

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

### **Decision notice**

**Date:** 13 October 2021

**Public Authority:** Department of Health and Social Care  
**Address:** 39 Victoria Street  
London  
Sw1H 0EU

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

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1. The complainant has requested the Department of Health and Social Care (the DHSC) to disclose information about the contract for 'Project Saturn'. The DHSC refused to disclose the requested information citing section 43 of the FOIA.
2. The Commissioner's decision is that the DHSC is entitled to refuse to disclose the requested information in accordance with section 43 of the FOIA. She has however found the DHSC in breach of sections 1 and 10 of the FOIA.
3. The Commissioner does not require any further action to be taken.

### **Request and response**

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4. On 18 September 2020, the complainant wrote to the DHSC and requested information in the following terms:  
  
"1. I am requesting, under FOI, the contract for Project Saturn signed with Deloitte, available here:  
<https://www.contractsfinder.service.gov.uk/Notice/683f2b62-8576-48aa-8008-a0fb6dfe385f>  
  
2. I am also requesting any information the department holds on the objectives of Project Saturn."

5. The DHSC responded on 16 October 2020. For part 1, the DHSC applied section 21 of the FOIA and for part 2 it refused to comply, as it felt it was not a valid request for information under section 8 of the FOIA.
6. The complainant requested an internal review on 16 October 2020. With regards to part 1, he stated that the information was heavily redacted under section 40 of the FOIA. For part 2, the complainant disagreed that this element of his request was not valid. He stated that he found it 'baffling' that the DHSC had signed off a contract worth £366,122 without producing any information whatsoever that relates to the objectives of the contract.
7. The DHSC carried out an internal review and notified the complainant of its findings on 3 December 2020. With regards to part 1 of the request, the DHSC confirmed that the redactions had been made under section 40 and 43 of the FOIA. In respect of part 2, the DHSC confirmed that it holds the requested information but considers it is exempt from disclosure under section 43 of the FOIA. It confirmed that it was incorrect to initially say this element of the complainant's request was not a valid request under section 8 of the FOIA.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 13 January 2021 to complain about the way his request for information had been handled. He confirmed that he is unhappy with the DHSC's application of section 43 of the FOIA to the withheld information. The complainant considers it is unsatisfactory for there to be no information available to the public in relation to this project.
9. During the Commissioner's investigation the DHSC decided to release some further information to the complainant. It proceeded to do that on 8 October 2021. It considers the remaining withheld information is still exempt from disclosure under section 43 of the FOIA.
10. The Commissioner considers the scope of her investigation to be to determine whether the DHSC is entitled or not to withhold the remaining withheld information under section 43 of the FOIA.

## Reasons for decision

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### Section 43 – commercial interests

11. Section 43 of the FOIA states that information is exempt from disclosure if its disclosure would or would be likely to prejudice the commercial interests of the public authority and/or a third party.
12. As section 43 is a qualified exemption in addition to demonstrating that disclosure would or would be likely to prejudice the commercial interests of the public authority and/or a third party, the DHSC must demonstrate that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption.
13. The DHSC informed the complainant that it considers disclosure would be likely to prejudice the commercial interests of a third party and felt the public interest rested in maintaining the exemption.
14. The DHSC provided a copy of the withheld information and further, more detailed submissions to the Commissioner as part of her investigation. The DHSC stressed that both the withheld information and the submissions it provided to the Commissioner had been provided in confidence and none could be shared or discussed in the Commissioner's decision notice, due to the submissions themselves containing commercially sensitive information.
15. In this case the Commissioner has used a confidential annex, which will only be shared with the DHSC, to outline her decision. Due to it containing commercially sensitive information it cannot be shared with the complainant.
16. The Commissioner can only share in this decision notice her overall decision, which is she is satisfied that all remaining withheld information is exempt from disclosure under section 43 of the FOIA. In terms of the public interest test, the Commissioner has decided that the public interest in favour of disclosure is outweighed by the public interest in maintaining the exemption. She therefore does not require any further action to be taken.

### Procedural matters

17. The Commissioner notes that information was disclosed to the complainant during her investigation. This is information to which the complainant was entitled under section 1 of the FOIA. She therefore finds the DHSC in breach of section 1 and 10 of the FOIA for failing to provide this information to the complainant within 20 working days of his request.

## Right of appeal

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18. 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: 0300 1234504

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)

19. 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.
20. 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

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