

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

### **Decision notice**

**Date:** 7 February 2024

**Public Authority:** Cabinet Office  
**Address:** 70 Whitehall  
London, SW1A 2AS

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

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1. The complainant has requested the Cabinet Office (CO) to confirm and provide any correspondence held relating to a request for 400 vaccines to be dispatched to a foreign country in December 2020 by Matt Hancock, his office or associates, or Nadhim Zahawi, his office or associates. CO refused to confirm or deny whether it holds any recorded information, citing section 27(4) of FOIA.
2. The Commissioner's decision is that CO is entitled to refuse to confirm or deny whether it holds the requested information in accordance with section 27(4) of FOIA.
3. The Commissioner does not require further steps.

#### **Request and response**

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

"I would like a breakdown [numbers only, no personal identifying details] of:

1. Did the Cabinet Office receive a request of 400 vaccines to be dispatched to a foreign country in Dec 2020 by Matt Hancock, his office, associates, or Nadhim Zahawi, his office or associates??
2. What was the name of the country?
3. A copy of all correspondence [sans personal identifying data] of the request."
5. CO responded on 13 January 2023. It refused to confirm or deny whether it holds the requested information in accordance with section 27(4) of FOIA.
6. The complainant requested an internal review on 17 January 2023.
7. CO carried out an internal review and notified the complainant of its findings on 7 March 2023. It upheld its application of section 27(4) of FOIA.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 8 March 2023 to complain about the way their request for information had been handled. They do not agree with the application of section 27(4) of FOIA. They believe the information is effectively already in the public domain, as it has been discussed in multiple media outlets as part of Matt Hancock's diary publication. They therefore feel it is not sustainable to rely on section 27(4).
9. The Commissioner considers that the scope of his investigation is to determine whether or not CO is entitled to refuse to confirm or deny holding the requested information in accordance with section 27(4) of FOIA.

### **Reasons for decision**

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#### **Neither confirm nor deny (NCND)**

10. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request.

11. The decision to use an NCND response will not be affected by whether a public authority does, or does not, in fact hold the requested information. The starting point, and main focus for NCND in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.
12. A public authority will need to use the NCND response consistently, over a series of requests, regardless of whether or not it holds the requested information. This is to prevent refusing to confirm or deny being taken by requesters as an indication of whether or not information is in fact held.
13. CO had taken the position of neither confirming or denying whether it holds the requested information. The issue that the Commissioner has to consider is not one of disclosure of any requested information that may be held, it is solely, whether or not CO is entitled to NCND it holds any information of the type requested by the complainant.

#### **Section 27(4) – International relations**

14. Section 27(4) of FOIA provides an exemption from complying with section 1(1)(a) of FOIA if to do so would or would be likely to prejudice the interests protected by section 27(1) or would involve the disclosure of confidential information protected by section 27(2).
15. Section 27(1) of FOIA provides that:

“(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

  - (a) relations between the United Kingdom and any other State,
  - (b) relations between the United Kingdom and any international organisation or international court,
  - (c) the interests of the United Kingdom abroad, or
  - (d) the promotion or protection by the United Kingdom of its interests abroad.”
16. CO explained that it cannot confirm or deny that the information requested is held, as this would likely prejudice the interests protected by section 27(1)(a). It stated firmly that this should not be taken as an indication that the information requested is or is not held by the department.
17. CO advised that it considered the complainant’s arguments about Matt Hancock’s published diary and confirmed that the government does not,

as a matter of policy, confirm or deny the accuracy of content published in memoirs of former ministers. It said that any reference to information in Matt Hancock's diary does not, therefore, constitute grounds to confirm or deny whether it holds information in relation to this request.

18. It referred to the Radcliffe Rules which govern the publication of books and memoirs by former Ministers and officials. Authors are asked to submit their manuscripts for review by CO, who assess for content that is damaging to the UK's international relations, to the UK's national security, or to the confidentiality of government business. The process is entirely non-statutory, and essentially voluntary, and requires CO to come to a position of mutual agreement with the author.
19. Under these rules, it says that it does not specifically review for factual accuracy. It is a long-held position that the agreement of a manuscript does not amount to CO's endorsement of any material in a book as true.
20. CO advised that to confirm or deny holding the requested information would be likely to prejudice international relations with another State. It stated that confirmation or denial would reveal that information relating to this specific claim of vaccine diplomacy does or does not exist. Confirming or denying that information is held could enable an inference to be drawn about the accuracy of this claim. It said that given the confidence in which sensitive matters of international diplomacy must, in general, be conducted, it considers confirmation or denial in this case would be likely to prejudice international relations with another State.
21. CO provided further arguments on this point but advised that they were confidential and cannot be included in the Commissioner's decision notice.
22. The Commissioner agrees with CO that reference or claims to such matters within the memoirs of former ministers is not official government record. Publications of this nature and media debate is not the same as any official statement made by government itself and CO has explained how the Radcliffe Rules operate and how these do not review any material for factual accuracy. Again, the Commissioner would stress that no inference should be taken from this notice as to whether the information is held or not. But it is important to highlight the distinction between information which may be published in such memoirs or diaries and official confirmation of that information direct from the government department concerned. It is not the same.
23. He accepts that if CO confirmed or denied holding the information it would be likely to prejudice international relations with another State. He agrees with CO that given the confidential manner in which sensitive matters of international diplomacy must, in general, be conducted,

confirmation or denial would be likely to prejudice international relationships between the UK and another State. The COVID-19 pandemic and the distribution of vaccines was a particularly sensitive and contentious matter.

24. With regards to the submissions supplied in confidence, these are addressed in a Confidential Annex.
25. For the above reasons the Commissioner is satisfied that CO is entitled to refuse to confirm or deny whether any recorded information is held falling within the scope of the request under section 27(4) of FOIA.
26. In terms of the public interest test, CO confirmed that it recognises the public interest in openness and transparency. It also recognises the public interest in international diplomacy during the COVID-19 pandemic and how the government conducts foreign policy more generally. It referred to the allocation of vaccines in the initial roll-out and how this is a contentious question of how public health resources were best put to use and there is a public interest in information on that topic. CO also advised that it acknowledged the public interest in confirming whether or not it holds the requested information.
27. However, CO decided that the public interest rests in maintaining its NCND response under section 27(4) of FOIA. It stated that confirmation or denial would reveal that information relating to this specific claim of vaccine diplomacy does or does not exist. Confirming or denying that information is held could enable an inference to be drawn about the accuracy of this claim.
28. It also said that UK government has established the Covid-19 Inquiry to establish the facts around all aspects of the pandemic, including the vaccine roll-out, allowing for an alternative and better means of answering questions around vaccine distribution. CO confirmed how the Inquiry had been established by the time of the request.
29. The Commissioner notes the general public interest arguments in favour of disclosure – openness, transparency and accountability. He also acknowledges the significant public interest in information relating to the COVID-19 pandemic and the management and distribution of vaccines. There is a significant public interest in understanding how the vaccines were being distributed, especially in the early stages of the vaccine rollout, considering the death toll and lockdowns.
30. However, in this case, the Commissioner is satisfied that the public interest rests in maintaining the exemption and CO's ability to refuse to confirm or deny whether the requested information is held for international relations reasons. Confirming if the requested information

is held or not could reveal sensitive information relating to international diplomacy between the United Kingdom and another State. It would enable an inference to be drawn about the accuracy of a claim, which has been published by a former minister in his ministerial diaries. Confirming or denying whether the requested information is held would be likely to prejudice the UK's international relations and this is not in the public interest.

31. Again, any arguments submitted in confidence by CO are addressed in the Confidential Annex.

## 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**