

## Freedom of Information Act 2000 (FOIA) Decision notice

**Date:** 16 September 2021

**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 has requested information relating to a report issued in 2007.
2. The Commissioner's decision is that on the balance of probabilities, Department of Health and Social Care (DHSC) does not hold any information within the scope of the request.
3. The Commissioner does not require any steps to be taken as a result of this Decision Notice.

### Request and response

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4. On 1 June 2020, the complainant wrote to DHSC and requested information in the following terms:

*"ACMD Drug Facilitated Sexual Assault (DFSA) Report 2007 I would be extremely grateful for your help with the following query pertaining to the above report. In the event this matter would be more appropriately dealt with by another body I would be most grateful if this letter could be forwarded to that other body.*

*In 2007 the Advisory Council on the Misuse of Drugs Secretariat ('ACMD'), a Home Office related body, published a report on DFSAs in 2007. Among its recommendations were the Department of Health (DoH) should ensure hospitals have 'early evidence kits' to allow for*

*testing for drugs used for DFSAs. I would be grateful if you could inform me of:*

- *What steps the DoH took to ensure all hospital A&E departments have early evidence kits;*
- *Any DoH guidance or related documentation provided to hospitals on the use of such kits as recommended by the ACMD or otherwise; and*
- *Whether the DoH requested the National Institute of Health & Clinical Excellence, or indeed any other bodies, help the DoH to develop such guidance and if so how I may obtain a copy of the same.*

*I would be grateful if you could also consider the above query with respect to Drug Facilitated Crime ('DFC') as well as DFSA."*

5. DHSC responded on 14 October 2020 and stated that it did not hold the information requested.
6. Following an internal review DHSC wrote to the complainant on 11 November 2020 and maintained its position.

## **Scope of the case**

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7. The complainant initially contacted the Commissioner on 12 August 2020 as they had not received a response to their request. The Commissioner issued a Decision Notice in that case ordering DHSC to provide a response and so does not form part of this review.
8. Following intervention by the Commissioner DHSC issued its response on 14 October 2020. The complainant subsequently contacted the Commissioner again on 23 November 2020 as she remained dissatisfied about the way their request for information had been handled.
9. Having reviewed the available information the Commissioner advised the complainant that it was unlikely the complaint would be upheld and invited them to withdraw the complaint. On 13 May 2021 the complainant contacted the Commissioner and confirmed they did not wish to withdraw their complaint and they would provide further submissions in support of their position. The Commissioner agreed to allow the complainant time to provide them, however at the time of this notice they have not been submitted.
10. The Commissioner is aware that she has allowed well over and above the usual time for such submissions and cannot accommodate this any further. Based on the last communication with the complainant the Commissioner considers it is appropriate to now issue a Decision Notice to bring this case to a conclusion. The scope of this case therefore is to

determine whether, in the balance of probabilities, any information was held within the scope of the request.

## Reasons for decision

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11. Section 1(1) of the 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. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.

13. In cases such as this, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.

14. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

### *DHSC's position*

15. In its submission to the Commissioner, DHSC provided the following background:

The FOI was in relation to the ACMD Drug Facilitated Sexual Assault (DFSA) Report 2007 and in particular to the recommendation that DHSC should ensure hospitals have early evidence kits to allow for testing for drugs used for DFSAs.

We responded to say that DHSC does not hold the information requested. We also provided a link to a wired.gov article on the report.

The article covered DH response to the recommendation:

"The Department of Health to ensure that early evidence kits are available in all A&Es and consider developing guidance for staff in A&E and SARCs to improve the management of victims of alleged drug-assisted sexual assault.

*It is for the local NHS to decide how they respond to ensure all patients receive appropriate care and support, and therefore it is a local matter as to whether such kits are provided and used in A&E."*

16. DHSC confirmed that at the time of the request it carried out searches of all locally held files on the shared drive and relevant emails accounts. It also carried out searches of its legacy system (Preservica) and did not find anything of relevance.
17. It went on to explain that the searches used were "ACMD" AND "DFSA" AND "report" AND "early evidence kits".
18. DHSC also stated that if the recommendation had been accepted, the records would have been held and retained electronically, either on the official records management system in use at the time; MEDS (or Preservica as it is now known) or within the relevant shared drive.
19. It advised that standard administration records are retained for three years and then deleted. A record is kept of any deletions and those records have also been checked.

*The Commissioner's view*

20. DHSC has confirmed it does not hold the information requested and fulfilled its obligation under section 1 FOIA. In addition it provided links to other information in the public domain that may be useful to the complainant and therefore has complied with its duty to provide advice and assistance under section 16 FOIA.
21. The information available via these links is not held by DHSC and therefore falls outside the scope of the request.
22. DHSC has confirmed the department rejected the recommendation in the report and stated it is for the local NHS to decide. This explains why it does not hold any information in relation to this request.
23. As the department rejected the recommendation, it would not create and retain records in relation to it.
24. The Commissioner is satisfied that DHSC has carried out adequate searches in an attempt to locate any relevant information, albeit without success. She therefore considers that, on the balance of probabilities, DHSC does not hold the information requested.

## Right of appeal

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25. 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)

26. 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.
27. 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

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