

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

### **Decision notice**

**Date:** 18 April 2023

**Public Authority:** Department of Health and Social Care  
**Address:** 1<sup>st</sup> Floor North  
Victoria Street  
London SW1H 0EU

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

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1. The Commissioner's decision is that the Department of Health and Social Care (DHSC) is entitled to refuse the complainant's two requests for information about the COVID Pass letters service under section 12 of FOIA. This is because the cost of complying with section 1 of FOIA in respect of the requests would exceed the appropriate limit. There was no breach of section 16(1), which concerns advice and assistance, but DHSC's refusal of the request of 18 October 2022 breached section 17(5) as it was not provided within the required timescale. It is not necessary for DHSC to take any corrective steps.

#### **Request and response**

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2. The NHS COVID Pass is a way for individuals to show their COVID-19 vaccination status or test results if they need to when they travel abroad. The COVID Pass is available in different formats, including through the NHS App, by email or by letter.
3. The complainant made the following information request to DHSC on 18 October 2022:

"Please provide me with copies of all information you hold pertaining to the management and analysis of data regarding the issuance of covid pass letters.

Please provide copies of the work orders or all formal documents detailing the management of the issuance of covid pass letters. The response is to include all versions of any document."

4. In correspondence dated 15 December 2022 DHSC refused the request under section 12(2) of FOIA. Under section 12(2) a public authority is not obliged to confirm whether or not it holds requested information if the cost of doing so would exceed the appropriate limit. DHSC maintained this position following its internal review dated 23 December 2022.

5. The complainant made the following request to DHSC on 30 December 2022:

"Following your response of 23 December 2022, I would like you to disregard the first part of my initial request and provide the following information:

Please provide copies of the work orders or all formal documents detailing the management of the issuance of covid pass letters. The response is to include all versions of any document.

I am sure that the Department of Health and Social Care have an excellent and efficient document management system in place and that this information is readily available."

6. In a response dated 30 January 2023 DHSC refused the refined request under section 12(1) of FOIA. It advised the complainant that it might be able to answer a refined request within the cost limit. For example, the complainant could set a specific timescale when this information was collated. However, DHSC noted that it could not guarantee that a refined request would fall within the FOIA cost limit, or that other exemptions would not apply. DHSC maintained its section 12 position following its internal review.

## **Reasons for decision**

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7. This reasoning covers DHSC's application of section 12 of FOIA to the complainant's initial request of 18 October 2022 and refined request of 30 December 2022. It will also consider whether DHSC's handling of the requests breached section 16(1) and 17(5).

8. Under section 1(1) of FOIA a public authority must confirm whether or not it holds information an applicant has requested. If it is held and is not exempt information, the authority must communicate the information to the applicant.
9. However, under section 12(1) of FOIA a public authority that is a Government department, such as DHSC, can refuse to comply with section 1(1) if the cost of complying would exceed the appropriate limit of £600 (24 hours work at £25 per hour).
10. As noted, under section 12(2) a public authority is not obliged to confirm whether or not it holds the requested information if the cost of doing that alone would exceed the cost limit.
11. Section 16(1) obliges a public authority relying on section 12 to offer an applicant advice and assistance to refine their request if it is possible to do so.
12. The complainant considers that the information they have requested would be "readily available" because DHSC would have "well maintained control of documents." They dispute what they consider is DHSC's "bogus" claim that it would need to sort through multiple email inboxes.
13. In its initial submission to the Commissioner, DHSC explained it had carried out a 60-minute sample exercise to estimate how long it would take to determine if the requested information requested is held, retrieve any information in scope of the request, and extract the information from the documents. Within these 60-minutes DHSC said it was able to carry out the following tasks:
  - Confirm that the programme held relevant management information (MI) data about issuing COVID Pass letters.
  - Confirm that relevant contracts are in place for the management of the letters service element of the COVID Pass service.
  - Review of the above contracts to confirm what deliverables, service descriptions, and cost models are included within it.
  - Confirm that all relevant MI reports are present since go-live of the Minimal Viable Product in May 2021.
  - Confirm that actions/decisions exist from key programme governance session (Programme Board and Steering group). This exercise also confirmed that workstream level meetings do not have a requirement to capture formal minutes/actions. If there is a requirement to identify what is available at workstream level this would increase the time to address this request considerably.
  - Plan an exercise to reach out to all members of the Senior Leadership Team (including those who have now left the programme) to collate, where possible, all email communications in relation to the management of the COVID Pass letters service.

