

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

### **Decision notice**

**Date:** 18 April 2023

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

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

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1. The complainant requested information from the Department of Health and Social Care ("DHSC") about correspondence relating to the types of potential integrated care contract providers during the formulation of the Health and Social Care Bill. DHSC advised that to ascertain whether or not the requested information was held would exceed the cost limit at section 12(2) (Cost of compliance exceeds appropriate limit) of FOIA.
2. The Commissioner's decision is that DHSC was entitled to rely on section 12(2) and that it complied with its duties under section 16 (Advice and assistance) of FOIA. No steps are required.

#### **Request and response**

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3. On 1 December 2021, the complainant wrote to DHSC with a refined request and requested information in the following terms:

"[...]"

You have again asked me to narrow my question. Accordingly I ask you to provide me with any correspondence between the lead official for the Health and Care Bill and the Secretary of State that discusses whether the providers of integrated care contracts should be confined or open to public sector bodies. You may limit the period of this correspondence to the 6 months before the Bill was

published. If again this breaches Section 12(2) of the FOIA then you may reduce the period as necessary.”

4. DHSC responded on 24 December 2021 and advised that it did not hold the requested information.
5. Following an internal review, DHSC wrote to the complainant on 11 March 2022 and upheld its original decision.
6. Following communication from the Commissioner, DHSC contacted the complainant on 10 October 2022 to request clarification. The complaint provided the following clarification on 15 November 2022:

“My FOI request is quite clear. Namely to provide me with any correspondence between the lead official for the Health and Care Bill and the Secretary of State that discusses whether the providers of integrated care contracts should be confined or open to public sector bodies. Both Matt Hancock and Simon Stevens said this would be the case when meeting the House of Commons Health and Social Care Committee (HSCC) in January 2019. According to your letter of 10 October 2022, reference to integrated care contracts did not form part of the policy discussions in the run up to the publication and passage of the Health and Care Bill.

If that is true then your answer to my request is that there is no correspondence that you can provide me in answer to my FOI request. I find this strange because the link in your letter to a 2019/2020 paper about the use of the Integrated Care Provider Contract within NHS England's Long Term Plan states that the HSCC recommended that the law should rule out the option of non-statutory providers holding an Integrated Care Provider Contract. The paper adds that this was the expectation of NHS England. This expectation is in accordance with the comments made by Matt Hancock and Simon Stevens to the HSCC in January 2019.

Without any further delaying tactics, please confirm whether or not any of my requested correspondence exists and if it does provide me with a copy”

7. DHSC provided a response on 12 December 2022, advising again that the information was not held.
8. Following an investigation by the Commissioner, a decision notice was issued under the reference number IC-153138-M7C8 that did not uphold DHSC's original response that the information was not held. DHSC then

issued a new response on 5 April 2023 and stated that it was instead relying on section 12(2) to refuse the request.

9. On 5 April 2023, the complainant expressed to the Commissioner their dissatisfaction with the new response.

## **Scope of the case**

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10. The Commissioner considers the scope of this case to be to determine if DHSC has correctly cited section 12(2) of FOIA in response to the request. The Commissioner has also considered whether DHSC met its obligation to offer advice and assistance, under section 16 of FOIA.

## **Reasons for decision**

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### **Section 12 – Cost of compliance exceeds appropriate limit**

11. Section 1 of FOIA states that:

“Any person making a request for information 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 that is the case, to have that information communicated to him”.

12. However, under section 12(2) a public authority is not required to comply with section 1(1) if the cost of establishing whether or not it holds the requested information would exceed the appropriate cost limit. This is set at £600 (24 hours work at £25 per hour) in the case of DHSC.
13. DHSC has previously explained that it is highly unlikely that the requested information exists, as although NHS England led work to develop an Integrated Care Provider Contract over several years, which was published in 2019, there is no apparent indication that it was ever used by anyone in the NHS. DHSC explained that as the contract was forming there was some public discussion of whether a lead commissioner could or should be a private provider – and, as a result, the contract was published in a form that was suitable for statutory bodies only. After this, in 2019-21, NHS England developed proposals for a legislative reframing for the NHS and its core bodies that was then further developed with DHSC. While this included changes to service

provision, the work did not touch on the Integrated Care Provider Contract.

14. DHSC explained that it would be required to search the email boxes of two key policy team members with a view to identify emails that may hold information pertaining to the request.
15. DHSC carried out a sampling exercise where it focussed the search on one email box and performed search exercises on various permutations of acronyms that it believed covered the request. It explained that, whilst each interpretation could produce significant results, it was possible that duplication across different searches would occur and it noted a considerable volume of emails obtained for each key word as detailed below:
  - Integrated Care Provider Contract - 5,958
  - Integrated Care Partnership - 9,869
  - Integrated Care Provider - 12,415
  - Integrated Care Contract - 6,803
  - Integrated Care - 20,158
  - ICP – 4,047
  - Total volume from these key words - 59,250
16. DHSC considered that it was a reasonable assumption that duplication occurred across search categories but stated that, due to the material content of the emails, it would be necessary to review each one to determine if it supplied the information requested. A sample exercise over a one-hour period determined that it took five minutes to read each randomly selected email. For illustration purposes, DHSC focussed on the key term 'ICP' and estimated that 4047 emails at five minutes per email would take over 337 hours to deduce whether any of them held information of interest. Even if the estimate was reduced to one minute per email this means it would take over 67 hours, well in excess of the cost limit.
17. The Commissioner has considered DHSC's submissions and the types of searches that DHSC has conducted in an effort to ascertain whether or not any information is held. He considers that the searches DHSC has attempted to carry out were appropriate and that its time estimates are reasonable based on the rationale it has provided above. The Commissioner's decision is that it would take significantly in excess of 24 hours for DHSC to be able to confirm definitively whether or not it holds the information the complainant has requested and that, therefore, section 12(2) of FOIA is engaged.

**Section 16(1) – The duty to provide advice and assistance**

18. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice<sup>1</sup> in providing advice and assistance, it will have complied with section 16(1).
19. The Commissioner notes that DHSC considered what advice and assistance it could provide but found this was not possible given that it did not consider the requested information to exist.
20. Considering the above, the Commissioner doesn't see how the request could be meaningfully refined to allow DHSC to search its systems for any information it may hold within the cost limit. Therefore, the Commissioner is satisfied that there was no section 16(1) breach in this instance.

## **Other Matters**

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21. The Commissioner notes that the complainant has displayed a great deal of patience and cooperation in refining their request over the course of their dealings with DHSC. While it is unlikely that it would have changed the outcome of the responses provided to date, the Commissioner feels that DHSC could have scoped the request more efficiently and asked for clarification sooner in order to reduce the amount of time that the complainant has had to wait.

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<sup>1</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

## Right of appeal

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22. 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)

23. 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.
24. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**