

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 July 2024

Public Authority: Ministry of Housing, Communities and Local Government (MHCLG)

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information from the Department for Levelling Up, Housing and Communities (DLUHC) about the assessment of the overall sufficiency of adult social care funding and the local government finance settlement 2023 to 2024 policy impact statement. DLUHC withheld some of the requested information under section 35(1)(a) of FOIA (formulation and development of government policy). The complainant also raised other concerns about how the request was handled.
2. DLUHC has recently changed name to the Ministry of Housing, Communities and Local Government (MHCLG). As this occurred after DLUHC's most recent correspondence with the Commissioner regarding this case, this decision notice refers to DLUHC throughout except in relation to the steps now required by the department.
3. The Commissioner's decision is that:
 - One further document held by DLUHC is within the scope of the request. However, the Commissioner is satisfied that, with the exception of this document, on the balance of probabilities, DLUHC has identified all of the information held within the scope of the request.
 - DLUHC is not entitled to rely on section 35(1)(a) of FOIA to withhold the majority of the information withheld on this basis (including the additional document that the Commissioner has determined is within the scope of the request). Although this exemption is engaged with respect to all of the withheld

information, the Commissioner's decision is that the public interest in disclosure of the majority this information outweighs that in maintaining the exemption.

- DLUHC failed to comply with section 10 of FOIA when dealing with this request as it failed to respond to the request within 20 working days.
 - DLUHC was incorrect to state that part 4 of the request is not a valid request for information. However, as DLUHC has already provided the requested information, the Commissioner does not require DLUHC to take any steps in respect to this part of the request.
4. The Commissioner requires MHCLG to take the following steps to ensure compliance with the legislation.
 - Disclose the information withheld under section 35(1)(a) (including the additional document that the Commissioner has determined is within the scope of the request) except for the information within the document "What will the additional adult social care funding in 23/24 and 24/25 likely deliver?" that relates to "Key Question 4" and the information within the same document that is opinion about the best approach between two different approaches to analysis, as listed in the confidential annex to this notice.
 5. MHCLG must take these steps within 30 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

6. On 15 May 2023, the complainant wrote to DLUHC and requested information in the following terms.

Regarding "Levelling Up, Housing and Communities Committee – process described to assess overall sufficiency of adult social care funding":

- "1. Please confirm the date of the most recent Analysis and the date of the most recent Assessment of Sufficiency of ASC Funding. Please provide copies of:
 - a) that Analysis;

- b) the evidential material taken into account in that Analysis, and its source;
- c) any other evidence that was taken into account in the Assessment of Sufficiency of ASC Funding informed by that Analysis;
- d) the Assessment of Sufficiency of ASC Funding informed by that Analysis, and the conclusion on sufficiency reached.

2. Please confirm the frequency of the Assessment of Sufficiency of ASC Funding and the next date for this process to be undertaken.

3. Please confirm what criteria were applied to determine the overall sufficiency of adult social care funding in the last use of this process.

4. Please confirm whether the Health Foundation's September 2021 estimates of the additional funding that would be needed over and above projected local authority spending power for (1) stabilisation and (2) recovery of the adult social care system in each of the years 2021/22, 2022/23 and 2023/24 were taken into account for the purpose of any Assessment of Sufficiency of ASC Funding undertaken after that date. The relevant estimates are to be found here at slide 23 [link to slide]."

Regarding "Local government finance settlement 2023 to 2024: policy impact statement (numbering altered for ease of reference)":

"5. In concluding that there will be no significant impacts on people with disabilities and older people:

- a) what criteria were used to determine whether an impact would be 'significant'?
- b) what evidence was taken into account?
- c) what analysis was undertaken of that evidence?

6. What 'potential impacts', as described at section 3 of the policy impact statement and evidenced through the 94 respondents who provided equalities impact information, were identified through the policy impact process on disabled and older people?

7. What analysis was undertaken of:

(a) the level of funding that would have to be allocated (1) in total by all local authorities, and (2) by each local authority to the funding of adult social care to avoid significant impacts on adults with disabilities and older people in each local authority area?

