

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

### **Decision notice**

**Date:** 6 October 2023

**Public Authority:** Medicines and Healthcare products Regulatory Authority

**Address:** 10 South Colonnade  
Canary Wharf, London, E14 4PU

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

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1. The complainant has requested Medicines and Healthcare products Regulatory Authority (MHRA) to disclose the FOI responses it has issued for the period 2 May 2022 to 31 December 2022, which to date have not been published on its website. MHRA refused to disclose the requested information citing section 22 of FOIA (information intended for future publication).
2. The Commissioner's decision is that MHRA is entitled to rely on section 22 of FOIA. He has however found MHRA in breach of section 17 of FOIA, as it was late in issuing its refusal notice. The Commissioner does not require any corrective steps to be taken.
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#### **Request and response**

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4. On 5 January 2023, the complainant wrote to MHRA and requested information in the following terms:

"At the reference page you list a "Collection: Freedom of Information responses from the MHRA: 2022" and state that the collection is if "Freedom of Information (FOI) responses released by the Medicines and Healthcare products Regulatory Agency (MHRA) for 2022"

The "collection" shows no responses after week commencing 25 April 2022.

I note your web site sets out a commitment as follows: "The agency's guiding principle is full transparency unless non-disclosure is justified on the basis of established freedom of information exemptions."

#### INFORMATION SOUGHT

1. Would you please provide a URL to a UK Government web site where you have published the missing "Freedom of Information (FOI) responses released by the Medicines and Healthcare products Regulatory Agency (MHRA) for 2022" i.e. those after week commencing 25 April 2022.
2. If the MHRA has yet to make the full set of its Freedom of Information (FOI) responses for 2022 (after week commencing 25 April 2022) available to the public:
  - a. please provide the highest level of MHRA Board or Corporate Executive level meeting minute, decision note, memo or similar internal instruction setting out when, why and how the decision was made to withhold further disclosure of FOI responses.
  - b. please provide, as response to this FOI, a zip file containing the missing FOI responses for the period 2 May 2022 to 31 December 2023."
5. The complainant followed their request up with some additional clarification on 18 January 2023, as follows:

"I am only seeking the missing FOIA responses for 2022. Therefore, the request should be amended at 2. b. to read:

  2. b. please provide, as response to this FOI, a zip file containing the missing FOI responses for the period 2 May 2022 to 31 December 2022."
6. As the complainant received no response, they chased the matter up on 4 February and 3 March 2023.
7. MHRA responded on 5 March 2023. It advised the complainant that no decision has been taken to stop the publishing of FOI responses. It said

that it remains committed to doing so but acknowledges there has been a long delay and a backlog of responses to publish has now developed. It confirmed that it intends to resume publishing towards the end of March 2023 with the aim to have caught up with the backlog in 2 to 3 months. Given that it plans to publish these requests in full, it refused to comply with the request citing section 22 of FOIA.

8. The complainant contacted MHRA on 9 March 2023 and requested it to provide proof that its intention to publish the backlog of FOI responses predates their request.
9. MHRA supplied a chain of emails, with personal data redacted under section 40 of FOIA, on 6 April 2023.
10. On 26 April 2023, the complainant requested MHRA to reconsider its application of section 22 of FOIA. They felt it was evident that MHRA is unlikely to publish the backlog of FOI responses in the timeframe it specified.
11. The complainant chased a response on 11 May 2023 and again on 5 July 2023.

### **Scope of the case**

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12. The complainant contacted the Commissioner on 29 May 2023 to complain about the way their request for information had been handled. At this time the Commissioner felt MHRA should have an opportunity to complete the internal review process. However, the complainant contacted the Commissioner again on 5 July 2023 to say that they had still not received a response. The Commissioner accepted the complaint for full investigation on 12 July 2023.
13. The Commissioner considers that the scope of his investigation is to establish whether or not MHRA is entitled to rely on section 22 of FOIA. He will also consider if there have been any procedural breaches of FOIA.

### **Reasons for decision**

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#### **Section 22(1) – information intended for future publication**

