Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 December 2022

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

Address: Nobel House
17 Smith Square
London
SW1P 3JR

Decision (including any steps ordered)

1. The complainant has requested information relating to COVID-19.

2. The UKHSA refused to provide the requested information, citing section 24(1) (national security) of FOIA.

3. The Commissioner's decision is that the withheld information engages section 24(1) and the public interest favours maintaining the exemption. The UKHSA breached section 10 (time for compliance with request) in failing to provide its refusal notice within twenty working days of receipt of the request.

4. The Commissioner does not require the UKHSA to take any steps.

Request and response

5. On 26 January 2022, the complainant wrote to the UKHSA and made a request for information. Due to the length of this request, it is outlined in an annex to this notice.

6. On 25 March 2022, the UKHSA provided its response. It refused to provide the requested information, citing section 24(1) of FOIA. It

provided the complainant with links to published information[1] about COVID-19 which they might find useful in line with its obligations under section 16 (duty to provide advice and assistance).

7. On 1 April 2022 the complainant requested an internal review. They disputed the existence of COVID-19 and the UKHSA's application of section 24(1).

8. Following an internal review, the UKHSA wrote to the complainant on 3 May 2022. It upheld its position in relation to section 24(1).

9. The Commissioner notes that the complainant has asked for answers to specific questions and **additional details** relating to virus isolation and genome sequencing. The UKHSA has advised the Commissioner that, whilst it is maintaining its reliance on section 24(1), it also believes that section 12 (cost of compliance exceeds appropriate limit) applies to the request.

10. The UKHSA has provided the Commissioner with the answers to the specific questions that the complainant posed in the request. This decision notice will consider whether that information, and any additional information that the UKHSA holds, is exempt under section 24(1).

Reasons for decision

Section 24(1) – National Security

11. Section 24(1) of FOIA states that information is exempt if it is required for the purpose of national security.

12. The UKHSA has explained that 'In a time of substantial COVID-19 associated biosecurity risk towards the global health and Government sector we must ensure that we continue to protect our infrastructure.'

13. It has elaborated that disclosure would detail the exact methodology utilised in virus amplification for COVID-19. The Commissioner understands that virus amplification, in this context, refers to the replication of the virus.

[1] https://www.eurosurveillance.org/content/10.2807/1560-7917.ES.2020.25.32.2001483; What do we know about the new COVID-19 variants? - UK Health Security Agency (blog.gov.uk); COVID-19: epidemiology, virology and clinical features - GOV.UK (www.gov.uk)

14. The UKHSA is concerned that COVID-19 is a designated high hazard virus which requires handling in a Biosafety Level 3 laboratory. It believes disclosure would release, into the public domain, information that would pose a threat to national and global biosecurity, if utilised by 'unascertained or unvetted member of the public or agents with ill intent.'

15. The UKHSA has explained 'Disclosure of information would constitute very detailed technical information, transferring know how, which would directly contravene an explicit request from the World Health Organization (WHO) to Public Health England (PHE now UKHSA) in 2020 not to release or make widely available the details of culture amplification of SARS-CoV-2.' Whilst the WHO's request doesn't automatically mean that the information engages the exemption, the Commissioner certainly considers it relevant.

16. National security means the security of the United Kingdom and its people. The Commissioner is mindful that the exemption exists to protect all information that could impact national security, even if there is no evidence that an attack is imminent. However, off the back of the COVID-19 pandemic, the Commissioner agrees with the UKHSA that the risks that disclosure would represent are obvious and therefore the exemption is engaged.

17. Whilst there is an obvious and weighty public interest in protecting national security, section 24(1) is not an absolute exemption, it is a qualified exemption. This means that it is subject to the public interest test.

18. In favour of disclosure, the UKHSA acknowledges that there is a public interest in transparency and the work that it does. Furthermore, disclosure would help to present a full picture of the COVID-19 virus, to enable wider public scrutiny of decision making.

19. However, the Commissioner agrees with the UKHSA, the public interest in disclosure does not outweigh the need to protect national security. For this reason, the UKHSA was correct to withhold the requested information under section 24(1).

Section 12(1) – cost of compliance exceeds appropriate limit

20. The Commissioner is satisfied that, first and foremost, section 24(1) applies to all information that falls within the scope of the request.

21. Section 12(1) states that a public authority does not have to comply with a request for information if it estimates that doing so would exceed the appropriate limit. The appropriate limit is 24 hours or £600 for a central government department such as the UKHSA.

22. Bearing in mind the scope of the request, the role of the UKHSA during the pandemic and the volume of relevant information that the UKHSA is likely to hold, the Commissioner is also satisfied that section 12(1) would apply in the alternative.

Procedural matters

23. Since the UKHSA failed to respond to the request within twenty working days, it breached section 10(1) (time for compliance with request) of FOIA.

Right of appeal

24. 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
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. 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.

26. 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

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

"All records in the possession, custody or control of the UK Health Security Agency (UKHSA) that contain **additional details** (listed below) of the so-called "virus isolation" and "whole genome sequencing" procedures/methodologies for SARS-COV-2 and results that were reported on in the publication 'Duration of infectiousness and correlation with RT-PCR cycle threshold values in cases of COVID-19, England, January to May 2020.

Pre-Experimental Details:

- The Cell Nutrient Solution (storage medium) quantity and dilution that the cell lines are stored in for preparation of the experiment

Cell Culture – Experimental Group Details

- The quantity of material from (alleged infected) nasopharyngeal and oropharyngeal swab specimens that was added to the cell culture experimental group (per well)
- Antibiotics Quantities for the cell culture experimental group (per well)
- Antifungals Quantities for the cell culture experimental group (per well)
- Fetal Bovine Serum Quantities and dilution for the cell culture experiment group (per well)
- The quantity and dilution of the Cell Nutrient Solution (DMEM) used in the control group (per well)
- The number of wells used in the control group
- The number of wells in the control group that experience CPE
- Type and quantity of UTM/VTM used in the control group (used in the storage of control swab specimens from a patient considered free of "the virus" – per swab)
- Any additional chemicals or components added to the control group, with quantities (per well)

"Whole Genome" Sequencing – Purity and Control Details:

- The degree of purity of the "virus" sample used in the sequencing experiment
- All details of the control group that was used when comparing the results of sequencing:

- the total nucleic acid extracted from the "viral lysate" (from the experimental group), versus
- the total nucleic acid extracted from the non-viral lysate (from the control group).

In summary, please provide all records that include any additional details of the experimental and/or control groups that were used when "isolating and sequencing the virus". (Requestor's emphasis)."