(b) how much of that allocation in total and by each local authority could be met from central government funding including the Local Government Financial Settlement?

8. Please confirm whether the Health Foundation's September 2021 estimates of the additional funding that would be needed over and above projected local authority spending power for (1) stabilisation and (2) recovery of the adult social care system in 2022/23 were taken into account for the purpose of the impact assessment. The relevant estimates are to be found here: Slide 23 [link to slide]."

7. DLUHC acknowledged the request on 30 June 2023. It asked the complainant to confirm if they still wanted it to process the request "given the amount of time that [had] passed" and stated that the request would be logged as having been received on the date on which the complainant responded to the email. DLUHC also stated that it believed the complainant's letter "would be better responded to by [its] policy experts" and it would only treat some of the questions as an FOI request.
8. DLUHC responded to the request on 31 July 2023. In this response it referred to the request of 15 May 2023 as having been received on 30 June 2023. It confirmed that it held some of the information requested, disclosed some of this information and withheld other information under section 35(1)(a) of FOIA (formulation or development of government policy). It stated that no information was held within the scope of parts 6 and 7 of the request. It also stated that it did not consider all of the questions to relate to recorded information (and stated that where that was the case policy officials had endeavoured to answer the queries).
9. On 28 September 2023 the complainant requested an internal review. When doing so they raised the following issues:
 - DLUHC's inaccurate recording of the date of the request, which should be 15 May, not 30 June.
 - They consider that each part of the request does relate to recorded information. They also highlighted that DLUHC had not clearly

stated which aspects it does not consider to be requests for recorded information.

- Regarding parts 1(a-d) of the request, they disagree with DLUHC's application of section 35(1)(a) to withhold the information withheld on this basis. Their arguments focused on whether all of the information held can be considered to relate to live policy-making and whether DLUHC has given due weight, when considering the public interest test, to various factors in favour of disclosure.
- They consider that DLUHC's response to parts 2 and 3 of the request is unclear / DLUHC had not provided the information requested.
- They consider DLUHC's response to part 4 of the request to be unclear.
- Regarding part 5(a-c) of the request, they don't believe DLUHC has responded to part 5a of the request, they consider DLUHC is likely to hold further information within scope of part 5 of the request beyond that referred to in its response and they disagree with DLUHC's application of section 35(1)(a) to withhold the information withheld on this basis.
- They believe DLUHC does hold information within the scope of parts 6 and 7 of the request. They also considered DLUHC's response to part 7 of the request did not clearly address each subsection.
- They consider DLUHC's response to part 8 of the request to be unclear.

10. DLUHC provided an internal review on 19 December 2023.

- It continued to refer to the request having been made on 30 June 2023 rather than on 15 May 2023, it did not give any indication as to why or respond to the comments made by the complainant about this.
- It stated that it did not consider part 4 of the request to be a request for recorded information.
- It upheld its position regarding the application of section 35(1)(a) to withhold information within scope of parts 1(a-d) and part 5c of the request.
- It revised its response to part 6 of the request, it disclosed some information within the scope of this part of the request, redacting personal data under section 40(2) of FOIA.

- It upheld its response to part 7 of the request, maintaining that it does not hold any information within the scope of this part of the request.
- It also added some additional detail to its responses to various parts of the request.

Scope of the case

11. During the Commissioner's investigation DLUHC revised its position regarding part 3 of the request. It wrote to the complainant stating:

"We previously stated that we could not provide the criteria applied in this process as we did not produce this assessment. Although we do not have record of all the sources DHSC used in producing their assessment, the analysis DLUHC received from DHSC did include reference to the Office for Budget Responsibility's forecasts; the Low Pay Commission's National Living Wage forecasts; and Bank of England projections. We apologise for not providing this information in our previous responses.

We do not hold the full evidential criteria which DHSC uses in updating their assessments, but we understand that DHSC have now disclosed this to you in response to a similar FOI."

