Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 May 2021

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

Decision (including any steps ordered)

1. The complainant has requested information relating to the mandatory requirement to wear face coverings.

2. The Commissioner's decision is that the Department of Health and Social Care (DHSC) has correctly cited section 35(1)(a) in response to the request.

3. The Commissioner does not require DHSC to take any steps as a result of this decision notice.

Request and response

4. On 20 November 2020, the complainant wrote to DHSC and requested information in the following terms:

   "I would be pleased to receive, under the FOI Act 2000, a copy of the Impact Assessment undertaken by DHSC regarding the mandatory requirement for certain members of the public to wear face masks under certain circumstances."

5. DHSC responded on 26 November 2020 and refused to provide the requested information citing section 35(1)(a) as its basis for doing so.

6. In his request for internal review the complainant stated:

"I have reason to believe that members of the public are at significant risk of harm from Hypoxia[1] and Hypercapnia[2] as a result of government policy. A fact sheet prepared by Dr Vernon Coleman on the subject [an eminent member of the medical profession and author of over 100 books] is also attached in support of my assertion."

7. DHSC provided its internal review on 1 December 2020 and maintained its position.

Scope of the case

8. The complainant contacted the Commissioner on 1 December 2020 to complain about the way his request for information had been handled. In his submission the complainant stated:

"I consider it unreasonable for DHSC to withhold the information requested. The risk of harm from Hypoxia and Hypercapnia is well-documented. I take the view that the public are entitled to receive a copy of the evidence presented to ministers to enable informed decisions to be taken regarding the risk of harm. I take the view that new statutes should not be imposed if officials consider the supporting evidence to be in draft form and subject to review."

9. Following a preliminary assessment the Commissioner wrote to the complainant on 17 May 2021 advising that she did not consider his complaint would be upheld. She further explained that DHSC has been particularly hit hard by the pandemic and given the exceptional circumstances and the subsequent effect on DHSC, asked if he would consider withdrawing his complaint.

10. The complainant declined to withdraw his complaint and provided additional information in support of his position.

11. The Commissioner considers the scope of this case to be to determine if DHSC has correctly cited section 35(1)(a) FOIA in response to the complaint. Given all the above the Commissioner has not sought further submissions from DHSC.

[1] *Low oxygen in the blood*

[2] *Build-up of carbon dioxide in the blood stream*

Reasons for decision

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

12. Section 35(1)(a) FOIA provides that:

> *"Information held by a government department or by the Welsh Assembly Government is exempt information if it relates to -*
>
> *(a) the formulation or development of government policy"*

13. In its response to the complainant DHSC confirmed that it held information relevant to the request and that an Equalities Impact Assessment had been carried out. It went on to state:

> *"However, this policy is one that remains under development as we keep the list of settings this applies to under review, guided by the scientific evidence. Therefore, we are withholding this information under section 35 (1)(a) of the FOI Act.*
>
> *This provides protection for the information that relates to the formulation or development of government policy. Section 35 is a qualified exemption and requires consideration of the public interest test.*
>
> *The Department recognises a general public interest in promoting openness in the way in which public authorities make decisions on policies. However, the purpose of the exemption at section 35 is to protect the internal deliberative process as it relates to policy making.*
>
> *In other words, the exemption is intended to ensure that the possibility of public exposure does not deter from full, candid and proper deliberation of policy formulation and development, including the exploration of all options, the keeping of detailed records and the taking of difficult decisions. Premature disclosure of information protected under section 35 could prejudice good working relationships, the perception of civil servants' neutrality and, ultimately, the quality of Government.*

The Complainant's position

14. In his further submission to the Commissioner the complainant referred to a number of legal proceedings that have been lodged, both in the UK and abroad. These are provided in an annex at the end of this decision notice. The Commissioner notes that none of these relate directly to the issue of face coverings and the focus is around the effectiveness of testing, pandemic fraud, gene-editing treatment and RT-PCR testing

rather than the impact of face coverings. Similarly the Corman Drosten review report relates to testing & diagnostics.

15. Section 35 is a class based exemption, therefore if information falls within the description of a particular sub-section of 35(1) then this information will be exempt; there is no need for the public authority to demonstrate prejudice to these purposes.

16. The Commissioner takes the view that the 'formulation' of policy comprises the early stages of the policy process – where options are generated and sorted, risks are identified, consultation occurs, and recommendations/submissions are put to a Minister or decision makers.

17. 'Development' may go beyond this stage to the processes involved in improving or altering existing policy such as piloting, monitoring, reviewing, analysing or recording the effects of existing policy.

18. Whether information relates to the formulation or development of government policy is a judgement that needs to be made on a case by case basis, focussing on the content of the information in question and its context.

