

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 March 2023

Public Authority: Department of Health and Social Care

Address: 39 Victoria Street

London

SW1H 0EU

Decision (including any steps ordered)

1. The complainant requested DHSC to disclose all correspondence between Matt Hancock and [named redacted] relating to government business from 1st January 2021 to 29 June 2021 which was not conducted on their departmental email accounts. DHSC initially applied section 14 of FOIA but at the internal review stage split the request into two. For email accounts, it set up a new request, carried out searches and confirmed that it does not hold any information. For other personal devices including WhatsApp, it delayed processing the internal review whilst it considered its position further. During this time it was able to transfer any WhatsApp messages over to another system and carry out the required searches. It therefore withdrew its application of section 14 of FOIA for this element of the request, carried out the required searches and again confirmed that it does not hold the information.
2. The Commissioner has considered the request as a whole and decided that, on the balance of probabilities, DHSC does not hold the requested information.
3. The Commissioner does not require any further action to be taken.

Request and response

4. On 12 August 2022, the complainant wrote to DHSC and requested information in the following terms:

"all correspondence between Matt Hancock and [named redacted] relating to government business from 1st January 2021 to 29 June 2021 using... methods of communication other than their departmental email or any private email that Mr Hancock has used for government business (so this request includes, without limitation, WhatsApp messaging, and [named redacted] email account)"
5. DHSC requested the complainant to provide clarification on 12 August 2022.
6. The complainant responded on 15 September 2022 and said:

"government business which was not conducted on:

Their departmental email accounts. Any private email that Mr Hancock has used for government business. This would include, but not be limited to, WhatsApp (on personal or government devices) and [name redacted] email account".
7. DHSC responded on 8 October 2022. It refused to comply with the request citing section 14 of FOIA.
8. The complainant requested an internal review on 11 October 2022. As DHSC seemed to suggest that it was able to process the element of the request that referred to email accounts, they asked for this to be processed accordingly. In terms of section 14 and its application to the remainder of the request (other private messaging services, including WhatsApp), they confirmed that they wished to challenge this decision.
9. DHSC responded to the email accounts element of the request on 5 December 2022 under a separate reference. It confirmed that there are 1385 emails between the named account and all DHSC departmental email addresses but no emails between the named account and Matt Hancock's DHSC departmental email address or the three known personal accounts he has used. It therefore does not hold this information.
10. In terms of other private messaging devices, DHSC carried out an internal review and notified the complainant of its findings on 13 January 2023. It upheld its initial application of section 14 of FOIA based on the circumstances at that time. However, it said that it has now copied the information to another computer system and is now able to

carry out the appropriate searches. The searches carried out returned no results, so it concluded that it does not hold this information.

Scope of the case

11. The complainant contacted the Commissioner on 14 December 2022 to complain about the way their request for information had been handled. They do not believe DHSC does not hold the requested information.
12. The Commissioner has considered the request as a whole and whether on the balance of probabilities the requested information is held.

Reasons for decision

13. DHSC confirmed that it has conducted full searches of all accounts held by DHSC for both individuals named in the request, including the three known personal accounts Matt Hancock has used and WhatsApp, and no recorded information is held. It also confirmed that no faxes or letters are held.
14. In terms of WhatsApp messages from Matt Hancock's personal device (that was held on another computer system on DHSC's behalf), since the request was first made and handled, these have been copied over to a second system and detailed searches have been carried out accordingly. These searches identified four WhatsApp messages, but these are all personal communications and therefore not related to government business and not caught by FOIA.
15. The Commissioner referred DHSC to the recent reporting in the news and media regarding the disclosure of over 100,000 WhatsApp messages by Matt Hancock, which it would appear relate to government business. The Commissioner asked it whether it holds these messages as part of its official record and if it does to reconsider how it has handled this request.
16. DHSC confirmed that it does not hold these messages as part of its official record. These messages were not transferred to the official record following Matt Hancock's resignation.
17. The Commissioner is satisfied from the enquiries he has made and the additional searches DHSC has now carried out that, on the balance of probabilities, DHSC does not hold any recorded information falling within the scope of FOIA.

18. The Commissioner would direct DHSC's and the complainant's attention to the ICO's Behind the screens reportⁱ, Practice recommendationⁱⁱ and the comments he made in a decision notice he served on 13 December 2022ⁱⁱⁱ, paragraphs 19 to 22.
19. The Commissioner does not require any further action to be taken in respect of this request.

Right of appeal

20. 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

21. 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.
22. 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

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

ⁱ [Behind the screens: ICO calls for review into use of private email and ndmessaging apps within government | ICO](#)

ii <https://ico.org.uk/media/action-weve-taken/practice-recommendations/4020918/dhscpractice-recommendation.pdf>

iii [ic-165171-j4k9.pdf \(ico.org.uk\)](#)