12. This notice will consider:

- whether, on the balance of probabilities DLUHC has identified all of the information it holds within the scope of the request (and therefore whether DLUHC has complied with section 1 of FOIA when dealing with this request);
- whether DLUHC is entitled to rely on section 35(1)(a) of FOIA to withhold information.
- whether DLUHC complied with section 10 of FOIA (time for compliance with request) when dealing with this request;
- whether DLUHC is correct to state that part 4 of the request is not a valid request for information as defined in section 8 of FOIA.

Reasons for decision

Section 1(1) – duty to provide information held

13. Section 1(1) of FOIA states that:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

14. The complainant has indicated that they believe DLUHC holds further information within the scope of parts 2, 3, 5a, 5b, 6 and 7 of the request.

15. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any further information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information is held.

16. The question for the Commissioner to consider in this case is, therefore, whether, on the balance of probabilities, DLUHC has identified all of the information it holds within the scope of the request.

17. During the course of his investigation the Commissioner asked DLUHC to provide details of the searches it had carried out to identify information held within the scope of the request. He also asked DLUHC to comment on the reasons given by the complainant for their belief that further information is held.

18. Regarding the searches it carried out, DLUHC stated its Knowledge and Information Access (KIA) team contacted policy officials in the relevant policy teams and asked them to check their records for the requested information. The KIA team held a Teams meeting with policy officials and communicated via email and Teams messaging to understand if the information might be held, and if so, where. Thorough searches of electronic records were then carried out to locate the relevant information.

19. DLUHC confirmed that searches were carried out by relevant policy officials on both personal and shared drives, and emails. For the questions regarding the sufficiency of adult social care funding, the following search terms were used: "adult social care funding sufficiency", "ASC funding sufficiency", "assessment", "funding sufficiency" and "Health Foundation". For the questions regarding the 2023-24 local government finance settlement policy impact statement, the following search terms were used: "policy impact statement", "2023-24", "consultation", "analysis", "PSED analysis", "equalities" and "analysis".
20. DLUHC believes that if any further information in scope were held the policy officials consulted would have had a record of it. It considers that, given the range of officials contacted, adequate searches have been carried out to identify all of the information within scope of the request.
21. With regard to the reasons stated by the complainant for their belief that further information is held, the Commissioner has not reproduced these in full here due to lengthy arguments presented, however he did put these reasons to DLUHC during the course of his investigation.
22. With respect to part 6 of the request the complainant stated "[the information disclosed at internal review] fails to address the issue or disclose the internally produced analysis or any fuller analysis from which the summary was produced." DLUHC stated, "Following internal review, we released the underlying data of the consultation responses. This included any response which included reference to disability or older people, but redacted other responses, and identifying information. We did not release our response summary, as the question asked for the 'potential impacts' evidenced through the 94 respondents. We interpreted this as referring to the consultation responses. A copy of the summary is attached (see Response Summary – PSED & Equalities). If the Commissioner is of the view that this second document falls in scope of the request, we would consider this to be exempt from disclosure under Section 35 of FOIA, as covered in the sections above".
23. Having viewed the document, the Commissioner's view is that this document containing DLUHC's analysis of the responses is within the scope of part 6 of the request. For ease of reference this part of the request was for the following information, "What 'potential impacts', as described at section 3 of the policy impact statement and evidenced through the 94 respondents who provided equalities impact information, were identified through the policy impact process on disabled and older people?". The Commissioner's view is DLUHC's summary and analysis of the 94 consultation responses is very clearly within the scope of this request. He has therefore considered whether DLUHC is entitled to

withhold the information in this document under section 35(1)(a) in the relevant analysis below.

