

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

### **Decision notice**

**Date:** 11 July 2023

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

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

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1. The complainant has requested information relating to the process of evaluation for Evusheld (a medicine used to prevent Covid-19 in adults and adolescents). The DHSC disclosed some information to the complainant but then claimed a late reliance on section 12 of FOIA.
2. The Commissioner's decision is that DHSC is entitled to rely on section 12 of FOIA. It provided appropriate advice and assistance to the complainant and has therefore met its obligations under section 16 of FOIA.
3. The Commissioner does not require any further action to be taken.

#### **Request and response**

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4. On, 16 October 2022, the complainant requested that DHSC provide the following information:

"On the 10/8/2022 your Director of Medicines wrote to NICE instructing [sic] them to begin a process of Evaluation in relation to Evusheld. Please can you confirm the process and parties involved leading up to this decision. Do make evident the ultimate decision makers title/s. Please note that the Governments recently published Rapid Cov19 meeting notes make reference to the event after referral only ie on August 28th. Prior to this the last meeting of Rapid C19 which was in May. There is a priod [sic] of 3 months of apparent delay further to

completion of B2 testing. Please also give a full account of what action was being undertaken in this period and the factual reasoning behind a referral in early August prior to consideration of further evidence at the end of month. Why also was the decision to refer matter to NICE not taken in March and run in parallel [sic] to further testing instigated by Astra Zeneca on 14th March. Please release any pertinent documents [sic] relating to the questions asked or process involved.”

5. DHSC responded 14 November 2022. It disclosed some information but withheld the remainder citing section 21 (information reasonably accessible to applicant via other means) of FOIA.
6. The complainant requested an internal review on 20 November 2022.
7. DHSC carried out an internal review and notified the complainant of its findings on 19 December 2022. It provided additional contextual information and explanation to the complainant and upheld its application of section 21 of FOIA.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 19 December 2022 to complain about the way their request for information had been handled. They felt their request remained largely unanswered despite DHSC responses.
9. During the Commissioner’s investigation DHSC issued a further response to the complainant on 17 March 2023. The complainant confirmed on 24 March 2023 that, despite this additional response, they still remained dissatisfied with the handling of their request. They outlined in detail why and what information and clarification is outstanding. The Commissioner put those comments to DHSC and asked it to consider the request again. On 19 May 2023 DHSC issued a revised response to the complainant citing section 12 of FOIA (cost limit).
10. It is important to highlight here that FOIA provides a right of access to recorded information. It does not extend to the right to ask questions, seek clarification on certain matters or debate the contents of information that is disclosed. It is about what recorded information is held falling within scope and whether that can be provided.
11. A public authority is permitted to claim a late reliance on a particular exemption. As section 12 of FOIA has now been cited in relation to all remaining information, the Commissioner considers the scope of his investigation to be to determine whether or not DHSC is entitled to rely on this exemption.

## Reasons for decision

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### Section 12 – cost limit

12. Section 12 of FOIA states that a public authority does not have to comply with a request if it estimates that it would exceed the cost limit. The cost limit for DHSC is £600 or 24 hours of work, at a rate of £25 per hour. A public authority is only permitted to consider the cost of determining whether it holds the information, locating and retrieving that information and extracting that information from any information which is not in the scope of the request.
13. DHSC has touched on whether the complainant's continuing correspondence, detailing what they feel is missing, constitutes a new request. It has said that it initially interpreted the request for a factual explanation of the gap between the ministerial decision and the formal referral letter to NICE, which it believes it has provided. However, it now considers the complainant's pursuit for further clarification around the process, by identifying meetings, briefings, reports and emails and so on that were involved from the end of May to the issue of a request in August 2022, to be an extension of their original request.
14. The Commissioner does not agree. While the complainant has tried to debate the content of information or explanations previously provided, their original request asked for "...any pertinent documents (sic) relating to the questions asked or process involved." The Commissioner considers the complainant is asking here for all relevant documents (whether meetings, briefings, emails and so on) and they were just providing further clarification during the Commissioner's investigation as to why they felt their request remained largely unanswered.
15. In terms of section 12 of FOIA, DHSC confirmed that it estimates that it would take well in excess of 24 hours to determine what information is held, locate and retrieve that, review it and extract relevant information from non-relevant information. It said that the complainant's request here is broad and general and would covers all emails and correspondence regarding the assessment on whether Evusheld was an effective prophylactic.
16. It confirmed that it would need to search, retrieve and review all emails in 21 separate email accounts, to see if those emails fall within the scope of the request. The Commissioner asked DHSC to carry out the initial search of those email accounts to see how many potential emails it holds which may fall in scope. It searched 13 of the 21 email accounts and quickly identified that the request would comfortably exceed the cost limit. It did not therefore continue to search the remaining 8 accounts. In total it said that it identified 16,537 potential emails, which

could fall in scope from those 13 accounts. Those accounts ranged from a total of 52 emails to 4579. The results were broken down as follows:

Inbox 1 – 715

Inbox 2 – 2048

Inbox 3 – 3344

Inbox 4 – 1192

Inbox 5 – 1611

Inbox 6 – 490

Inbox 7 – 4579

Inbox 8 – 612

Inbox 9 – 677

Inbox 10 – 52

Inbox 11 – 306

Inbox 12 – 270

Inbox 13 - 641

17. The search conducted for each used the term 'Evusheld' between 23 May 2022 and 10 August 2022. On average there is roughly 1272 emails per inbox which DHSC would need to review to see whether they are in scope. At an estimate of one per minute, this would take DHSC 275 hours to complete.
18. In an earlier sampling exercise (so prior to searching 13 of the 21 email accounts) DHSC looked at one account which contained 437 emails. Within an hour it managed to review 70 of those emails and establish that 47 of them fell within the scope of the request. Of those 70 emails, roughly 25% contained an attachment of 2 to 3 pages on average.
19. The earlier sample does suggest that DHSC was able to review the requested information email by email in just under a minute, as it managed to review 70 emails in 60 minutes and establish if they were in scope or not. That being said, it would still exceed the cost limit prescribed by FOIA (24 hours) by a significant margin for DHSC to comply with the complainant's request. At 30 seconds per email on average it would still take DHSC 137.5 hours to comply with the request.

20. For the above reasons, the Commissioner is satisfied that section 12 of FOIA applies.
21. Section 12 of FOIA triggers the duty to provide advice and assistance so far as is reasonably practicable. The Commissioner notes that DHSC issued a revised response to the complainant on 19 May 2023. In that response it suggested to the complainant that they consider submitting a new request which focussed on a particular individual or which just asked for emails only and also to consider a significantly reduced time frame, for example a particular week.
22. The Commissioner considers DHSC has provided appropriate advice and assistance and has therefore met its obligations under section 16 of FOIA. It has suggested focusing a new request on a particular member of staff and what they hold, limiting the request to just emails only or reducing the timeframe.

## Right of appeal

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23. 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)

24. 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.
25. 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**