14. Section 22(1) of FOIA says that information is exempt information if:

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether or not),
  - (b) the information was already held with a view to such publication at the time when the request for information was made, and
  - (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).
15. Section 22 is a qualified exemption which means it is subject to the public interest test.
  16. For the exemption in section 22 to apply, the public authority must have a settled expectation that the information will be published at some future date – even if no precise date is set.
  17. MHRA explained how no decision had been made to stop the publication of FOI responses and how it also remained committed to publishing those responses on its website. It accepted that there had been a long delay and that a backlog of responses to publish had now developed. It provided an email chain to the complainant to demonstrate that it had a settled intention to continue their publication.
  18. MHRA informed the Commissioner that the temporary pause on publication and the backlog of responses that has built up is due to resource issues and the resources it does have being diverted to other tasks. It fully intends to resume publication of FOI responses and to publish the backlog of FOI responses currently missing from its website. Initially it had hoped this would begin within two to three months of its initial response to the complainant. But again due to its resources having to be diverted to other tasks, the publication of the backlog of FOI responses is having to take a back seat.
  19. The Commissioner is satisfied that MHRA had a settled intention to publish the requested information at the time of the request. It is clear that in the past MHRA routinely published its FOI responses on its website. This has only been paused (not stopped permanently) due to resource issues. Given that MHRA is currently diverting its resources to other tasks (and tasks which understandably take priority) the Commissioner accepts that in all the circumstances it is reasonable to withhold the information under section 22 of FOIA until the publication date.
  20. In their correspondence to the Commissioner the complainant stated that MHRA's reliance on section 22 of FOIA and its statement that it intends to publish the backlog of FOI responses is disingenuous. Initially

it stated that it would take two to three months. Several months has passed and it has still not caught up and has only published releases for the weeks beginning 23 and 30 May 2022.

21. As stated above in paragraph 16, a public authority does not have to have or give a precise date for the publication of requested information in order to rely on this exemption. It however needs to demonstrate that it had a settled intention to publish the requested information at the time of the request. MHRA has demonstrated this. The Commissioner also considers that it is reasonable for MHRA to rely on this exemption.
22. Recently, the Commissioner served MHRA with a practice recommendation. This can be viewed via the following link:  
[Microsoft Word - MHRA Practice Recommendation 01.08.23 final \(ico.org.uk\)](#)
23. The practice recommendation outlines how MHRA has struggled with the volume and complexity of information requests coming in from around 2021/2022 onwards (especially with the introduction of covid vaccines). Its compliance with section 10 of FOIA (time limit for responding to requests) and the Section 45 Code of Practice in terms of timeliness in conducting internal reviews have been and remain areas of concern. While MHRA has every intention to begin publishing FOI responses routinely again, and to publish the backlog of responses that have built up, resources are currently being diverted to these main issues for the time being. That being said, it is a recommendation which has been made and the practice recommendation has given a deadline of 31 December 2023.
24. The practice recommendation does post-date the request but it highlights the position MHRA was in at the time of the request and what it is now currently working towards. It also highlights where resources have been diverted to.

### **Public interest test**

25. MHRA said that it recognised the public interest in providing copies of its FOI responses. However, to do that ahead of its proposed publication timeframe would involve taking resources away from its front line customer team to focus on this activity, leading to a delay in responses to customers making contact with the team. It argued that given that it has a plan to begin publishing again in the near future, and make provisions for publishing the backlog of responses that have built up, the public interest is not best served by bringing this activity forward.
26. The Commissioner recognises the public interest in openness and transparency. He acknowledges the public interest in seeing what

requests have previously been made, how these were responded to and what recorded information has been released into the public domain as a result. He accepts that publication of such information may also prevent others from requesting the same or very similar information, thereby reducing the amount of duplicate requests being made.

27. However, the Commissioner agrees with MHRA that the public interest rests in maintaining section 22 of FOIA in this case and allowing MHRA to publish the backlog of FOI responses that have built up in the timeframe it has set itself. This is because to prepare and disclose that information now would result in MHRA diverting its limited and stretched resources away from addressing and managing more important activities or more urgent tasks. It has highlighted itself that to disclose the information now (as opposed to when it has planned to) would result in delayed responses to customer enquiries. The Commissioner is aware that this would include current information requests and internal review requests coming in. Although it is something which the Commissioner has noted himself in the practice recommendation issued, there are more pressing matters which should be tackled first. These being MHRA overall compliance with section 10 of FOIA for current and future requests and the timeliness of its internal review process, coupled with the various changes that are required or currently being implemented to enable MHRA to tackle that.
28. MHRA published this information in the past, prior to when it started to struggle with FOI caseload and complexity of requests. It fully intends to get back to publishing that information routinely and publishing the backlog of previous FOI responses. But the Commissioner agrees with MHRA that this should not be at the expense of more pressing matters, as this would not be in the broader interests of the overall public. There is a timeframe for this to be resolved and it is reasonable for MHRA to work towards that.

### **Procedural matters**

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29. MHRA was late in issuing its refusal notice to the complainant. It therefore breached section 17 of FOIA.

### **Other matters**

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30. The Commissioner also notes that MHRA failed to carry out an internal review, despite the various reminders it received. The Section 45 Code of Practice advises all public authorities to carry out internal reviews in a

timely manner and within 20 working days. A total of 40 working days is permitted in particular complex or voluminous requests.

31. MHRA is reminded of the requirements of the code and of the importance of carrying out internal reviews in a timely manner and in accordance with the timeframes specified in the code.

## Right of appeal

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32. 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)

33. 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.
34. 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**