24. The complainant has also stated that they believe that the information redacted from the spreadsheet containing the consultation responses (disclosed in response to part 6 of the request) on the grounds that it is not in scope of the request may in fact be in scope. In the course of his investigation the Commissioner asked DLUHC to provide a copy of this information and to provide details of why it did not consider this information to be in scope. The Commissioner notes that DLUHC also redacted a small amount of personal data, the complainant has not raised any concerns about this information being redacted. Regarding the information redacted on the grounds that it is not in scope DLUHC stated, "Question 6 asked specifically about the potential impacts identified through the policy impact process 'on disabled and older people'. We therefore provided a copy of every consultation response that included reference to disability or older people as part of our internal review response. The remaining responses were redacted on the grounds that they did not relate to either of these characteristics". Having viewed the information, the Commissioner's decision is that DLUHC is correct to state that the responses it redacted from the spreadsheet on the grounds that they did not relate to disability or older people are not within scope of the request.
25. In response to the reasons stated by the complainant for their belief that further information is held, DLUHC also stated that much of the information that the complainant stated they expected DLUHC to hold, for various reasons, is included in the information it had withheld under section 35(1)(a). Having seen the withheld information, the Commissioner can confirm that this is the case.
26. DLUHC also addressed concerns raised by the complainant by providing further explanation in the following instances.
27. With respect to part 2 of the request, regarding the frequency of assessment, it stated, "in our internal review response, we confirmed that DHSC's most recent analysis was in March 2023 following the Spring Budget. At the time of the FOI request, DLUHC had most recently updated our assessment of the sufficiency of funding across all local government services following the 2022 Autumn Statement".
28. With respect to part 5(a) of the request, the complainant stated that DLUHC had provided the process but not the criteria, DLUHC stated, "In our responses we have already supplied the assessment criteria as described in the analytical document identified as in scope: "The analysis looks at overall Core Spending Power (CSP) within the context of the LGF Settlement, and compares final 2023/24 CSP allocations, for

an average individual within each protected characteristic group, with the allocations from the final settlement last year (2022/23).”

29. With respect to part 5(b) of the request, the complainant stated that DLUHC had not been clear about the specific items of evidence taken in to account. DLUHC had stated that the analysis drew on publicly available data which “includes local authority data from the 2011 Census, recent population projections from NOMIS for age and sex data, as well as local authority core spending power information for the 2022/23 and 20223/24 LGF settlement”. It appears the complainant’s concern is that the word “includes” may suggest that not all of the evidence was included in the list. DLUHC has confirmed that the specific evidence used was “Census 2011: local authority data on ethnicity, religion, disability”, Nomis population projections: local authority data on age and sex (2023)” and “Local government finance settlement – Local Authority Core Spending Power – 2022-23 and 2023-24”.
30. With respect to part 7 of the request the complainant stated, “it is difficult to understand how the Department could have concluded that there would be no significant impacts of the settlement on disabled and older people without undertaking any analysis (however brief or broad-brush) of this kind”. DLUHC stated, “in fulfilling our public sector equality duty, the main analysis underpinning our conclusions is covered in questions 5C and 6. Local authorities are also required to have due regard to equality considerations when exercising their functions, and may be more likely to have produced the specific analysis requested”.
31. As the Commissioner has determined that DLUHC’s summary and analysis of consultation responses is within the scope of part 6 of the request he finds that DLUHC had not complied with section 1(1) of FOIA.
32. Nevertheless, given the explanations provided by DLUHC and the nature of the staff consultations and searches that were carried out, the Commissioner is satisfied that, with the exception of this document, on the balance of probabilities, DLUHC has identified all of the information held within the scope of the request. He therefore does not require MHCLG to carry out any further searches.

Section 35 – formulation and development of government policy

33. Section 35(1)(a) states:

“Information held by a government department or by the Welsh Assembly Government is exempt information if it relates to the formulation or development of government policy.”

34. The Commissioner considers that the ‘formulation’ of policy comprises the early stages of the policy process – where options are generated and

sorted, risks are identified, consultation occurs, and recommendations/submissions are put to a Minister or decision makers. 'Development' of policy may go beyond this stage to the processes involved in improving or altering existing policy such as piloting, monitoring, reviewing, analysing or recording the effects of existing policy.

35. The Commissioner considers that the term 'relates to' in section 35 can be interpreted broadly. This means that the information itself does not have to be created as part of the activity. Any significant link between the information and the activity is enough.
36. DLUHC has withheld the following information under section 35(1)(a) regarding adult social care funding sufficiency: two documents containing information within the scope of part 1a of the request and some information within the scope of part 1d of the request.
37. DLUHC has withheld the following information under section 35(1)(a) regarding the local government finance settlement policy impact statement: one document containing information within the scope of part 5c of the request and the document containing information within the scope of part 6 of the request, which the Commissioner has determined above is within the scope of the request.

DLUHC's view

38. Regarding the withheld information within the scope of parts 1a and 1d of the request, DLUHC states, "this information relates to the policies around funding for adult social care and for local government more broadly. More specifically, this also relates to the Government's analysis and assessments which inform decision and policy making including the provision of additional funding outside fiscal events".
39. DLUHC considers the formulation and development of the relevant policies to have been ongoing at the time of the request for the following reasons:

"We believe that the information covered by the request relates to ongoing policy formulation relating to both the financial year in which the FOI was asked (2023/24) and the following financial year (2024/25), as well as informing the following Spending Review period.

Decisions around funding sufficiency can be made outside fiscal events, for example in response to updated information. Funding may be announced mid-year, outside of Spending Reviews or Local Government Finance Settlements.

In requesting the 'most recent' analysis and assessment, this would always be, by definition, related to live policy. We consider information such as the analysis in question to inform policy development over the medium term which extends into the next Spending Review period. We would consider policy development to be ongoing until the end of the next Spending Review period (that beginning in 2025)."

40. Regarding the withheld information within the scope of parts 5c and 6 of the request, DLUHC states, "this information relates to the policies around the distribution of local government funding. This document provided an assessment of the equalities impact of the 2023-24 final local government finance settlement. Policies and decisions around the distribution of funding within the year 2023-24 refer to this assessment, given that it is the most up-to-date assessment of the local government finance settlement for that year".
41. DLUHC considers the formulation and development of the relevant policies to have been ongoing at the time of the request for the following reasons:

"We believe that the information covered by the request relates to ongoing policy formulation relating to the financial year in which the FOI was asked (2023/24).

Decisions around Local Government funding can be made outside fiscal events, for example in response to updated information. Funding may be announced mid-year and outside the Local Government Finance Settlements.

Policy development for the design of new funding for local government taking place in the year 2023-24 draws on the analysis – given that it is the latest comprehensive assessment of the equalities impact of the Local Government Finance Settlement."

The Commissioner's decision

42. The Commissioner is satisfied that all of the withheld information relates to the development of government policy as it relates to reviewing, analysing or recording the effects of existing policy. Specifically, policies around funding for adult social care and the local government finance settlement 2023-2024.
43. The Commissioner is therefore satisfied that the exemption at section 35(1)(a) of FOIA is engaged with respect to all of the withheld information. The Commissioner has therefore gone on to consider the public interest test.

Public interest test

DLUHC's position

44. DLUHC stated that it had taken in to account the public interest arguments around transparency and accountability, as well as public interest in the high-profile issue of adult social care and its funding. It also recognises that there is public interest in the high-profile issue of the funding of local government. In addition, it recognises that there is a general public interest in disclosing information in relation to the business of government, as this allows the Government to be accountable and open to the electorate and increases public trust and confidence in the workings of government.
45. However, DLUHC's position is that the public interest in maintaining the exemption outweighs that in disclosure.
46. Regarding the information within scope of parts 1a and 1d of the request, relating to adult social care funding sufficiency, DLUHC argues that disclosure of the withheld information would impact on the ability of the Government to maintain a safe space to develop policy and reach robust conclusions. Specifically, it argues:

“...disclosure of this analysis would erode the safe space in which policy officials and Ministers are able to reach policy decisions away from external interference and distraction. It would be likely to prevent officials conducting rigorous and candid assessments of the options available to them, risk closing-off discussions, constrain ongoing discussions about local government funding and finance policy, and undermine the integrity of subsequent fiscal events. It would also result in Ministers feeling less able to participate in free, frank and objective discussions regarding any information and advice put before them.

This analysis will inform the Government's ongoing policy making throughout the remainder of the current Spending Review period and will form the basis for the next Spending Review. We believe that releasing this analysis would undermine the Government's ability to make decisions free from interference as, in isolation, the analysis does not provide a full reflection of the fiscal context facing local authorities. Funding for adult social care services goes through the local government finance settlement, alongside funding for other statutory services which councils must provide. Assessing the sufficiency of adult social care funding must be done in the broader context of the wider resources available to

local authorities. This includes unringfenced locally raised revenue such as council tax.”

47. In addition, it also stated:

“For the reasons set out above, we took the view that disclosing the analysis and assessment of adult social care funding sufficiency would unacceptably erode the “safe space” required by officials and Ministers for policy development. We believe that this would have a “chilling effect” on policy making, likely impeding the ability of officials and Ministers to have free and frank discussions about all available options. This is particularly impactful as we are approaching the next Spending Review period which will take place after the next general election (per the announcement at the Spring Budget 2024).

In addition, the importance of free and frank discussions is particularly important at times of negotiation between departments (such as before Spending Reviews and Settlements are agreed). Ministers must be able to review information produced by their departments which may inform differing views in private, while taking collective responsibility for the outcome.”

48. Regarding the information within scope of parts 5c and 6 of the request, relating to the local government finance settlement policy impact statement, DLUHC stated, “Ministers need to consider a wide range of interacting policy choices at the Local Government Finance Settlement, and we believe that fear of disclosure may have a chilling effect on the scope of choices Ministers are presented, and willing to explore, with officials. We think that disclosure would bring a level of scrutiny that may be counter-productive”. It also added, “For the reasons set out above, we took the view that disclosing the local government finance settlement equalities analysis would unacceptably erode the “safe space” required by officials and ministers for policy development. We believe that this would have a “chilling effect” on policy making, likely impeding the ability of officials and Ministers to have free and frank discussions about all available options”.

49. On the balance of the public interest, DLUHC also stated, “we recognise and have considered the importance of transparency from the Government. DHSC commissions demand projections for adult social care which are then published. These projections are then used by organisations such as the Office for Budget Responsibility to publish independent assessments of the pressures in adult social care funding. We understand that DHSC has set out more detail about these processes in their responses to a similar FOI from the complainant”. In addition, DLUHC argues that “rather than heightening the sense among civil

servants and ministers of the need for care and rigour in this important area of decision making”, disclosure risks impeding their ability to have free and frank conversations in developing policy.

The complainant's view

50. The complainant's view is that there is a strong public interest in disclosure of the information requested. The Commissioner has not included their full arguments due to their length but he would highlight the following arguments made by the complainant.
51. They state that the funding for adult social care has been a matter of significance and growing public concern for some time and that the government has made assertions of adequacy while refusing to disclose its own analysis and assessments of sufficiency on which it relies.
52. They argue that government transparency and accountability are particularly important as regards the budgeting process.
53. They have also highlighted that section 35(4) of FOIA specifically acknowledges that there is particular public interest in the disclosure of any factual information used to provide an informed background to government decisions. Their view is that DLUHC has failed to give proper weight to the disclosure of factual information when considering the balance of the public interest test.

The Commissioner's decision

54. The Commissioner has considered the arguments put forward by both the complainant and by DLUHC and considered the content of the information that has actually been withheld.
55. The Commissioner considers that the public interest in the disclosure of information relating to the sufficiency of adult social care funding and to the impact of local government funding on people with disabilities and older people to be of significant weight as this information relates to the impact of government policy on people with vulnerabilities.
56. Having viewed the withheld information, the Commissioner would characterise the vast majority of it as being primarily factual analysis of the impact of existing government policy, as one would expect from the wording of the request. This information does not include discussion about proposed changes to the policies or an exchange of opinions on the policies between DLUHC staff and/or ministers.
57. However the Commissioner notes that one of the documents, that entitled, “What will the additional adult social care funding in 23/24 and 24/25 likely deliver?” contains a small amount of information, that

relating to "Key Question 4" in the document, that relates to the implications of a future hypothetical change rather than solely to existing policy and also a small amount of information which is opinion about the best approach between two different approaches to analysis. With respect to this small amount of information the Commissioner accepts disclosure of this information would be likely to inhibit free and frank discussion in the way described by DLUHC and he considers the public interest in allowing such free and frank discussion to outweigh that in disclosure of this information. The Commissioner therefore finds that DLUHC is entitled to withhold this information under section 35(1)(a) of FOIA.

58. Regarding the remainder of the information, the Commissioner considers the risk of disclosure of this information resulting in a chilling effect on policy making or the inhibition of free and frank discussion to be minimal. He considers it unlikely that the disclosure of this type of factual analysis of the impact of existing government policy would have any significant impact on DLUHC's ability to develop policy effectively and reach robust conclusions. The Commissioner's view is that the public interest in disclosure of this information therefore outweighs that in maintaining the exemption.
59. The Commissioner's decision is therefore that DLUHC was not entitled to rely on section 35(1)(a) of FOIA to withhold the majority of information withheld on this basis because, although this exemption is engaged with respect to all of the withheld information, the public interest in disclosure of the majority of this information outweighs that in maintaining the exemption.

Section 10 - Time for compliance with request.

60. Section 1(1) of FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

61. Section 10(1) of FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".
62. From the evidence provided to the Commissioner in this case, it is clear that DLUHC did not deal with this request in accordance with FOIA.

63. DLUHC acknowledged during the course of the Commissioner's investigation that, despite its repeated referral to the request having been made on 30 June 2023 in its correspondence with the complainant, the request was made on 15 May 2023 and that it had failed to respond to the request within 20 working days.
64. The Commissioner finds that DLUHC has breached section 10(1) by failing to respond to the request within 20 working days.

Section 8 – request for information

65. Section 8(1) of FOIA states that a valid request is one that is in writing, includes the applicant's name and contact details and describes the information requested.
66. DLUHC's position is that part 4 of the request is not a valid request for information as defined in section 8 of FOIA.
67. During the course of his investigation, the Commissioner asked DLUHC to confirm why it does not consider this part of the request to be a valid request. It stated, "the Department recognises that a request framed as a question can constitute a valid request under Section 8(c) of FOIA. However, we consider that part 4 of the request has already been sufficiently answered in both our original response and internal review response which confirmed that the Health Foundation's September 2021 estimates did not feed directly into our own assessments of the sufficiency of funding for local government across all services".
68. However, whether the information had already been provided is not relevant to the question of whether this is a valid request.
69. The Freedom of Information Act gives a general public right of access to recorded information held by public authorities.
70. Section 84 of FOIA defines "information" as "...information recorded in any form". Therefore, in order to constitute a valid request for information under FOIA, not only must the complainant's request satisfy the criteria in section 8 of FOIA, but it must also be a request for recorded information.
71. While part 4 of the request is a yes/no question the Commissioner considers that it does constitute a request for recorded information. It was not a question that asked DLUHC to create new information or to provide an explanation, rather it asked it to confirm whether those specific estimates had been taken into account for the purposes of the assessments. The Commissioner considers this to be a request for information about the information fed in to the assessments, which is recorded information.

72. The Commissioner's decision is therefore that DLUHC was incorrect to state that part 4 of the request is not a valid request for information.
73. However, as DLUHC has already provided the requested information, the Commissioner does not require DLUHC to take any steps in respect to this part of the request.

Other matters

74. The Commissioner is concerned by the approach taken by DLUHC in its 30 June 2023 response, as described at paragraph seven of this notice. MHCLG should ensure that information requests under FOIA and the EIR are handled correctly and responded to appropriately. This includes ensuring that the date that they are received is accurately recorded.

Right of appeal

75. 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

76. 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.
77. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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