To execute this plan would take another 30-minutes to complete (and this time has not been included in the sample exercise).

- Draft an email to DHSC's technical supplier, to confirm that all knowledge was documented prior to them exiting the project in July 2022.
14. DHSC noted that the 60-minute sample exercise did not allow time to locate the information, or documents which may contain the information. It was also unable to retrieve or extract the information that was potentially in scope.
  15. In addition to the sample exercise, DHSC also estimated the time it believed it would reasonably take to locate, retrieve and extract the information, as follows.
  16. **Locating** - given the very broad nature of the request, and where the letters service sits within "the solution", coupled with the timeframe in question DHSC said it can assume that all shared and individual mailboxes could contain the information in scope of the request. There are a total of 10 shared mailboxes which would require searching. DHSC carried out an exercise using one shared email inbox and used the search terms 'letters service' and 'letters'. After searching with these terms, it found 3060 emails that could potentially be in scope. If DHSC used this sample, estimating that it would take two minutes to search through each email this would take in the region of 118 hours to complete. DHSC notes that this is from only one shared inbox and if it considered the other nine inboxes plus the "individual inboxes" the time would far exceed the 118 hours outlined above.
  17. **Retrieving** - for each individual to forward x1 email or transfer into a folder to share, DHSC estimates it would take 20 seconds per email held. This has been calculated by actual working/timing. 3060 emails x 20 seconds = 17 hours. As outlined before this is only one sample of emails and it would take far in excess of this estimated time to complete this task for all the emails in scope.
  18. **Retrieving and Identifying** - after receiving the emails it is necessary for the reviewer to check they align to the required information, ensure they are in scope and store them in a folder/file. An estimated time for each email would be 30 seconds, equating to 25.5 hours.
  19. **Extracting and saving** - once all emails are in the in-scope folder, the reviewer would need to enter each email onto an Excel spreadsheet to record whether fully in scope (to ensure all emails have been reviewed) and to weed out any duplicates, as DHSC anticipates a lot of duplication. Each email would take a conservative 2.5 minutes (x3060) = 127.5 hrs.

20. With the information provided above DHSC said it would calculate that it would take at least 288 hours, and this is only from one shared mailbox. There are nine other team mailboxes so the time taken to search all these would far exceed the 24 hours under section 12 of FOIA.
21. The Commissioner asked DHSC further questions about its submission, as follows: Could DHSC explain why it would need to search all individual and shared mailboxes? If the information is not held centrally, how is it held? Why is it necessary to search all 10 shared mailboxes? Why wouldn't one specific mailbox or file not contain the requested information? Could DHSC use more specific search terms?
22. The Commissioner asked DHSC to provide more detail on how the Covid Pass letters service is run. He also asked DHSC to explain what data is collected, how the data is managed, where any MI/analysis of the service would be stored and whether a specific team or staff members would manage the service with a search limited to just those email accounts or files.
23. In response, DHSC first advised that it did not consider there were better search terms it could have used to search mailboxes. The complainant has asked for "all information pertaining to the management ... of covid pass letters." DHSC considered that the request would presumably cover all information about designing the letters service as well as the ongoing management. This would include correspondence with the architects of the "solution", developers, managers of the current live service, managers of the historic live services and the letter printing company.
24. DHSC therefore considered that searching using the terms "letters" and "letters service" was appropriate as correspondence within the service will not always refer to the COVID Pass letters service.
25. Given the breadth of the request (ie the request is not restricted purely to information about the numbers of letters generated) DHSC said it could not see any other way to search for this information other than that described in its original submission.
26. DHSC then listed the 10 separate email accounts that would be covered by the request and each account's role in the COVID Pass letters service work.
27. Following transition to NHS Business Services Authority, DHSC said that information may still be stored in any of those mailboxes (it has not transferred historic emails). Indeed, it said, there are now a number of additional nhsbsa.nhs.uk mailboxes that it would need to consider. All those mailboxes could include (to a greater or lesser extent) information about how the COVID Pass letters service was managed.

