

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

### **Decision notice**

**Date:** 3 November 2022

**Public Authority:** UK Health Security Agency  
(Executive Agency of the Department of Health and Social Care)

**Address:** InformationRights@UKHSA.gov.uk

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

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1. The complainant requested information relating to companies that had used the 'VIP' route for gaining covid related contracts.
2. The UK Health Security Agency ("UKHSA") disclosed the names of the 50 suppliers but could not confirm or deny whether it held information relating to the names of ministers or senior officials who referred the companies to the 'VIP' route, and in doing so, relied on section 12(2) of FOIA (cost of compliance exceeds appropriate limit).
3. Commissioner's decision is that UKHSA has failed to demonstrate that section 12(2) is engaged.
4. The Commissioner requires UKHSA to take the following steps to ensure compliance with the legislation:
  - Disclose the information about the referrers to the complainant. OR
  - Issue a fresh response to the request, which do not rely on section 12(2) of FOIA.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

## Request and response

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6. On 24 September 2021, the complainant wrote to DHSC and requested information in the following terms:

*"1 - Please confirm the number of companies that were designated as 'VIP's' ? [sic]*

*2 - Please provide the names of the companies that were designated as VIP's who then subsequently were awarded contracts from the DHSC?*

*3 - Following your response to the previous questions, Please [sic] provide the names of the Ministers or senior officials who referred the companies onto the 'VIP' route?*

*Please note that the DHSC has recently committed [sic] to providing the names of the PPE providers who were listed as 'VIP's [sic] by the department, i [sic] therefore expect (and i [sic] imagine the ICO would agree) that the same principle [sic] should be adopted here".*

7. DHSC responded and refused to provide the requested information citing section 12(1) of FOIA. Following an internal review DHSC upheld its original position.
8. This request was originally made to DHSC, however, during the course of the Commissioner's investigation, he was advised by DHSC on 12 May 2022 that the responsibility for this information was transferred from DHSC to UKHSA.

## Reasons for decision

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### Section 12 – cost of compliance exceeds the appropriate limit

9. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
10. Section 12(2) states that, if a public authority estimates that it would exceed the appropriate limit to confirm whether or not the requested information is held it does not have to deal with the substance of the request.

11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations')<sup>1</sup> at £600 for central government department such as UKHSA.
12. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 24 hours for UKHSA.
13. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
  - (a) determining whether it holds the information,
  - (b) locating the information, or a document which may contain the information,
  - (c) retrieving the information, or a document which may contain the information, and
  - (d) extracting the information from a document containing it."

#### **UKHSA's position**

14. In correspondence with the Commissioner, UKHSA advised that it was not always possible to discover the source of an original referral. It explained that, at times, it became aware of suppliers after the initial contact had been made with another government department or agency. Also due to the pace of work, there were instances where, an initial email with a supplier's name often referred to previous conversations that took place when the data was held by other departments. Therefore, to reconstruct if the information is held would require considerable work that would far outweigh the time limit and, in some cases, it would still not be possible to respond to the request.
15. UKHSA also stated:

"At times, suppliers are referred to us by other suppliers as competitors or in comparing products – this is not differentiated by the database that is in place to search the emails, meaning that numerous documents will have to be reviewed that don't just relate to the supplier themselves, it will pull in other irrelevant material that will still have to be reviewed on

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<sup>1</sup> <https://www.legislation.gov.uk/uksi/2004/3244/made>

screen. It also sometimes yielded leads that enabled us to broaden our market analysis to ensure best value for the taxpayer in the award of a contract and so would not provide a clear line of referral / processing as is being requested within the statutory timeframe.”

“Often where there is a clear forward into the inbox, it is from a junior official and so establishing how they received the information will mean trying to establish if they remain employed, asking for their recollections, and this is considered to likely take us outside the time frame required by law, owing to the steps involved and the complexity of the way in which we hold the information in our agency”.

“This data does not exist in a report unlike the work undertaken to identify the suppliers in the first instance and which we were able to provide after following the s.45 Code of Practice in our ref IR-188. We would have to create this information following extensive research. The original research project, using the tools we have used to populate the spreadsheet attached, took a team of three FTE1.0 staff a period of six months to complete, due to the complexity of the records involved and this was for a far more straightforward ask which was purely the names of the suppliers, not the referrers. We estimate to establish the information requested would take even longer and we do not have the staffing to facilitate this scale of work in a three-day period, nor does this represent best value of a use of our resources for the taxpayer.”

16. UKHSA has estimated that the number of electronic files that are relevant to identify the data linked to the request is 70,000 files. It estimates that it will take 4 minutes to assess each file, with a total number of hours projected at 4666.67 at a total cost of £116,666.67 which exceeds the cost limit.

### **The Commissioner's view**

17. Any estimate that a public authority provides must be realistic and based on cogent evidence. The Commissioner is not convinced that the method of extraction is the simplest and quickest to achieve this aim.
18. The Commissioner would consider it appropriate to conduct searches based on the 50 known suppliers across the 70,000 electronic files to reduce the number of files from which the information could be extracted.
19. At this stage, the Commissioner does not know how many of the 70000 electronic files contain information about the 50 suppliers. He considers it plausible that all 70000 files may contain information relating to the 50 suppliers. However, the Commissioner has no information before him from UKHSA to suggest this is the case.

20. Even if all 70000 files contain information about the 50 suppliers, the Commissioner considers that UKHSA could have conducted a sampling exercise to give an approximate indication, of how long it would take to locate and/or extract the information and provide a breakdown of the timeframe and the cost limit involved in determining whether or not it holds the information.
21. The Commissioner considers that UKHSA has failed to demonstrate how the cost of determining whether it holds information within the scope of the request would exceed the appropriate limit in this case. For this reason, it is the Commissioner's view that UKHSA has failed to demonstrate that section 12(2) is engaged.

**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 .....**

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