

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 May 2024

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

Decision (including any steps ordered)

1. The complainant has requested information on the National Risk Register of civil emergencies – 2017 Edition from the Department of Health & Social Care (DHSC). DHSC provided updated website links that superseded the 2017 version and advised it did not hold the recorded information within the scope of the request.
2. The Commissioner's decision is that on a balance of probabilities, the DHSC holds no recorded information relevant to the complainant's request and has complied with section 1(1) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 29 September 2023, the complainant wrote to DHSC and requested information in the following terms:

"Page 34 of the UK National Risk Register of Civil Emergencies (2017 edition, UK_National_Risk_Register_2017.pdf (publishing.service.gov.uk)) under the title 'Human diseases', lists 'ways of catching [these] diseases'. The first bullet point states:

- respiratory (airborne from one infected person to another);

I would be grateful if you would provide the documents, references (peer reviewed publications), emails and/or presentations used to inform this bullet point statement, please. I would be grateful if you would provide electronic copies of the relevant sources using this email address, please (email redacted)

Clarification, requested by the Cabinet Office team and included here for your reference:

On page 34 of the National Risk Register under the title 'Human diseases', paragraph 2 begins:

'Emerging infectious diseases could also cause large numbers of people to fall ill.'

The next paragraph, as stated in my original request, begins thus: 'Ways of catching these diseases can include:'

There then follows a list of routes of human-to-human pathogen transmission (i.e., respiratory, vector-borne, blood-borne and food-borne) with in brackets, a summary description of the known mechanism. Alongside 'respiratory' is stated: 'airborne from one infected person to another'.

I would be grateful if you would provide the documents, references (peer reviewed publications), emails and/or presentations used to inform the affirmation that the respiratory route of transmission was known to be underpinned by the stated mechanism of transmission: 'airborne from one infected person to another'.

Returning to my request for information, I hope it is now clear that I am not requesting information on the established fact that 'emerging infectious diseases' may be transmitted by the respiratory route. Rather, I was seeking the relevant documents, references (peer reviewed publications), emails and/or presentations used to inform the affirmation that the respiratory route of transmission was known to be underpinned by the stated mechanism of transmission: 'airborne from one infected person to another'.

5. DHSC responded on 27 October 2023. It stated that it did not hold the information but provided some links to related information which it believed may be of interest to the complainant. It stated:

"On a discretionary basis and outside the scope of the FOIA it may interest you to know that the National Risk Register of civil emergencies – 2017 Edition referred to in your request has been withdrawn. This document has since been superseded; the current published risk assessment product is the National Risk Register 2023. This document is available both to explore online and to

download at

<https://www.gov.uk/government/publications/national-risk-register-2023>"

6. Following an internal review DHSC wrote to the complainant on 6 December 2023. It maintained its original position.

Scope of the case

7. The complainant contacted the Commissioner on 8 December 2023 to complain about the way their request for information had been handled as he believed that DHSC did hold the information.
8. The Commissioner has considered whether, on the balance of probabilities, the Council holds recorded information within scope of the complainant's request and whether it has complied with section 1(1) of FOIA.

Reasons for decision

9. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
10. The right of access to information, under FOIA relates only to information which is held in a recorded form at the time a request is received. There is no obligation to create or obtain information, generate answers to general questions nor to provide statements, opinions, and explanations, unless these are already held in a recorded form. Nor does the legislation require a public authority to amend or verify the accuracy of the information it holds.
11. The Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
12. In its submissions to the Commissioner, DHSC stated that any relevant information, if it existed, would be held electronically on its SharePoint IT systems and searches had been conducted back to creation dates in 2015 based on their interpretation of the complainant's request using key words to filter information such as "draft risk assessment" "National Risk Assessment" and "NRA". These searches were conducted twice due to limited functionality with the SharePoint system to ensure they did not miss any files.

13. DHSC concentrated searches in the SharePoint folders in three locations specifically in the folders of the (now closed) Health Protection Policy Team that drafted the impact assessment, the (now closed) Emergency Preparedness, Resilience and Response Team, who coordinated all Departmental submissions to Cabinet Office for this work, and the relevant SharePoint folder of the UK Health Security Team as this team inherited responsibility for this policy area. Again, due to the limited functionality of SharePoint, these searches were completed three times.
14. As the officials who either had responsibility for completion of the assessment, coordination, approval and assessment of risks posed by an emerging infectious disease have left the Department and their personal files and emails deleted, DHSC is assured that searches were completed at all appropriate locations and that this information is no longer held, if it indeed was ever held at all.
15. DHSC further stated that all documents retrieved were then manually reviewed to identify whether they contained:
 - expert advice on the topic requested,
 - records of research undertaken by the drafter,
 - presentations on the risk posed by pathogens with different transmission mechanisms or
 - references to publish (peer reviewed) journal articles related to the material requested.
16. DHSC further advised the Commissioner that it had not identified any records within the scope of the request and stated:

“It should be noted that (name redacted) had previously made a similar request to the Cabinet Office. The Cabinet Office did not contact DHSC with regard to the request that they received, nor did DHSC contact Cabinet Office about the requests above and DHSC officials were unaware of Cabinet Office’s response until the 6 February 2024. However, as both Departments provided similar responses there is a possibility that (name redacted) has been given the impression that the Departments discussed their respective cases and took a collective stance on handling.”
17. The Commissioner is satisfied that DHSC carried out appropriate searches of its electronic and IT record systems and consulted with all responsible, authorised, and appropriate staff members as to whether information within the scope of the request was held.
18. Whilst the Commissioner recognises that the complainant believes further information within the scope of this request is held by the DHSC,

the Commissioner accepts DHSC's explanation that it undertook proportionate and appropriate searches and that, on a balance of probabilities, no information is held.

19. Section 1 of FOIA is a matter of fact of whether information is held or not held. It is not an opinion on whether it should be held or recorded.
20. As such, the Commissioner has decided that the DHSC has complied with section 1(1) of FOIA and that, on the balance of probabilities, DHSC did not hold the information at the time of the request.

Right of appeal

21. 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

22. 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.
23. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Michael Lea
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