28. DHSC said it collects information about the number of different formats of letters ie standard print, accessible formats etc and for the last stage it also collects information about the amount of printing that has been done (ie the number of sheets of paper used).
29. The service also had information about the cost of individual contracts (some of which relate solely to the letters service and some of which are shared with other parts of the wider COVID Pass service).
30. The detailed data is held for 90 days in line with DHSC's data retention policies in the service. The only information that is held longer is aggregated MI about the service. This management information is summarised for the Service leadership on a weekly basis and discussed, to identify issues about the how efficient the service is and whether there are any opportunities for improvement.
31. Regarding solely searching mailboxes associated with individuals who have conducted the data/analysis, DHSC said this would involve: at least one of the shared mailboxes referred to above (as this is where one part of the information is received); seven individual mailboxes covering the period back to May 2022; further individual mailboxes prior to this when another supplier supported the COVID Pass programme; at least two other mailboxes associated with any financial information that will not be held by the above.
32. DHSC said that many of the above mailboxes are associated with people who have now "rolled off" the programme so, in addition, DHSC would need to review with NHS England the effort needed to recover those mailboxes from the archive.
33. The Commissioner asked DHSC to explain why it needed to search email accounts for formal/official documents which detail how the issuing of COVID pass letters is managed. He queried whether these documents would not be held more centrally. He also noted that the complainant's refined request does not ask for email correspondence but that DHSC's search results for the refined request focusses on mailboxes and the same search terms as the initial request.
34. DHSC explained that a key factor that makes it difficult to respond to the request is the breadth in terms of the documents covered:
  - The initial request asked for "all formal documents" relating to the letters service.
  - The refined request still references "...and all formal documents".
35. DHSC considers that the residual of the request (ie the "...and all formal documents" part of it) very much depends on how formal/official documents is defined:

- The letters service is documented through a system called Confluence (which describes how different parts of it work together).
  - DHSC uses a different system called Jira to manage any changes to the letters service across the numerous architects/developers/testers/approvers involved.
  - Several documents, ie its Go/No Go documentation associated with any releases and meeting minutes, may also be deemed official documents and these are stored separately from the above in SharePoint.
  - While the above covers much of the decision making associated with the letters service, there may still be other formal decisions that were taken by the COVID Pass Senior Leadership Team through email and/or Management Information that was received from the various suppliers.
36. DHSC says that the final point is why it indicated that responding to the full request would involve searching email inboxes. It maintains its position that the amount of time it would take to search the emails would be considerable. The estimated time taken to deal with one mail account was put at 25.5 hours. This includes locating, retrieving, identifying, and saving the relevant information. There are a total of 10 shared mailboxes which would need to be searched.

### **The Commissioner's conclusion**

37. The scope of the complainant's requests - all formal documents, in all formats, that detail how the issuing of COVID Pass letters was managed - are very broad. The Commissioner considers that DHSC has carried out an appropriate sampling exercise and has made satisfactory enquiries as to how and where relevant information might be held. To comply with the requests would not be as straightforward as the complainant imagines. DHSC has addressed all the Commissioner's queries and has made a convincing case that confirming whether it holds relevant information in the case of the first request and complying with the second request as framed would exceed the cost limit significantly, for the reasons it had given. The Commissioner's decision is therefore that DHSC is entitled to rely on section 12 of FOIA to refuse the requests.

## **Procedural matters**

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38. A high volume of material is in scope of the first request and is still potentially in scope of the refined request. Email accounts would still need to be searched. The amount of time it would take for DHSC to comply with the request is therefore in the 100s of hours and so the complainant would need to refine any future request considerably to bring it within the cost limit. However, DHSC gave the complainant one suggestion as to how they might refine any future request (with a caveat) and, as such, the Commissioner finds there was no breach of section 16(1) of FOIA.
39. Under section 17(5) of FOIA, a public authority that is refusing a request under section 12 must give the applicant a refusal notice stating that fact within 20 working days following the date of receipt of the request.
40. In this case, the complainant submitted their initial request to DHSC on 18 October 2022 and DHSC did not give them a section 12 refusal notice until 15 December 2022. This was a breach of section 17(5).



## **Right of appeal**

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41. 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)

42. 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.
43. 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**

**Cressida Woodall**  
**Senior Case Officer`**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**