

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 August 2024

**Public Authority:** UK Health Security Agency  
**Address:** 10 South Colonnade  
London  
E14 4PU

#### Decision (including any steps ordered)

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1. The complainant has requested information about deceased people who had been removed from the NHS Immunisation Management Service (NIMS) database between 2021 and 2023. The UK Health Security Agency ('UKHSA') provided some of the requested information but relied on section 38 of FOIA (health and safety) to withhold some of the information in the detail specified.
2. The Commissioner's decision is that UKHSA was entitled to rely on section 38(1)(a) of FOIA to withhold some of the requested information. The Commissioner also finds that UKHSA breached section 10(1) and 17(1) of FOIA by failing to communicate the requested information or issue a section 38 refusal notice within 20 working days.
3. The Commissioner does not require further steps.

#### Request and response

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4. On 26 January 2024, the complainant wrote to UKHSA and requested information in the following terms:

"Please can you provide, compiled or extracted from the raw data that I can see that you have previously confirmed the UKHSA holds (ref Case 04/08/23/LD/309), the following information:

For each person aged 20 or over at their recorded date of death occurring between 1 January 2021 and 31 December 2023, whose data consequently is no longer included in the published NIMS database:

1. Age cohort for first dose of Covid vaccination (please use the age cohorts already used for NIMS purposes)
2. Date of each dose of Covid vaccination
3. Date of death

[...]"

5. UKHSA responded on 30 May 2024. It disclosed some of the requested information, but it advised that it was relying on section 38 of FOIA to present the information by age band, week of vaccination and month of death rather than the exact dates as requested.
6. The complainant requested an internal review on 4 June 2024. To date, UKHSA has not provided its internal review outcome.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 12 June 2024 to complain about the way their request for information had been handled.
8. The Commissioner notes that he has recently issued a decision<sup>1</sup> on a complaint about a very similar request. For both requests, in this and the previous case, UKHSA had issued the same response and had relied on section 38 of FOIA to withhold some of the requested information. In the previous case, the Commissioner found that UKHSA was entitled to rely on section 38 of FOIA and the complainant subsequently made an appeal to the First Tier Tribunal ('FTT').
9. The complainant has acknowledged that they were aware of the previous request to UKHSA but explained that whereas the previous request was made from a medical perspective, their request was made from a legal perspective. The complainant also acknowledged that the Commissioner had already provided his decision on UKHSA's reliance on section 38 of FOIA but advised that they would like their complaint and the previous complaint to be presented to the FTT in parallel.

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<sup>1</sup> [ic-306332-x9c9.pdf \(ico.org.uk\)](#)

10. The Commissioner therefore considers that the scope of his investigation is to determine whether UKHSA was entitled to rely on section 38(1)(a) of FOIA to withhold some of the requested information.

## **Reasons for decision**

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### **Section 38 – health and safety**

11. Section 38 of FOIA states:

(1) 'Information is exempt information if its disclosure under this Act would be likely to –

(a) endanger the physical or mental health of any individual, or

(b) endanger the safety of any individual.'

12. In order to satisfy the Commissioner this exemption is engaged the public authority must demonstrate that there is a causal link between the endangerment and disclosure of the information.
13. The public authority must also show that disclosure would or would be likely to endanger the health and safety of any individual. The effect cannot be trivial or insignificant. Endangering physical health usually means an adverse physical impact and often involves medical matters, this can relate to either individuals or a group of people. Endangering mental health implies that the disclosure of information might lead to a psychological disorder or make mental illness worse. This means that it must have a greater impact than causing upset and distress.

### **Complainant's position**

14. In their request for internal review, the complainant expressed their dissatisfaction with UKHSA's response and argued that the way that UKHSA had disclosed the requested information did not satisfy their request. They stated that the way UKHSA had presented the information denied "the possibility of meaningful analysis of potential trends, patterns or anomalies arising between the two data points."
15. The complainant requested that UKHSA use barnardisation to anonymise the requested information and expressed their dissatisfaction that UKHSA refused to do this. UKHSA has stated that it would need to create information to anonymise the data in this way.
16. The complainant also challenged UKHSA's reliance on section 38 of FOIA, arguing that it had not identified any causal link between

disclosure and a “very significant and weighty chance” of endangering the mental health of an individual.

