a public authority may refuse to comply with a request if it estimates that it would exceed the cost limit to do so.
11. The cost limit for the DHSC is 24 hours and it is permitted to take into account the time it would take to establish whether the requested information is held, locate that information, retrieve it and extract it from any non-relevant information.
12. Section 12 is not subject to the public interest test. So it is irrelevant whether there is a significant public interest in the disclosure of the information. If the public authority can demonstrate that it would exceed the cost limit to comply, it is entitled to rely on this exemption.
13. The request is wide ranging, encompassing a significant amount of information over a 21 month period, during a time when both parties will have been in contact daily and often several times a day due to the Covid-19 pandemic.
14. The DHSC has conducted a search and this generated 10,766 items. To simply download and print those items off at a rate of 30 seconds per item it would take the DHSC over 89 hours of work. At 15 seconds per item it would comfortably take 44 hours, which is over the cost limit prescribed by FOIA.

15. For the above reasons, the Commissioner is satisfied that section 12 of FOIA applies.
16. The exemption is not subject to the public interest test. So any public interest arguments the complainant has submitted are not relevant. The complainant also made the comment that the DHSC does not have to apply section 12; it can choose to comply with the request. This is correct. But in this case it has decided to apply that exemption and it is entitled to do so.

### **Section 16 advice and assistance**

17. Section 12 of FOIA triggers the obligation to provide advice and assistance so far as it is reasonably practicable to do so. The DHSC advised the complainant to consider limiting their request to a more specific subject area within the topic of Covid-19 and reducing the time period.
18. The Commissioner considers the advice provided was reasonable in the circumstances and therefore the DHSC complied with section 16 of FOIA.

### **Other matters**

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19. The Commissioner notes that the DHSC took over three months to complete the internal review process. The Commissioner would like to remind the DHSC of the Section 45 Code of Practice and the timeframe for carrying out internal reviews. They should be completed in 20 working days of receipt and certainly no later than 40 working days. 40 working days should only be required in the most complex and voluminous of cases.

## **Right of appeal**

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20. 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)

21. 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.
22. 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**