19. The Commissioner considers that the following factors will be key indicators of the formulation or development of government policy:

    - the final decision will be made either by the Cabinet or the relevant Minister;

    - the government intends to achieve a particular outcome or change in the real world; and

    - the consequences of the decision will be wide-ranging.

20. The Commissioner considers that the information requested relates to the development of government policy and therefore the exemption is engaged.

Public interest test

21. Section 35 is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption contained at section 35(1)(a) outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the information

22. With regard to the public interest test, the Commissioner notes that DHSC has only provided the complainant with limited details of its considerations

23. The complainant has argued that *"the public are entitled to receive a copy of the evidence presented to ministers to enable informed decisions to be taken regarding the risk of harm. I take the view that new statutes should not be imposed if officials consider the supporting evidence to be in draft form and subject to review."* He has also stated his belief that members of the public are at significant risk of harm from Hypoxia and Hypercapnia as a result of government policy.

24. DHSC acknowledged a general public interest in promoting openness in the way in which public authorities make decisions on policies.

25. 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. Once a policy decision has been finalised and the policy process is complete, the sensitivity of information relating to that policy will generally start to wane, and public interest arguments for protecting the policy process become weaker. If the request is made after the policy process is complete, that particular process can no longer be harmed.

Public interest arguments in favour of maintaining the exemption

26. 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.

27. At the time of the request the pandemic was far from over and government policies relating to public health measures that were in place or may need to be amended would naturally be kept under review and in development

28. The policy in question remained 'live' due to emerging scientific evidence and clinical data. On the day the request was made 20,252 new infections and 511 deaths were recorded in the UK.

The Commissioner's decision

29. The Commissioner considers that given the timing of the request and the stage that DHSC was at, at that time, the public interest rests in maintaining the exemption.

Right of appeal

30. 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

31. 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.

32. 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

Annex

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15 May 2021

"Statement of Case" alleging pandemic fraud against Hancock, Whitty, Vallance and Ferguson was filed electronically at Westminster Magistrates Court on 19 March 2021, along with a covering letter informing the court that the substantive evidence bundle would be sent by Royal Mail Special Delivery the following week, including hard copies of the "Statement of Case" and the covering letter. On 26 March 2021 the three case files were received and signed for by the court. The judge purported to dismiss the case on the emphatically unsustainable ground that not enough prima facie evidence had been presented for the case to proceed. When it became clear that the judge's decision was based on the 126 page "Statement of Case" and that he had not had sight of the supporting evidence of 800 pages which included 11 expert witness statements in support of the serious allegations made, the judge indicated that he would be reconsidering the case upon all the evidence adduced at the end of next week, with his final decision to follow shortly afterwards. The judge's second decision is awaited.

11 May 2021

The legal team representing America's Frontline Doctors is filing cases in court to prevent the Food and Drugs Administration [FDA] from issuing an "Emergency Use Authorisation" [EUA] for the experimental Covid 19 gene-editing treatment for 12 to 15 year old children. The FDA proposes to expand the EUA for Pfizer's COVID-19 vaccine to enrol adolescents, ages 12-15. Scientists around the world have noted extreme danger and believe the danger is even greater for young people due to their stronger immune systems. There are now over 4,100 deaths associated with the experimental Covid 19 gene-editing treatments. By comparison, an experimental vaccine rollout in the USA in 1976 was permanently halted after just 25 deaths. Critical testing and clinical trials were bypassed. The average length of time required to approve a vaccine is 10-15 years but now, barely six months in, the FDA is poised to test it on children and then request universal approval. Independent scientists from all over the world are protesting, but they are being ignored. The lives of America's youth are now at grave risk over an experimental injection for a virus which is 99.97% survivable. Children are not affected by Covid, so why should they receive an experimental gene-editing treatment. Parents, teachers, doctors, and all others who can attest to harm, injury, or death from vaccines already administered will provide the evidence to save children from being injected with these dangerous and unnecessary biological agents. Further updates will be provided as litigation now progresses.

20 April 2021

In a 27-page submission, a 'Request for Investigation' of the UK Government and its advisers, for genocide, crimes against humanity and breaches of the Nuremberg Code, was issued to the International Criminal Court [ICC] at the Hague. Compelling reasons as to why the UK Government and its advisers are guilty of the above charges was submitted. The ICC will review the 'Request for Investigation' and assess whether they believe there is a reasonable basis to proceed with an investigation into a 'Situation', pursuant to the criteria established by the Rome Statute. The ICC does not provide a timeline regarding acceptance, nor is there any guarantee that they will ultimately accept the 'Request for Investigation' due to a variety of reasons, including the fact that they are limited in their capacity to conduct investigations.

