

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 September 2024

Public Authority: Office for National Statistics
Address: Government Buildings
Cardiff Road
Newport
NP10 8XG

Decision (including any steps ordered)

1. The complainant has requested information on COVID-19 deaths broken down by age and gender. The Office for National Statistics (ONS) refused the request under section 21 FOIA – information accessible to the applicant by other means.
2. The Commissioner's decision is that the information is reasonably accessible to the applicant by other means and ONS has correctly refused the request under section 21 FOIA.

Request and response

3. The request in this case related to a previously released table of deaths where Covid-19 was listed as the cause of death: COVID-19 deaths and autopsies Feb 2020 to Dec 2021 - Office for National Statistics (ons.gov.uk)¹ The request asked for an updated version of this from February 2020 to December 2022.

¹ [COVID-19 deaths and autopsies Feb 2020 to Dec 2021 - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk)

4. The request was initially submitted to ONS on 29 January 2024 but without the link to the previously published information. Following some clarification ONS responded on 27 February 2024 and explained it held analysis up to 2021 but not beyond this and directed the complainant to other publications where the information might be accessed.
5. On the same date the complainant requested an internal review arguing that as information was provided in response to an earlier request it should be simple to provide an updated table. The complainant was not content with the suggestion from ONS that the links provided could be used to count up the information.
6. An internal review response was sent on 20 March 2024. It reiterated the instructions as to where information could be found online and maintained its position that the information as requested was exempt under section 21 FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 20 May 2024 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to be to determine if ONS has correctly refused the request under section 21 FOIA.

Reasons for decision

Section 21 – information accessible to the applicant by other means

9. Information is exempt from disclosure if it is accessible to the applicant by other means.
10. Section 21 is an absolute exemption which means there is no requirement to carry out a public interest test if the requested information is exempt.
11. Unlike most exemptions, the circumstances of the applicant can be considered, as the information must be reasonably accessible to the particular applicant.
12. It is reasonable for a public authority to assume that information is reasonably accessible to the applicant as a member of the general public until it becomes aware of any particular circumstances or evidence to the contrary.

13. In this case, the complainant does not accept that the information is readily available to them through other means. They argue the original table provided was simple and able to be provided before so should be easy for ONS to reproduce with updated figures. The complainant believes that ONS providing a set of links to various ways of counting deaths from COVID is ONS saying "you do the work".
14. In its internal review response ONS reiterated it had provided definitions for deaths 'due to COVID-19' and 'involving COVID-19', provided links to published analysis showing deaths due to COVID-19 for 2020-2022 and links to published analysis showing deaths involving COVID-19 for 2020 and 2021.
15. ONS had also provided links to its NOMIS² website with step-by-step instructions as to how to use each filter to obtain information broken down in various way, with all relevant COVID-19 cause of death codes provided.
16. ONS explained that 'deaths solely from COVID-19' could be interpreted differently based on differing methodology. It therefore provided explanations of the differing types of methodology that could be used and links to the corresponding information accessible on its website or via NOMIS.
17. In its submissions to the Commissioner ONS has further explained that between March 2020 and January 2024 it received over 1000 FOIA requests regarding COVID-19 mortality. Approximately 60 of these related to deaths solely/only from COVID-19 but this terminology is not used for ONS' mortality data. As such the request could have referred to a number of methodologies that have been used to answer the question.
18. For example, deaths "due to COVID-19", could refer to deaths where COVID-19 was mentioned on Part I of the death certificate. Part I contains the condition or sequence of conditions leading directly to death. This is distinct from deaths "involving COVID-19", where COVID-19 is mentioned anywhere on the death certificate, either as a direct cause (located on Part I), or a contributory cause (located on Part II).
19. Alternatively deaths "due to COVID-19" could be where the individual died from COVID-19 but had no pre-existing conditions mentioned on the death certificate. This is where COVID-19 is mentioned on Part I of the death certificate, but no other conditions are recorded on a lower line to, and therefore clearly preceding, COVID-19, and no conditions

² [Nomis - Official Census and Labour Market Statistics \(nomisweb.co.uk\)](https://www.nomisweb.co.uk)

mentioned on Part II. Some members of the public would describe this as deaths 'solely from COVID-19', as COVID-19 is thought to be the catalyst illness.

