

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 June 2023

Public Authority: Department of Health and Social Care
Address: 39 Victoria Street
London SW1H 0EU

Decision (including any steps ordered)

1. The Commissioner's decision is that the Department of Health and Social Care (DHSC) is entitled to withhold the requested correspondence between Matt Hancock and Michelle Mone under section 23(1) of FOIA. This is because the information relates to a body dealing with security matters. DHSC's late reliance on section 23 (and section 31) means that it did not comply with the timescale for refusing a request set out under section 17(1).
2. It is not necessary for DHSC to take any corrective steps.

Request and response

3. The complainant made the following information request to DHSC on 8 December 2022:

"My request relates to all correspondence received by Matt Hancock, sent by Michelle Mone, as well as correspondence to Baroness Mone sent by Matt Hancock.

Under the act, I would like to request complete copies of such correspondence held electronically either in departmental email addresses assigned to Mr Hancock and his private office, in private email addresses used by Mr Hancock, or in WhatsApp or similar text

messages linked to Mr Hancock either on an official departmental issued device or a personal device of Mr Hancock.

Please search the period 1 April 2020 to 1 November 2021. If it is helpful I believe email correspondence from Michelle Mone will originate or be sent to her address [redacted]...

...I would also like to ask your department on answering this request to provide a schedule of documents which are relevant to this request. I believe that there should be a brief description of each relevant document including the nature of the document, the date of the document, and whether the document is being released or not. I believe that

providing such a schedule would clarify what documents are being released and what is being withheld, and would also represent best practice in open government."

4. DHSC refused the request under section 35 and 40 of FOIA, which concern the formulation of government policy and personal data respectively. DHSC maintained this position following an internal review dated 27 January 2023. In a further review dated 13 April 2023, DHSC also applied section 31 of FOIA to the information, which concerns law enforcement.
5. As a result of the complaint to him, DHSC confirmed to the Commissioner that it considered that the information is also exempt under section 23.

Reasons for decision

6. In the first instance, this reasoning focusses on DHSC's reliance on section 23(1) of FOIA to withhold the requested information in full. If necessary, the Commissioner will also consider the other exemptions DHSC has applied.
7. Under section 23(1) of FOIA, information is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3). One of the bodies specified in subsection (3) is the National Crime Agency (NCA).
8. DHSC has told the Commissioner that the requested information 'relates' to the NCA. It has explained that PPE Medpro (a firm linked to Michelle Mone) is subject to an ongoing fraud investigation by the NCA and that DHSC supplied the information in scope of this request to the NCA as part of its investigation.

9. DHSC noted that the phrase 'relates to' has been interpreted broadly. In the case of *Lownie v IC & FCO 2018*¹ the Upper Tribunal found that 'relates to' includes both a direct and indirect connection (paragraphs 59 and 60). Furthermore, the Commissioner's guidance on section 23² explains the interpretation of 'relates to' as including any information concerning or linked to the activities of a security body.
10. In DHSC's view the information it holds is information that 'relates to' the NCA and therefore engages the section 23 exemption.
11. The Commissioner accepts that DHSC supplied the relevant information it holds to the NCA as part of an ongoing fraud investigation. In line with his own guidance, the information can therefore be said to relate to the NCA. As such, the Commissioner's decision is that DHSC has correctly applied section 23(1) of FOIA to the complainant's request and is entitled to withhold it.
12. Section 23 is an absolute exemption and is not generally subject to the public interest test. The exception is in the case of historical records, which is not relevant here.
13. Because the Commissioner has found that the information can be withheld in full under section 23(1) of FOIA it has not been necessary to consider the remaining exemptions DHSC has applied.

Procedural matters

14. Under section 17(1) of FOIA, a public authority that is refusing a request must advise the applicant of the exemption(s) it is relying on within 20 working days of receiving the request. In this case, DHSC did not inform the complainant that it was relying on section 31 and 23 within that timescale and so breached section 17(1).

1

https://assets.publishing.service.gov.uk/media/5e5fa93086650c5137ffb6ea/GIA_2690_2018-00.pdf

2 <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-23-security-bodies/>

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Right of appeal

15. 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

16. 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.
17. 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