19 April 2021

Private Criminal Prosecution [PCP] alleging pandemic fraud is set to be listed for hearing at Bromley Magistrates Court. Effectively, this means that the case files contained enough prima facie evidence of pandemic fraud for Westminster to transfer the case to Bromley, for the purposes of performing the final legal checks [the initial checks having been done by the south London court's legal department] and listing the first hearing of the case at the Kent court.

19 March 2021

Private Criminal Prosecution [PCP] papers alleging pandemic fraud were laid electronically at a south London Magistrates Court, against Matt Hancock, Chris Whitty, Patrick Vallance and Neil Ferguson. The Court will receive a 1,200 page bundle of evidence, which includes expert witness statements from two professors, three doctors, a dental surgeon, a probate solicitor, a mathematician, a retired nuclear submarine data analyst, an independent data analyst and a former CID fraud detective. In addition to the charges of fraud by false representation and non-disclosure, in material breaches of sections 2 and 3 of the Fraud Act 2006, the action [instigated by Michael O'Bernecia] is informally applying for a declaration, under the inherent powers of the court, which states that autopsies are to be carried out for all alleged Covid deaths, which will be held as evidence in the forthcoming trial, on the ground that expert witness testimony is available of the falsification of death certificates, as per UK Government policy. Additionally, a request is being made for a moratorium on the UK influenza and Covid 'vaccinations' programmes to be declared for period of at least 90 days, in order to definitively establish whether it is Covid 19 or 'vaccines' that are killing people at a minimum mortality rate of 377 per 100,000 healthy adults, as

per the leaked WHO approved 'vaccine' safety study which is being included as evidence. The court previously requested more prima facie evidence when the last application in late 2020 was made, seeking the arrest of Matt Hancock for fraud by non-disclosure over the declassification of Covid 19 by the ACDP.

11 January 2021

Legal proceedings under Class Proceedings Act 1992 initiated on behalf of plaintiffs at Ontario Superior Court of Justice alleging, inter alia, crimes against humanity and war crimes. Court reference CV-21-000085478-00CP. Defendants include: Pope Francis, The Holy See, The State of the Vatican, The Society of Jesus, H M Queen Elizabeth II, The Order of the Garter, The House of Windsor, Global Vaccine Alliance [GAVI], the United Nations World Health Organisation, Public Health Organisation of Canada, Bill & Melinda Gates Foundation, Prime Minister Justin Trudeau, Dr Theresa Tam, Premier Doug Ford, Christine Elliot, Mayor Jim Watson, Attorney General of Canada, Attorney General for Ontario. The action alleges, inter alia, that the defendants are vicariously liable for knowingly and wilfully advancing, promoting, adopting and manufacturing Covid 19 protocols, task force response, and medical protocols which violate terms and provisions of the "Crimes Against Humanity and War Crimes Act". Under the action the plaintiffs and Class Members seek damages for breach of domestic torts such as negligence, breach of fiduciary duty, malfeasance in office, unlawful confinement, and conspiracy. The plaintiffs and Class Members also seek damages for breaches of customary international law, prohibitions against crimes against humanity, cruel, inhuman or degrading behaviour, and torts of genocide and apartheid.

15 December 2020

"Cease and Desist" papers served on Dr Christian Drosten regarding the fraudulent content of the "Corman - Drosten paper" on RT-PCR tests, by Dr Reiner Fuellmich [Dr in Law] who leads a team of 34 lawyers prosecuting global officials over Covid 19.

25 November 2020

First lawsuit in a multi-lawsuit strategy filed in Germany. Fact checkers are being sued regarding validity of RT-PCR test for SARS-CoV-2 virus. Dr Reimer Fuellmich working with the "Coronavirus Investigation Committee" in Germany. Cases also filed in U S Courts as they have better separation between the legislature and the legal system than courts in Europe.

11 November 2020

An appeals court in Portugal has ruled that the RT-PCR process is not a reliable test for Sars-Cov-2 (the purported cause of the Covid-19 disease

[which has not been isolated or identified with a compiled genome available], and therefore any enforced quarantine based on those test results is unlawful. Further, the ruling suggested that any forced quarantine applied to healthy people could be a violation of their fundamental right to liberty. Most importantly, the judges ruled that a single positive PCR test cannot be used as an effective diagnosis of infection.

2 September 2020

191-page lawsuit filed by "Rocco Galati" against multiple levels of the Canadian Government regarding their management of the alleged pandemic. The following are named in his lawsuit: Justin Trudeau, Theresa Tam, Doug Ford, John Tory, and a host of other federal, provincial and municipal government officials. The lawsuit seeks several official declarations from the courts that pandemic measures are neither scientific or medically-based, that they are extreme, irrational, and unwarranted and that they breach multiple sections of the Canadian Charter of Rights and Freedoms. He is also seeking damages from the Canadian Broadcasting Corporation [CBC].