

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

### **Decision notice**

**Date:** 16 September 2024

**Public Authority:** HM Treasury  
**Address:** 1 Horse Guards Road  
Westminster  
London  
SW1A 2HQ

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

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1. The complainant submitted a request to HM Treasury (HMT) seeking information about the assessment of the overall sufficiency of adult social care funding and the local government finance settlement. HMT disclosed some information but sought to withhold the remainder on the basis of section 35(1)(a) (formulation or development of government policy) of FOIA. The complainant challenged this and also argued that HMT had failed to provide adequate or full responses to parts of the request.
2. The Commissioner's decision is that:
  - HMT has located and provided (or withheld) all of the recorded information it holds falling within the scope of the request.
  - The information withheld on the basis of section 35(1)(a) falls within the scope of that exemption, but the public interest in disclosure of this outweighs the public interest in withholding it.
3. The Commissioner requires HMT to take the following steps to ensure compliance with the legislation:
  - Provide the complainant with a copy of the information which it has withheld on the basis of section 35(1)(a) of FOIA.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the

Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. The complainant submitted the following request to HMT on 15 May 2023:

“The then Minister for Equalities wrote to Clive Betts MP on 17th June 2022 in his capacity as Chair of the Committee.<sup>1</sup> This letter provided supplemental information to that given during her appearance before the Committee as a witness in the Committee’s inquiry into the long-term funding of adult social care.

The Minister stated at page 2 of the letter:

‘For adult social care, the Department for Health and Social Care (DHSC) provide a forecast using not only CPI and average earnings, but also accounts for the impact of the National Living Wage (NLW). DHSC collate qualitative information from discussions with local authorities and adult social care providers, and commission independent projections of the long-term demand on adult social care services in England. These projections are informed by demographic drivers of demand for social care, including population size, and disability prevalence in younger and older adults. DHSC then account for cost pressures, such as inflation, by combining these projections with the latest information on CPI, the NLW, and average earnings from the OBR to project both pay (c.70% of costs) and non-pay (c.30% of costs) unit cost drivers of care. DHSC then shares this analysis with HMT and DLUHC [Department for Levelling Up, Housing and Communities] to inform assessments of the overall sufficiency of adult social care funding.’ [Emphasis added by complainant.]

In the following requests we will refer to the process of analysis to which Ms Badenoch refers as the ‘Analysis’, and to the process of assessment of the overall sufficiency of adult social care funding as the ‘Assessment of Sufficiency of ASC [adult social care] Funding’. Please would you provide the following information:

1. Please confirm the date of the most recent Analysis and the date of the most recent Assessment of Sufficiency of ASC Funding.

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<sup>1</sup> [committees.parliament.uk/publications/22803/documents/167593/default/](https://committees.parliament.uk/publications/22803/documents/167593/default/)

Please provide copies of:

- a) that Analysis;
  - b) the evidential material taken into account in that Analysis, and its source;
  - c) any other evidence that was taken into account in the Assessment of Sufficiency of ASC Funding informed by that Analysis;
  - d) the Assessment of Sufficiency of ASC Funding informed by that Analysis, and the conclusion on sufficiency reached.
2. Please confirm the frequency of the Assessment of Sufficiency of ASC Funding and the next date for this process to be undertaken.
  3. Please confirm what criteria were applied to determine the overall sufficiency of adult social care funding in the last use of this process.
  4. Please confirm whether the Health Foundation's September 2021 estimates of the additional funding that would be needed over and above projected local authority spending power for (1) stabilisation and (2) recovery of the adult social care system in each of the years 2021/22, 2022/23 and 2023/24 were taken into account for the purpose of any Assessment of Sufficiency of ASC Funding undertaken after that date. The relevant estimates are to be found here. Slide 23 PowerPoint Presentation (health.org.uk)"
6. HMT responded on 29 June 2023. It provided information in response to questions 1, 2 and 4. In relation to questions 1a) to d), and question 3, it confirmed that it held information but explained that it considered this to be exempt from disclosure on the basis of section 35(1)(a) of FOIA.
  7. The complainant contacted HMT on 17 August 2023 and asked it to conduct an internal review in respect of the decision to apply section 35(1)(a) and sought clarity on the nature of responses provided in relation to the remainder of the questions.
  8. HMT responded on 21 December 2023. It confirmed that it remained of the view that the information withheld on the basis of section 35(1)(a) was exempt from disclosure on the basis of this exemption. It also provided clarification regarding its previous responses to questions 1, 2 and 4.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 31 January 2024 in order to complain about HMT's response to her request. Her specific

points of complaint are set out in more detail in the analysis below, but in summary she raised the following concerns:

