

05 April 2023

IC-219890-Z7B8

## Request for Information

Further to our acknowledgement of 7 March 2023 we can now respond to your request for information of 7 March 2023.

We have dealt with your request in accordance with the Freedom of Information Act 2000 (FOIA).

## Request

In your request you asked *"Please provide all copies of all communications between @ICONews and DHSC concerning the release of Matt Hancock's PPE Whatsapp or other messages."*

## Information Withheld

I can confirm that we do hold information in scope of this request but at this time it is exempt from disclosure under section 31(1)(g) of the FOIA at this time. This is an exemption relating to information which, if disclosed, would or would be likely to cause prejudice to our ability to regulate the laws we oversee.

Specifically, the exemption at section 31(1)(g) of the FOIA refers to circumstances where the disclosure of information:

*"would, or would be likely to, prejudice – ... the exercise by any public authority of its functions for any of the purposes specified in subsection (2)."*

In this case the relevant purposes contained in subsection 31(2) are 31(2)(a) and 31(2)(c) which state:

*"(a) the purpose of ascertaining whether any person has failed to comply with the law" and*

*"(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise ..."*

Clearly, these purposes apply when the Information Commissioner is considering whether or not a data controller has met its obligations in respect of data protection legislation.

The exemption at section 31 is not absolute, and we must therefore consider the prejudice or harm which may be caused by disclosure of the information you have sought, as well as applying a public interest test by weighing up the factors in favour of disclosure against those in favour of maintaining the exemption.

Given that our investigation into the actions of Department for Health and Social Care (DHSC) is still ongoing, in considering the prejudice or harm that disclosure may cause we have taken into account the factors that would, in our view, impact on the release of the information at this stage.

Firstly, we take the view that to release the information you have asked for could prejudice the ICO's ability to conduct the investigation in an appropriate manner. For example, it is probable that any disclosure at this stage would discourage our ongoing discussions between the ICO and DHSC, and may damage our ability to conduct and conclude the investigation fairly and proportionately.

Disclosure could also jeopardise the ICO's ability to obtain information either relating to this case or others in the future.

In our view harm could be caused if either party were reluctant to enter into any further discussions if information had already been disclosed in response to information requests or even general enquiries. This is likely to result in other parties being reluctant to engage with the ICO in the future. In addition, any information released at this stage could be misinterpreted, which in turn could distract from the investigation process.

With this in mind, we have then considered the public interest test for and against disclosure.

In this case the public interest factors in disclosing the information are –

- increased transparency in the way in which DHSC has responded to the ICO's enquiries;
- increased transparency in the way in which the ICO conducts its investigations.

The factors in withholding the information are –

- the public interest in maintaining public authorities' trust and confidence that their replies to the ICO's enquiries will be afforded an appropriate level of confidentiality while investigation into a complaint a continuing;
- the public interest in public authorities being open and honest in their correspondence with the ICO about the way they have handled an FOI request which is the subject of a complaint to the ICO, without fear that their comments will be made public prematurely or, as appropriate, at all;
- the public interest in meeting the DHSC expectation of non-disclosure having ascertained their views on this individual request;
- the public interest in maintaining the ICO's ability to conduct the investigation into FOI complaints as it thinks fit, following the statutory scheme for handling FOI complaints as laid down in the Act (which includes a right of appeal to the Information Tribunal).

Having considered all of these factors we have taken the decision that at this time, the public interest in withholding the information outweighs the public interest in disclosing it.

This therefore concludes our response to your information request.

### **Next steps**

If you are dissatisfied with our response under the FOIA or wish to complain about how your request has been handled please write to the Information Access Team at the address below or email [accessicoinformation@ico.org.uk](mailto:accessicoinformation@ico.org.uk).

A request for internal review should be submitted to us within 40 working days of receipt by you of this response. Any such request received after this time will only be considered at the discretion of the Commissioner.

If having exhausted the review process you are not content that your request or review has been dealt with correctly, you have a further right of appeal to this office in our capacity as the statutory complaint handler under the legislation. To make such an application, please write to our FOI Complaints & Appeals Department at the address below or visit our website if you wish to make a complaint under the Freedom of Information Act.

A copy of our review procedure can be accessed from our website [here](#).



Information Access Team  
Risk and Governance Department, Corporate Strategy and  
Planning Service  
Information Commissioner's Office, Wycliffe House, Water  
Lane, Wilmslow, Cheshire SK9 5AF  
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