

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

### **Decision notice**

**Date:** 16 January 2023

**Public Authority:** Department of Health & Social Care  
**Address:** 39 Victoria Street  
London  
SW1H 0EU

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

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1. The complainant has requested the DHSC to disclose copies of any correspondence, including letters and emails, between Emily Lawson and Baroness Michelle Mone since March 2020 relating to personal protective equipment sold to the government by the company PPE Medpro. The DHSC refused to disclose the information citing section 43 of 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 FOIA. He has also recorded a breach of section 10 of FOIA, as the DHSC failed to respond to the complainant's request within 20 working days of receipt.

#### **Request and response**

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3. On 28 June 2022, the complainant wrote to the DHSC and requested information in the following terms:

"Copies of any correspondence, including letters and emails, between Emily Lawson and Baroness Michelle Mone since March 2020 relating to personal protective equipment sold to the government by the company PPE Medpro."

(The complainant first submitted this request to the DHSC in January 2022. However, they were incorrectly directed to NHS Improvement, which in turn referred them back to the DHSC.)

4. The DHSC responded on 13 July 2022, refusing to disclose the requested information in accordance with section 43 of FOIA.
5. The complainant requested an internal review on 18 July 2022.
6. The DHSC carried out an internal review and notified the complainant of its findings on 22 July 2022. It upheld the application of section 43 of FOIA.

### **Scope of the case**

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7. The complaint was accepted for full investigation on 25 July 2022.
8. The Commissioner considers the scope of his investigation to be to determine whether the DHSC is correct to rely on section 43 of FOIA.
9. The Commissioner has received a copy of the withheld information and additional submissions from the DHSC and he is satisfied that section 43 of FOIA is engaged. The following section of this notice will explain why.

### **Reasons for decision**

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10. Section 43 of FOIA states that information is exempt from disclosure if its disclosure would or would be likely to prejudice the commercial interests of the DHSC and/or a third party. It is also subject to the public interest test.
11. The DHSC confirmed that PPE Medpro has recently engaged with a mediation process intended to avoid the need for formal legal action in relation to a dispute between the DHSC and the company. It said the negotiations are confidential and held on a without prejudice basis in order to allow the parties a genuine opportunity to settle the dispute outside of court. It argued that disclosure of the withheld information at this stage carries a significant risk of destabilising those discussions.
12. It commented that a negotiated settlement is the most favourable route to secure the return of funds to the public purse from the company. The disclosure of material relating to the DHSC's contract with PPE Medpro is therefore likely to damage the abilities of the parties to hold negotiations in good faith and directly impact upon the DHSC's commercial interests.

13. The Commissioner is satisfied that, based on the circumstances at the time of the request, section 43 of FOIA is engaged. As the DHSC has explained, it is in the midst of mediation with PPE Medpro and disclosure of the withheld information would be likely to prejudice that process and the ability of the DHSC to negotiate what it considers to be a fair settlement and potentially recover funds.
14. In terms of the public interest test, the DHSC said that it recognised the public interest in members of the public understanding the workings of government and its decision making. It also accepted that there is a public interest in knowing how the DHSC is approaching its concerns over this PPE contract.
15. However, disclosing material that exposes exchanges between a prominent representative of a supplier and a senior commercial leader working for the DHSC would make it less likely that companies or individuals would engage openly and frankly with the DHSC to progress commercially sensitive matters in the future.
16. The DHSC also said that the correspondence requested refers very specifically to the deliveries and performance that is disputed. Disclosure would be likely to hinder the mediation process and this is not in the interests of the public.
17. The Commissioner acknowledges the significant public interest in members of the public understanding more closely how the DHSC is progressing this matter. However, he considers the public interest rests in maintaining this exemption. It is in the public interest to allow the mediation process to progress and protect the DHSC's ability to negotiate the most favourable settlement for the public purse. If mediation fails as a result of the disclosure of sensitive information at a key stage in that process, the matter will progress to a much more lengthy and costly court case, which is not in the wider interests of the public.

### **Procedural matters**

18. It is noted that there was a considerable delay in the processing of this request because the DHSC incorrectly advised the complainant initially that it did not hold the information and should direct the request to NHS Improvement. It was not until June 2022 that the DHSC began to consider the request. The Commissioner has therefore recorded a breach of section 10 of FOIA against the DHSC, as it failed to respond to the complainant's request within 20 working days of receipt.

## Right of appeal

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19. 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)

20. 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.
21. 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**