

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

### **Decision notice**

**Date:** 8 June 2022

**Public Authority:** The 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 requested from the Department of Health and Social Care (DHSC) information regarding the Coronavirus pandemic.
2. The Commissioner's decision is that the DHSC was entitled to refuse to comply with the request in accordance with section 12(1) (cost limit) of the FOIA. He also finds that the DHSC met its obligations under section 16(1) of the FOIA to offer advice and assistance.
3. The Commissioner does not require the DHSC to take any steps.

## Request and response

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4. On 14 June 2021, the complainant wrote to the DHSC and requested information in the following terms:

"Please provide me with all working email correspondence between the Minister for Health Mr. Matt Hancock and all UK personnel regarding the present coronavirus situation, to include all information sent in emails but not restricted to, lockdown's, masks, vaccine situation, and any other emails discussions the Coronavirus situation from the first announcements made. In particular emails between Matt Hancock, Professor Chris Whitty and Sir Patrick Vallance but not restricted to them only.

Also, please provide the same information between these individuals and [name redacted] of the United States of America health service and [names redacted].

All information is to be unredacted as this is information required for dissemination to the general public, who are entitled to be made aware of government dealings. Despite a disclaimer saying you cannot accept FOI requests by mail, I will be copying this in letter form to you as I believe your reason for not accepting this my mail is illegal."

5. The DHSC responded on 12 July 2021 and refused to provide the requested information citing section 12(1) (cost limit) of the FOIA as its basis for doing so.
6. On 12 July 2021 the complainant wrote to the DHSC to request an internal review.
7. Following an internal review, the DHSC wrote to the complainant on 18 January 2022. It maintained its reliance on section 12(1) of the FOIA.

## Scope of the case

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8. The complainant contacted the Commissioner on 19 January 2022 to complain about the way his request for information had been handled.
9. The scope of this case and the following analysis is to determine if the DHSC has correctly cited section 12(1) of the FOIA in response to the request.

## Reasons for decision

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### Section 12 – cost of compliance

10. Section 12(1) of the 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 cost limit.
11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for central government public authorities such as the DHSC.
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 the DHSC.
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:
  - determining whether the information is held;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it;
  - and extracting the information from a document containing it.
14. A public authority does not have to make a precise calculation of the costs of complying with a request; instead, only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/00041*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence". The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
15. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under the FOIA to consider whether there is a public interest in the disclosure of the information.

16. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

### **The DHSC's position**

17. As is the practice in a case in which the public authority has cited the cost limit under section 12(1) of the FOIA, the Commissioner asked the DHSC to provide a detailed explanation of its estimate of the time and cost of responding to the request.
18. In its submissions to the Commissioner, the DHSC maintained its reliance on section 12(1) of the FOIA and offered an explanation for how it had calculated that the request exceeded the cost limit.
19. The DHSC explained that it considers the request to be a 'catch-all' request. As a result of this the DHSC explained that in order to provide the requested information it would have to conduct a search of the following mailboxes:
  - the Health Secretary's inbox
  - the inboxes of the 28 staff members in the Health Secretary's private office team between 2 January 2020 and 5 February 2020
  - the Health Secretary's private office shared inbox from 5 February 2020 to June 2021
20. The DHSC explained that the shared mailbox of the Health Secretary's private office received 58,463 emails in 2020 and 89,595 in 2021. Therefore, the DHSC estimated that on average, the mailbox received 74,028 emails a year. This equates to 202 emails a day.
21. The DHSC calculated that between 2 January 2020 and 14 June 2021, there were 368 working days. Therefore, in this period, the DHSC estimated that the Health Secretary's private office shared mailbox would have received approximately 74,336 emails (368 working days x 202 emails per day = 74,336 emails). The DHSC explained that it would have to review each of the 74,336 emails for information that falls within the scope of the request.
22. The DHSC explained that it would also have to review all the emails sent by the Health Secretary's private office shared mailbox. The DHSC stated that the mailbox sent 12,947 emails between 12 November 2020 and 17 January 2021. This equates to 196 emails per day.

23. Therefore, the DHSC calculated that between 2 January 2020 and 14 June 2021, the Health Secretary's private office shared mailbox sent approximately 72,128 emails (368 working days x 196 emails per day = 72,128 emails). The DHSC explained that these emails would have to be reviewed to determine whether they contained information that falls within the scope of the request.
24. In total, the DHSC calculated that in order to provide the requested information, it would have to review approximately 146,464 emails. The DHSC estimated that it would take between 225 and 235 hours to review the emails.

### **The Commissioner's position**

25. The Commissioner considers the DHSC's estimate of 225 to 235 hours to review correspondence held within the shared mailbox of the Health Secretary's private office for information within the scope of the request to be reasonable. Even if the cost estimate provided by the DHSC was halved, it would still be significantly over the appropriate limit under the FOIA.
26. Furthermore, the Commissioner recognised that the estimate provided by the DHSC only takes into account the amount of time it would take the DHSC to review emails contained within the shared mailbox of the Health Secretary's private office. If the DHSC was to include the time it would take to search the Health Secretary's mailbox and the individual mailboxes of the 28 team members in the Health Secretary's private office for information within the scope of the request in its estimate, it is likely that the cost of complying within the request would further exceed the appropriate limit.
27. The Commissioner's decision is that the DHSC estimated reasonably that the cost of complying with the request would exceed the appropriate limit. Therefore, the DHSC was correct to apply section 12(1) of the FOIA to the request.

### **Section 16(1) – the duty to provide advice and assistance**

28. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45

code of practice<sup>1</sup> in providing advice and assistance, it will have complied with section 16(1).

29. The DHSC advised the complainant that they could reduce the scope of their request to bring it within the cost limit. The DHSC suggested to the complainant that they could narrow the scope of their request by limiting their request to correspondence between Matt Hancock and one person of interest, one specific subject area or, a specific time period.
30. The Commissioner considers that this was an appropriate response in the circumstances given the broad scope of the original request. He is therefore satisfied that the DHSC met its obligations under section 16(1) of the FOIA.

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<sup>1</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

## Right of appeal

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31. 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)

32. 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.
33. 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 .....**

**Ben Tomes**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**