### **UKHSA’s position**

17. As mentioned previously, the Commissioner has recently issued a decision notice on a similar complaint case. He will therefore only include a summary of UKHSA’s position in this notice and the detail can be found in the previous case IC-306332-X9C9.
18. In summary, UKHSA has explained that disclosing the requested information in the detail specified:
  - would present a real risk to the mental health of those linked to the deceased individuals featured in the information
  - would result in a loss of confidence in UKHSA’s ability to protect the well-being of the families and friends of those who have died
  - would risk individuals being identified. UKHSA found that presenting the information by both date of death and week of death could still lead to some individuals being identifiable
  - could lead to the families of the deceased being subjected to unsolicited approaches by the media and anti-vaccine campaigners; and
  - could lead to misinformation that would have adverse impact on vaccine uptake in the wider public, particularly vulnerable groups.
19. UKHSA added that there were a number of factors that would invalidate the use of disclosed database for comparison of mortality by vaccination status and mean that conclusions drawn from an analysis of this data are highly likely to be misleading. These factors included:
  - the very high vaccine coverage across the population particularly in vulnerable groups meaning that it would be likely that the rate of deaths due to unrelated causes will be higher in vaccinated people than in unvaccinated individuals; and
  - that the small proportion of the eligible population who do not have a record of vaccination are also likely to be systematically different to those who have a record of vaccination.
20. UKHSA explained that, in order to mitigate against the effects misinformation would have on public health, it provided some information in aggregated form with an explanatory narrative of the information being released, to make clear the importance of public

health messaging in this case and the context of the disclosed information.

### **The Commissioner's position**

21. Given the similarity between the requests for information and the substance of the respective complaints, the Commissioner considers that his position remains unchanged to that determined in IC-306332-X9C9.
22. The Commissioner acknowledges the complainant's frustration that UKHSA did not present the information in the level of detail requested and that it considered the suggested approach of barnardisation to involve creating information. The Commissioner notes that while UKHSA did not consider barnardisation an appropriate format for anonymisation, it has attempted to provide the information in an anonymised format, and in doing so has identified the potential identification of some of the individuals featured.
23. The Commissioner has considered the potential adverse effects which UKHSA has set out to the Commissioner in detail. While he recognises that the potential identification of deceased individuals would be likely to cause distress to their families, he considers it difficult to determine if this alone would extend to causing harm to physical and mental health at a level that would engage the exemption. However, he considers that when combined with the arguments about misinformation to cause potential harm to the health of the wider public and the impact on public health, the exemption is engaged.
24. While the Commissioner has not received any indication from the complainant that they intend to use the requested information to dissuade people from participating in Covid-19 vaccination programmes, he is mindful that disclosure of information is to the public at large and other people may use the information with this intention.
25. The Commissioner is satisfied that there is a causal link between disclosure of the information, and endangerment of the health of individuals. Furthermore, the Commissioner accepts disclosure 'would be likely' to prejudice the health and safety of individuals.
26. In terms of the public interest test, the Commissioner will not replicate the arguments here, but will refer back to IC-306332-X9C9. On balance, the Commissioner that the strength of the arguments favouring disclosure is outweighed by the public interest in maintaining the exemption in order to safeguard individuals' health and safety. He considers that the information UKHSA has disclosed satisfies the general public interest in transparency to a satisfactory degree.

27. The Commissioner's decision in this case, as in IC-306332-X9C9, is that the balance of the public interest favours maintaining the exemption, and that UKHSA was entitled to rely on section 38 of FOIA to withhold the details of age at vaccination, date of vaccination and date of death.

### **Procedural matters**

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28. The Commissioner finds that UKHSA breached section 10(1) and 17(1) of FOIA by failing to communicate the requested information or issue a section 38 refusal notice within 20 working days.

## **Right of appeal**

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29. 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)

30. 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.
31. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Keeley Christine**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**