

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 December 2022

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

Address: Wellington House
133-155 Waterloo Road
London
SE1 8UG

Decision (including any steps ordered)

1. The complainant has requested details of the services provided by UKHSA to Pfizer relating to a number of listed service fees. UKHSA refused the request under section 41 of FOIA.
2. The Commissioner's decision is that the UKHSA has failed to demonstrate the exemption is engaged.
3. The Commissioner requires UKHSA to take the following steps to ensure compliance with the legislation:
 - Provide the descriptions of the services provided by UKHSA to Pfizer for each of the listed fees, extracted from the Agreement documents.
4. 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 24 July 2022 the complainant made the following request for information to UKHSA:

"Please find attached a PDF which contains a list of payments made to the UKHSA (or its predecessor) by the Pharmaceutical company Pfizer Ltd during the years 2019, 2020 and 2021. This information has been extracted from the ABPI Disclosure database. It appears that there were 24 separate payments over this period and a total sum of £301,819.09 has been paid. For the years 2019 and 2020 these payments are listed as "Service Fees" and for the year 2021 they are listed as "Contracted Services-Fees"

I am writing to request information under the UK Freedom of Information Act. Please can you send me information detailing exactly what services were provided by the UKHSA to Pfizer, services for which these fees were paid. Please send me this information for each of the individual payments made."

6. UKHSA responded on 21 September 2022 confirming it held the requested information but considered it exempt under section 41 as it concerned collaborative work between UKHSA and Pfizer relating to proprietary Pfizer products and intellectual property. UKHSA upheld this position following an internal review.

Reasons for decision

7. Section 41(1) of FOIA states that information is exempt information if it was obtained by a public authority from any other person and if its disclosure to the public would constitute an actionable breach of confidence by that or any other person.
8. UKHSA sent the Commissioner a sample of the withheld information. The Commissioner has viewed this and notes that UKHSA holds a list of payments, ordered by payment reference number, made to Pfizer. To answer the information request and provide the detail as to what services were provided by UKHSA to Pfizer would require UKHSA to provide specific information from its Agreement For the Supply of Services documents that exist between it and Pfizer.
9. The request asked for "information detailing exactly what services were provided by UKHSA to Pfizer". UKHSA has stated the withheld information is therefore a description of the services Pfizer has commissioned UKHSA to provide and this information is extracted from the Agreement documents.

10. The Commissioner notes the Agreements were drawn up by UKHSA's predecessor Public Health England so the information in the documents would not have been provided to UKHSA or PHE by Pfizer. The Commissioner's guidance on [section 41](#) at paragraphs 17-18 states that:

"The contents of a contract between a public authority and a third party generally won't be information obtained by an authority from another person.

This is because the terms of the contract will have been mutually agreed by the respective parties, rather than provided by one party to another."

11. The Commissioner's view is that Agreement is comparable to a contract – it sets out the binding terms of the Agreement between the two parties and what is expected of each throughout the duration of the arrangement.
12. The Commissioner's guidance does go on to accept that technical information included in contracts (or in this case Agreements) may be information obtained from another party but in this case the information in question is simply a description of the services that UKHSA has agreed to carry out.
13. The Commissioner's view is therefore that this is not information obtained by UKHSA (or its predecessor PHE) from Pfizer, as it forms part of the mutually accepted Agreement and simply states the overarching nature of the services, rather than any specific detail as to what that entails. The Commissioner therefore does not find the exemption is engaged and considers the description of agreed services related to each payment reference, found in the Agreement documents, is sufficient to meet the information request.

Right of appeal

14. 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

15. 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.
16. 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

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