- Complaint 1 - She argued that HMT had failed to provide sufficiently clear responses to question 1 of the request, and that it may hold further information which falls within the scope of this part of the request.
- Complaint 2 - She argued that HMT had failed to provide sufficiently clear responses to question 2 of the request, and that it may hold further information which falls within the scope of this part of the request.
- Complaint 3 – She argued that that HMT had failed to provide sufficiently clear responses to question 4 of the request.
- Complaint 4 – She challenged HMT’s decision to withhold the information falling within the scope of questions 1a) to d), and 3, on the basis of section 35(1)(a) of FOIA.

## **Reasons for decision**

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### Complaint 1

10. In submissions to support this ground of complaint the complainant stated the following:

“HMT’s response to our request for confirmation of the date of the most recent Analysis and the date of the most recent Assessment of Sufficiency of ASC Funding simply said that the “most recent update” was provided by DHSC in May 2023. This left considerable ambiguity as to what was meant by the use of the term ‘update’ in a context where we had asked specific questions about the ‘Assessment of Sufficiency of ASC Funding’ and the ‘Analysis’, having defined both terms in our request. We therefore asked [in the request for an internal review] for the following clarifications:

a) Ms Badenoch’s letter refers to two processes, which we have termed:

i) ‘Analysis’ and;

ii) ‘Assessment of Sufficiency’ which is informed by the Analysis. We understand from her letter that the Analysis is undertaken by DHSC and this is then shared with HMT and DLUHC.

We therefore understand your response to mean that you last received an Analysis from DHSC in May 2023. Please confirm that this

understanding is correct and, if not, please explain in what way it is incorrect.

b) Ms Badenoch's letter is less clear as to which Department carries out the Assessment of Sufficiency. Is the Assessment of Sufficiency also provided to HMT by DHSC? Is this included in the same document as the Analysis or is it a separate document? If it is provided by DHSC, was the last Assessment of Sufficiency also provided in May 2023?

c) Irrespective of whether DHSC provides its Assessment of Sufficiency to HMT, does HMT carry out an Assessment of Sufficiency itself and/or jointly with other Departments and, if so, which Departments? When was this last Assessment of Sufficiency carried out?

HMT's internal review replied as follows:

In your first question you ask for clarification on our previous response. We can confirm that your understanding is correct that we were referring to May 2023 as the last analysis of sufficiency we had received from DHSC. DHSC consider as part of their analysis what funding is available to local authorities and what pressures they are facing, and that helps them draw conclusions as to the funding available. DHSC has policy responsibility for adult social care, and therefore holds primary responsibility for understanding demand pressures in the system. HM Treasury works with DHSC and DLUHC to understand and critically assess this work, which then supports decision-making at and between Spending Reviews. HM Treasury therefore does not model overall sufficiency of funding in Adult Social Care, although we do use a range of sources (e.g. the Health Foundation's analysis) to enable us to critically engage with DHSC's model.

However, this fails to provide the clarifications we sought. We remain unclear as to the nature of the material received from DHSC. The internal review refers to an 'analysis of sufficiency', but Ms Badenoch's letter to the Committee clearly refers to two processes. She said:

"DHSC then shares **this analysis** with HMT and DLUHC to **inform assessments** of the overall sufficiency of adult social care funding...'" [complainant's emphasis]

Although this appears to suggest that DHSC undertakes the Analysis, it is not entirely clear which Department undertakes an Assessment of Sufficiency, whether this is a joint venture or whether each Department undertakes its own assessment and reaches its own conclusion. HMT's internal review response fails to clarify the position. Although HMT says that it does not 'model overall sufficiency of funding in Adult Social Care', it does, it says, 'engage critically with DHSC's model'. This suggests that it does form its own view on sufficiency i.e.

it undertakes some form of assessment in response to the material with which it is provided. This would fall within the scope of our request.

It also fails to clarify whether any Assessment of Sufficiency is incorporated into the same document as the Analysis undertaken by DHSC.”

11. In order to consider this ground of complaint, the Commissioner asked HMT to:
  - Clarify which department undertakes the 'Assessment of Sufficiency' and whether this a separate document to that containing the 'Analysis'.
  - Note the complainant's point that in her view HMT's own critical engagement with DHSC's model falls within the scope of her request, and confirm whether HMT agrees with this position, and therefore whether such information forms part of the information withheld on the basis of section 35(1)(a) of FOIA.
12. In response HMT explained to the Commissioner that DHSC, as the department responsible for adult social care policy, are responsible for carrying out the analysis on the assessment of sufficiency. HMT explained that DHSC share both their conclusions and a summary of the modelling underpinning it with HMT and Ministry of Housing, Communities and Local Government (MHCLG, the successor department to DLUHC) in one document.
13. HMT further explained that once it had received that document, HMT may ask questions with DHSC to clarify understanding of the document and check consistency with wider models, which is what it meant by "critically engaging" in its response to the complainant. HMT explained that its search found some evidence from May 2023 of HMT officials asking such clarificatory questions, but since this did not change DHSC's overall analysis or their assessment, in its view such information was not in scope of the complainant's request.
14. The Commissioner is satisfied that HMT's response resolves this ground of complaint. It confirms that DHSC carries out both the assessment and the analysis and these are contained in one document. Furthermore, given the wording of question 1, the Commissioner is satisfied that this is the sole information falling within the scope of that part of request and the additional information described by HMT above is indeed out of scope of the request as it cannot be considered to be the analysis or assessment completed by DHSC.

## Complaint 2

15. The complainant's second ground of complaint concerned question 2 of the request. In submissions to the Commissioner to explain this ground, she stated that:

"In response to question 2, HMT said in its initial response, that DHSC updates its analysis "after each fiscal event" and "on an ongoing basis to inform policy discussions". We were of the view that this description of frequency and the timing of the last update were insufficiently precise and failed to fully address the question we asked. We sought clarification in the following terms:

a) Please would you confirm whether the following were 'fiscal events' for the purpose of undertaking an Analysis:

(i) SR 2020 and SR 2021;

(ii) 2022 Autumn Statement;

(iii) Spring Budget 2023.

b.) Is an Assessment of Sufficiency undertaken on each occasion an Analysis is provided by DHSC after a fiscal event and, if so, by whom?

c.) Please clarify what is meant by saying that the Analysis is updated on an ongoing basis?

d) Is an Analysis provided to HMT by DHSC on each occasion it is updated on an ongoing basis and not just after each fiscal event?

e) Is an Assessment of Sufficiency undertaken on each occasion that the Analysis is updated on an ongoing basis and, if so, by which Department?

f) Please provide, in relation to each of the specific fiscal events identified above at (a)(i) – (iii), the date of the latest Analysis and Assessment of Sufficiency undertaken prior to each of those fiscal events.

In their internal review response HMT said: "In your second question you ask for further information on when DHSC provides or updates analysis. We can confirm that the dates you have listed in your question (SR2020, SR2021, 2022 Autumn Statement and Spring Budget 2023) were 'fiscal events' for the purpose of undertaking an analysis. DHSC update its analysis of sufficiency of ASC funding after each fiscal event. By 'ongoing basis', we referred to ongoing discussions that we continue to have with DHSC about overall levels of funding for social care, including for instance any discussions they have had with local authorities in the interim. As this is DHSC's model, HM Treasury does not hold information on 'the date of the latest Analysis and Assessment of Sufficiency undertaken prior to each fiscal event



you have specified'. It is for DHSC to outline when they carried out the modelling, which may differ from when it was sent to HM Treasury."

This response fails to provide any answer to b, d or e that we can discern. These are very straightforward questions which, as with question 1, are simply seeking clarity about the details of the process undertaken.

In relation to the response provided to (f), it seems inconceivable that any Analysis or Assessment of Sufficiency provided to HMT by DHSC would be undated. If it is dated then, on the face of it, the information requested is information that HMT holds."

16. In order to consider this ground of complaint, the Commissioner asked HMT to:

- Confirm whether HMT holds any recorded information described at points b), d), e) and f), and provide this information to him, confirming whether it would also be prepared to provide this to the complainant.

17. In response, HMT explained that points b)-f) were clarificatory questions, which it provided answers to in its internal review response, namely:

'On b: "DHSC update its analysis of sufficiency of ASC funding after each fiscal event."

On d and e: "By 'ongoing basis', we referred to ongoing discussions that we continue to have with DHSC about overall levels of funding for social care, including for instance any discussions they have had with local authorities in the interim."

On f: "this is DHSC's model, HM Treasury does not hold information on 'the date of the latest Analysis and Assessment of Sufficiency undertaken prior to each [fiscal event you have specified]'. It is for DHSC to outline when they carried out the modelling, which may differ from when it was sent to HM Treasury."

18. HMT explained to the Commissioner that its responses covered its general understanding of how DHSC develop this information. It also confirmed to the Commissioner that there is no specific additional information which it holds with regard to these queries.

19. Having considered HMT's submissions above, the Commissioner is satisfied that these provide a logical narrative response to each of the clarification queries, and furthermore that in view of these it is reasonable to conclude that HMT does not hold any further recorded information that could be used to answer these points.



### Complaint 3

20. This ground of complaint concerns question 4. In submissions to the Commissioner to explain this ground the complainant stated that:

“In response to question 4 HMT said that:

“HM Treasury takes into account evidence from a range of sources in its policy making and this has included the Health Foundation’s analysis.” In our request for internal review, we pointed out that this response did not expressly and clearly confirm whether the Health Foundation’s September 2021 estimates were taken into account for the purpose of any Assessment of Sufficiency undertaken after that date. [We noted in our request that the HMT version of our request referred to the Health Foundation’s September 2023 estimates when in fact the question we asked concerned the taking into account of the 2021 estimates.]

HMT responded as follows:

The Health Foundation analyses, including the 2021 analysis, are one of a range of sources used regularly by HMT as part of its policy making, including providing useful context to enable HMT officials to engage critically with the information provided by DHSC.

This fails to give a clear answer to our question. HMT holds the Analysis/Assessment (whether any part is undertaken by HMT or not) and it seems inconceivable that this would not set out clearly when Health Foundation material was being taken into account.”

21. So that he could consider this particular ground of complaint, the Commissioner asked HMT to:

- Confirm whether it holds any recorded information which sets out when the Health Foundation material was being taken into account, and provide this information to the him, confirming whether it would also be prepared to provide this to the complainant.

22. In response, HMT explained that as part of preparatory work for the Autumn Statement package on Adult Social Care in 2022, it sought to understand how expected outturn spending on ASC would compare with modelling separately developed by the Health Foundation in 2021, who themselves had developed a model of how much spending would be required within the sector to deliver different outcomes.

23. HMT explained that departmental officials had produced a table comparing expected spend on ASC as assumed at the start of the Spending Review 2021 period and the updated expected budgets for

23/24 and 24/25 following additional funding which ministers were considering providing at Autumn Statement 2022, with scenarios developed by the Health Foundation for how much it would cost to 'stabilise' or 'recover' the sector. HMT explained that it considered this table of analysis to be exempt from disclosure on the basis of section 35(1)(a) of FOIA. The Commissioner has considered the application of this exemption to this information in his analysis below.

#### Complaint 4

24. In this ground of complaint challenged HMT's decision to withhold the information falling within the scope of questions 1a) to d), and question 4, on the basis of section 35(1)(a).
25. As noted above, during the course of the Commissioner's investigation HMT confirmed that it was also seeking to withhold a table officials had compiled in comparing analysis with modelling separately developed by the Health Foundation on the basis of section 35(1)(a) (the 'Health Foundation table').
26. Section 35(1)(a) of FOIA states that:

"Information held by a government department or by the Welsh Assembly Government is exempt information if it relates to-

  - (a) the formulation or development of government policy"
27. Section 35(2) specifically deals with statistical information and states that:

"(2) Once a decision as to government policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded—

  - (a) for the purposes of subsection (1)(a), as relating to the formulation or development of government policy"
28. Section 35 is a class based exemption, therefore if information falls within the description of a particular sub-section of 35(1) then this information will be exempt; there is no need for the public authority to demonstrate prejudice to these purposes.
29. The Commissioner takes the view that the 'formulation' of policy comprises the early stages of the policy process – where options are generated and sorted, risks are identified, consultation occurs, and recommendations/submissions are put to a minister or decision makers.

30. 'Development' may go beyond this stage to the processes involved in improving or altering existing policy such as piloting, monitoring, reviewing, analysing or recording the effects of existing policy.
31. Ultimately whether information relates to the formulation or development of government policy is a judgement that needs to be made on a case by case basis, focussing on the precise context and timing of the information in question.
32. The Commissioner considers that the following factors will be key indicators of the formulation or development of government policy:
  - the final decision will be made either by the Cabinet or the relevant minister;
  - the Government intends to achieve a particular outcome or change in the real world; and
  - the consequences of the decision will be wide-ranging.
33. With regard to the 'Health Foundation table', HMT explained that this compared expected spend on ASC as assumed at the start of the Spending Review 2021 period and the updated expected budgets for years 23/24 and 24/25 following additional funding which ministers were considering providing at Autumn Statement 2022, with scenarios developed by the Health Foundation for how much it would cost to 'stabilise' or 'recover' the sector. HMT explained that these expected budgets are internal government estimates and are released at the start of the Spending Review period as they form part of the analysis underpinning the wider local government funding settlement, which is then revised and updated at a more granular level by MHCLG.
34. HMT explained that it considered this table to fall within the scope of section 35(1)(a) of FOIA on the basis that the information at the time of the request included estimated budgets for 23/24 and 24/25, which were still subject to overall decision-making including at the Local Government Finance Settlement.
35. With regard to the remaining information which HMT withheld on the basis of section 35(1)(a), it argued that this was caught by this exemption given that the information was material to and informed live decision-making by ministers. In particular, the information related to the formulation of government policy regarding the best use of adult social care budgets across 23/24 and 24/25. HMT explained that DHSC's analysis and their assessment of overall sufficiency of funding formed an important part of their rationale for a proposal to provide further funding to local authorities to support the adult social care sector. HMT ministers were reviewing this proposal and had various options for how to use the

funding. As they did so, they were weighing both policy priorities and wider fiscal considerations across health budgets.

36. The Commissioner is satisfied that all of the withheld information relates to formulation and development of government policy in respect of financial planning for the years 23/24 and 24/25, and in particular decision making regarding the Local Government Finance Settlement.
37. The Commissioner is therefore satisfied that the exemption at section 35(1)(a) of FOIA is engaged with respect to all of the withheld information. The Commissioner has therefore gone on to consider the public interest test.

### **Public interest test**

38. Section 35 is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption contained at section 35(1)(a) outweighs the public interest in disclosing the information.

#### Public interest in favour of disclosing the information

39. The complainant's view is that there is a strong public interest in disclosure of the information requested. The Commissioner has not included their full arguments due to their length but he would highlight the following arguments made by the complainant:
40. That the funding for adult social care has been a matter of significance and growing public concern for some time and that the government has made assertions of adequacy while refusing to disclose its own analysis and assessments of sufficiency on which it relies.
41. That government transparency and accountability are particularly important as regards the budgeting process.
42. The complainant also highlighted that section 35(4) of FOIA specifically acknowledges that there is particular public interest in the disclosure of any factual information used to provide an informed background to government decisions. In her view HMT failed to give proper weight to the disclosure of factual information when considering the balance of the public interest test.
43. For its part, in relation to the Health Foundation table, HMT recognised that there is a benefit in transparency of public authorities, and an interest in factual information which forms the basis of overall decisions, including financial decisions. It acknowledged that the Health Foundation is an important third-party source of information on estimated funding need in adult social care, and that there may be some benefit in

understanding how it compares with the government's own estimated funding model.

Public interest in favour of maintaining the exemption

44. In relation to the Health Foundation table, HMT emphasised that at time of the request, decision making regarding budgets for the years 23/24 and 24/25 remained live and ongoing. It argued that disclosure of this information at the time of the request would have invaded the safe space needed for such decision making:

"we note that at the time the information would have included sensitive information about expected spending on adult social care in 24/25. These continued to be subject to debate, as part of the wider local government finance settlement and wider decisions (outlined under question 4 below) on whether to provide further funding for adult social care. We consider that had we released this information at the time, it is likely that it would have influenced these decisions, as it offered conclusions on how close expected budgets were to the Health Foundation's analysis of how much funding was needed. These decisions were finely balanced, including wider consideration beyond just adult social care budgets and policy. Further, these were not intended to be shared with local government given they were preliminary estimates, as illustrated by the fact that these numbers subsequently changed materially by the time of the announcement."

45. HMT explained that since the request, alternative relevant information on adult social care budgets has since been released, including the expected budget for 24/25 which includes additional funding allocated since the analysis was produced. The Health Foundation had also produced further updated analysis. Therefore, HMT argued that pertinent comparisons could be made with the Health Foundation without the information it was seeking to withhold, and consequently disclosure of this (at this stage) would not materially improve government accountability or improve public debate.

46. Nevertheless, HMT argued that disclosure of such analysis could have a wider chilling effect on future analysis. More specifically it argued that:

"The comparison with the Health Foundation's data was intended to assist HMT in developing the overall package in 2022, supporting officials to contextualise the package, and to support officials to check their analysis against external bodies'. This is valuable in improving the quality of analysis and decision-making. Given the political sensitivity of conclusions reached by organisations like the Health Foundation, there is a risk that releasing this information creates a chilling effect which makes it less likely officials would carry out such analysis in future. That could undermine the overall quality of policy-making. We

therefore do not consider that the public benefit outweighs the likely chilling effect from the release of the material upon future policy-making."

47. In relation to the remaining information which it had sought to withhold on the basis of section 35(1)(a), HMT also argued that disclosure of this at the time of the request risked encroaching both on the safe space of live policy making and causing a chilling effect on future policy making. More specifically, HMT argued that:

"there is a strong public interest in protecting the safe space in which ministers and officials can discuss and develop policies and to reach well-formed conclusions. As noted above, this information formed part of DHSC's rationale for their proposal to provide further funding to local authorities to support the adult social care sector. This was a finely balanced decision for ministers who were balancing different priorities across health budgets. Had we published the assessment of sufficiency, we consider it is likely that it would have prevented officials conducting rigorous and candid assessments of the range of options available to them. It is also likely that it would have made it harder for ministers to consider alternative options for the funding, and then come to a reasoned and effective decision which balanced legitimate differing priorities.

In addition, this analysis will continue to inform the government's ongoing policy making throughout the remainder of this Spending Review period (until March 2025) and preparations for the next Spending Review (from financial year 25/26). The analysis includes information about 24/25 (the current financial year) and core modelling assumptions which are subject to consideration between departments ahead of the Spending Review. There is a risk that release of the information undermines the ability of the government to make decisions free from external interference. This is particularly because assessing the sufficiency of adult social care funding must be taken in the broader context of the wider local government finance settlement, alongside funding for other statutory services which councils must provide. Release of this information would risk having a chilling effect on ministers' and officials' ability to take a broad view of the range of options, which is particularly important during a Spending Review period when ministers hold negotiations in private, taking into account a wide range of views and priorities."

48. Furthermore, whilst HMT recognised the interests in transparency, as noted above (see paragraph 43), in its view there was already information in the public domain which supported this transparency:

"Core modelling and evidence is published in the public domain, namely through DHSC commissioning the London School of Economics' Care



Policy and Evaluation Centre (CPEC) to produce long-term demand projections for ASC and ensures these are published. These projections are used by the Health Foundation, the Office for Budget Responsibility, and others to publish independent assessments of the funding pressures facing ASC. CPEC's projections are a key source used in DHSC's analysis and assessments of funding sufficiency, and feed into decision-making at each Spending Review.

To support overall understanding, we have publicly described the process by which DHSC assess overall funding sufficiency after each fiscal event, and subsequently share it with MHCLG and HMT."

### Balance of the public interest test

49. In reaching a decision as to where the balance of the public interest lies, the Commissioner has taken into account two recent decisions he has issued involving the complaints from the same individual involving requests submitted to DHSC<sup>2</sup> and DLUHC.<sup>3</sup>
50. The request in the DHSC case captured all of the information which HMT is seeking to withhold in this case on the basis of section 35(1)(a). (The only exception being the Health Foundation table; this did not fall within the scope of the request received by DHSC.) DHSC also withheld such information on the basis of section 35(1)(a). In respect of the balance of the public interest the decision notice found that:

"...the Commissioner considers the public interest arguments to be evenly balanced. However, given the presumption in favour of disclosure, the Commissioner has found that the public interest in disclosing the information outweighs the public interest in maintaining the exemption."<sup>4</sup>
51. The information in the scope of the request received by DLUHC also excluded that Health Foundation table, but did include approximately half of the analysis/assessment information which HMT is seeking to withhold in this case. The decision notice in the DLUHC case also accepted that such information was accept from disclosure on the basis of section 35(1)(a), but that the public interest in disclosure of such

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<sup>2</sup>

[https://indigoffice.sharepoint.com/sites/CRMDocuments/NoticeWebPublishing/DecisionNotice/2418/e48fd8cc-3a09-ef11-b85d-00224843529c\\_DNIC-269593-P7Q5.pdf](https://indigoffice.sharepoint.com/sites/CRMDocuments/NoticeWebPublishing/DecisionNotice/2418/e48fd8cc-3a09-ef11-b85d-00224843529c_DNIC-269593-P7Q5.pdf)

<sup>3</sup>

[https://indigoffice.sharepoint.com/sites/CRMDocuments/NoticeWebPublishing/DecisionNotice/2430/afadb30b-2b4b-ef11-b863-00224843529c\\_DNIC-285725-D7S7.pdf](https://indigoffice.sharepoint.com/sites/CRMDocuments/NoticeWebPublishing/DecisionNotice/2430/afadb30b-2b4b-ef11-b863-00224843529c_DNIC-285725-D7S7.pdf)

<sup>4</sup> Paragraph 67.



information outweighed the public interest in maintaining the exemption.<sup>5</sup>

52. The Commissioner notes that there is a significant crossover between the arguments advanced by HMT in this case for maintaining the exemption contained at section 35(1)(a) and those advanced by DHSC and DLUHC, namely: the live nature of policy making; the impact on the safe space in policy making; the risk of a chilling effect; and, the availability of information elsewhere which already contributes to the public interest in transparency. There is also little material difference between the arguments in favour of disclosure advanced by the complainant in her submissions to the Commissioner in relation to each of the three cases.
53. In view of the above, and in particular given that the information withheld by HMT (with the exception of the Health Foundation table) was also withheld by DHSC, and that half of the analysis/assessment information was also withheld by DLUHC, the Commissioner is also satisfied that the public interest favours disclosure of the information withheld by HMT on the basis of section 35(1)(a). In reaching this finding the Commissioner adopts and accepts the rationale of the analysis set out at paragraphs 54 to 59 of the DLUHC decision notice and at paragraphs 58 to 67 of the DHSC decision notice.
54. With regard to the Healthcare Foundation table, as noted this was not considered by either previous decision notice. However, given the crossover in subject matter between the information in the table, and HMT's public interest arguments to withhold this in respect of the information discussed in the previous paragraph, for similar reasons the Commissioner is also satisfied that the public interest favours disclosing this information.

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<sup>5</sup> Paragraph 59.

## **Right of appeal**

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55. 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)

56. 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.
57. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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**SK9 5AF**