

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

### **Decision notice**

**Date:** 8 October 2024

**Public Authority:** Council of the London School of Hygiene and Tropical Medicine

**Address:** Keppel Street  
London  
WC1E 7HT

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

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1. The complainant has requested copies of an application for grant funding from the Bill and Melinda Gates Foundation and associated correspondence. The above public authority (“the public authority”) disclosed some information, but its final position was to rely on section 22A of FOIA (research) to withhold the remainder.
2. The Commissioner’s decision is that the public authority has not demonstrated that the exemption applies. The public authority breached section 10 of FOIA as it failed to disclose non-exempt information within 20 working days.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose the information it has relied on section 22A of FOIA to withhold. The public authority may make appropriate redactions to comply with its data protection obligations.
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. On 19 March 2024, the complainant requested information of the following description:

"My request concerns the committed grant from the Bill & Melinda Gates Foundation (BMGF) ref INV-069494 (February 2024) "To advance the introduction of Respiratory Syncytial Virus Infection (RSV) maternal vaccines in Lower, Middle Income Countries (LMICs)." Please would you supply copies of:

  - a) the application for this grant
  - b) extracts of minutes of meetings relating to this grant (before and after the application)
  - c) all correspondence to/from BMGF relating to this grant in the last twelve months
  - d) current plans or protocol of how LSHTM proposes to advance the introduction of RSV maternal vaccines in LMICs
6. On 27 March 2024, the public authority responded. It relied on section 22 of FOIA (future publication) to withhold the information within the scope of part a, claimed to hold no information within the scope of part b, relied on section 41 of FOIA (breach of confidence) to withhold information within the scope of part c and relied on section 12 of FOIA (costs) to refuse part d.
7. The complainant requested an internal review on 28 March 2024. The public authority the outcome of its internal review on 12 April 2024. The public authority upheld its original position in respect of part a, but did not refer to the remainder of the request.

## Scope of the case

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8. On 16 July 2024, the Commissioner opened his investigation with a letter to the public authority. He noted that the public authority had relied on section 22 of FOIA, but that 22A seemed more appropriate. He noted that section 41 would be unlikely to cover correspondence the public authority had **sent** to the Foundation – even if it might cover what had been **received**. Finally, he noted that the public authority had relied on section 12 to refuse part of the request but had also referred to the same information as not having been written down.

9. On 30 July 2024, the public authority issued a fresh response to the request. It now disclosed a redacted version of the application and the correspondence. It relied on section 22A of FOIA to withhold some of the contents of this information and relied on section 40(2) to withhold the remaining information. It now confirmed it held no information within the scope of either parts b or d.
10. The Commissioner wrote to the complainant on 12 August 2024 to set out his preliminary view of the complaint. Whilst he had been unable to view the disclosed information he noted that, by its very nature, the information would relate to a research project. References, contained within the information, to precise research methodologies may undermine the project, therefore there was a reasonable likelihood that the exemption would be engaged.
11. The complainant did not accept the Commissioner's conclusion. His reasons are discussed in more detail below. The complainant has not challenged the extent of the information that is held.
12. The Commissioner considers that the scope of his investigation is to determine with section 22A of FOIA applies.

### **Reasons for decision**

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13. Section 22A of FOIA allows a public authority to withhold information that forms part of a programme of research and where disclosure would harm the project or any of its participants.
14. The public authority has disclosed part of the grant application, but has relied on the exemption to withhold most of the remaining information within this document – with the exceptions of the names of researchers, which have been withheld because it is their personal information.
15. The complainant argued that the information had not been obtained in the course of a programme of research nor was it derived from such a programme. The information must, by definition, have been created prior to any research.
16. In addition, or in the alternative, the complainant argued that there was no programme of “research” at all. The grant had been awarded for a project “to advance” the rollout of vaccines, which would indicate that the object was to promote or speed up processes already happening, rather than actual research.
17. In the Commissioner's view, both arguments are misconceived.

18. The phrase "programme of research" does not only cover the period during which researchers are actually collecting data. The "programme" will also cover the early stages when a research proposal is being formulated and funding sought.
19. Research proposals will often contain details of the methodology the researchers intend to employ. The disclosure of those methodologies would allow others to replicate the research and be in a position to exploit the results more quickly – preventing the original researchers from being able to realise the benefits of their research. It would be unfair and contrary to the purpose of the exemption, if the research methodology was only protected at the point the research actually began.
20. In respect of whether there is any "research," the public authority has provided the Commissioner with more details about the programme. The Commissioner accepts that this programme is intended to gather data and reach conclusions. It is not intended to "promote" any particular product which, as the complainant rightly points out, is unlikely to be "research."
21. However, whilst the Commissioner is satisfied that the information is derived from a programme of research and that the outcome of that research will eventually be published, he is not satisfied that the public authority has demonstrated that disclosure would harm an interest applicable to the exemption.
22. Turning first to the sections of the application that deal with methodology, the public authority has stated that:

"there are academic sensitivities about sharing this information e.g. if it was widely publicised it may reduce the novelty of the work and hence publication possibilities, as well as potentially jeopardise the research project."
23. To the extent that parts of the withheld information reveal information about the proposed methodology, the Commissioner considers that these are largely generic. The submission highlighted above is vague as to the consequences of disclosure and the Commissioner is not satisfied that there is a sufficient link between disclosure of this precise information and a substantial harm.
24. The withheld information also covers the geographical extent of the research. The Commissioner asked for specific clarity from the public authority on this point, but was not persuaded by the public authority's response.

25. The Commissioner considered it was appropriate to address this point in more detail to explain why he did not feel able to accept the public authority's arguments. However this necessarily involved discussion of the information being withheld. The Commissioner has therefore placed this section of the analysis in a confidential annex which will only be provided to the public authority. The Commissioner appreciates that this will be frustrating to the complainant.
26. For the benefit of the complainant, the gist of the analysis in the confidential annex is that the Commissioner was not satisfied that, in this specific case, the public had identified a harm applicable to this exemption. In the alternative, it has not demonstrated a causal link between the disclosure and the applicable harm.
27. As the exemption does not apply, the information must be disclosed.

### **Procedural matters**

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28. The public authority breached section 10 of FOIA as it failed to disclose non-exempt information within 20 working days of receiving the request.

### **Confidential Annex**

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29. The Commissioner has found it necessary to include a confidential annex with this decision. This is to preserve a meaningful right of appeal for the public authority, should it wish to exercise it, by not revealing the contents of the withheld information.
30. The analysis in the annex only covers the matters referred to in paragraphs 24-26. All the remaining analysis is contained within this decision notice.

## Right of appeal

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31. 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)

32. 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.
33. 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

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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