20. ONS has stressed that the complainant did not provide clarification on what was meant in their request and that no link to the initial table was provided. However, the Commissioner notes that the complainant did send a link to their original FOIA request that had resulted in the table of data from February 2020 – December 2021³. This request was clear in its intention, asking:

"Please supply deaths caused solely by covid 19, where covid is the only cause of death listed on the death certificate, broken down by age group and gender between feb 2020 up to and including dec 2021."

21. The Commissioner does not consider this is open to much interpretation, the request clearly asked for a breakdown of deaths caused solely by COVID-19 and clarified this as meaning where COVID-19 is the only cause of death on the death certificate. The Commissioner therefore considers the updated request from the complainant is for information in the same terms/methodology but for a new date range.
22. ONS had informed the complainant that it offered bespoke services to the public allowing them to commission their own datasets but this was a chargeable service subject to its Charging Policy. Commissioned tables are subject to a charge if their production exceeds 1 hour.
23. ONS did explain to the Commissioner that if the request was interpreted as being for the number of deaths where COVID-19 was the only cause mentioned on the death certificate between 1 February 2020 and 31 December 2022 broken down by sex and age then this information could be provided but it would take significantly longer than 1 hour to produce. This is due to the time taken to extract, tabulate, disclosure control and quality assure the data, and then to produce a final presentation file.
24. ONS considered that as section 21(2)(a) states that the information is reasonably accessible via another route, even if only on payment, the information is still exempt under Section 21(1).
25. The information was provided in response to the earlier information request so the Commissioner has considered the change in position of

³ [COVID-19 deaths and autopsies Feb 2020 to Dec 2021 - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk)

ONS and the reasons for this. ONS has explained that it did not charge for the earlier provision of data, even though it technically met the threshold for the charging scheme as it took over 1 hour to produce. This is because, at the time of the earlier request the mortality team was much larger and had more capacity to produce *ad hoc* files in response to FOIA requests. There was also deemed to be a much higher public interest in producing COVID-19 mortality data at the time of the earlier request (January 2022) so an exception was made for the earlier request.

26. The Commissioner's view on this matter is firstly that the request can and should have been interpreted in the same way as the earlier request. It is clear that the intention was to obtain an updated table under the same methodology ie deaths where COVID-19 was the only cause of death on the death certificate broken down by age and gender.
27. As such the links provided, whilst helpful, do not provide the specific information that the complainant requested. The Commissioner has followed these links and notes they do provide breakdowns of various statistics relating to COVID-19 deaths and the NOMIS site in particular does allow for breakdowns at quite a detailed level but does not allow for production of the specific information requested.
28. ONS argued that section 21(2)(a) applies as the information is accessible for a fee and it has a clear charging scheme in place⁴ as part of its publication scheme.
29. Section 21(2) states that:
 - (2) For the purposes of subsection (1) —
 - (a) information may be reasonably accessible to the applicant even though it is accessible only on payment; and
30. The Commissioner, in line with the decision of the Information Tribunal in *Davis v Information Commissioner & the Health and Social Care Information Centre [EA/2012/0175]*⁵ accepts that section 21(2) does apply here. The ruling of the Tribunal in *Davis* concerned a bespoke request to the public authority that required analysis and interrogation of a database. The Tribunal considered whether information was reasonably accessible to the public if the request requires a tailor-made

⁴ [Charging rates - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk)

⁵ [Microsoft Word - 2013-01-24 Decision EA-2012-0175.doc \(tribunals.gov.uk\)](https://tribunals.gov.uk)

answer and the provision of a fee. It concluded that it was provided this was included as part of an approved publication scheme.

31. The Commissioner can draw clear parallels with ONS and their bespoke service for requests that are not part of routine disclosures under the publication scheme. There is a clear charging scheme in place and ONS have explained why this request would require more than 1 hour to compile and therefore require provision of a fee. The Commissioner accepts, in line with the Tribunal decision, that this information can still be said to be reasonably accessible to the requester under section 21(2)(a) and therefore ONS has correctly refused the request on this basis.

Right of appeal

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

Website: 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.

Jill Hulley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF