

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

### **Decision notice**

**Date:** 10 May 2023

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

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

---

1. The complainant has requested DHSC to disclose all correspondence between itself and Steve Brine MP relating to a particular FOIA request and all FOIA handling correspondence in relation to that request. DHSC refused the request, initially citing section 36(2)(b) and then section 12 of FOIA. During the Commissioner's investigation DHSC claimed a late reliance on section 14 of FOIA.
2. The Commissioner's decision is that DHSC is entitled to refuse to comply with the request in accordance with section 14 of FOIA. He does not require any further action to be taken.

#### **Request and response**

---

3. On, 23 June 2022, the complainant requested DHSC to provide the following information:

"I am sending this request under the Freedom of Information Act.

1) Please provide a copy of all correspondence between DHSC and Steve Brine MP relating to request FOI-1372744.

2) Please provide a copy of all FOI handling correspondence in relation to FOI-1372744.

Please check departmental email, and departmental instant messages. If any correspondence by text or services such as WhatsApp took place, for example with special advisors, please obtain and disclose these records too.

Please note ICO guidelines in relation to searches of private platforms in relation to this request.

Records may also be filed under:

-IC-150951-L7R6 (Failure to respond to request)

-IC-157300-Q5G5 (ICO investigation into failure to disclose relevant correspondence)"

4. DHSC responded on 2 August 2022. In relation to question one, it provided a further copy of the requested information (this fell within the scope of another request they submitted). Regarding question two, DHSC advised that it was withholding the requested information under section 36(2)(b)(i) of FOIA.
5. The complainant requested an internal review on 9 August 2022. They questioned whether further recorded information is held relating to question one and stated that the information for question two should be disclosed, as there is a clear public interest in its disclosure.
6. DHSC carried out an internal review and notified the complainant of its findings on 4 October 2022. It revised its position and applied section 12 of FOIA.

### **Scope of the case**

---

7. The complainant contacted the Commissioner on 14 October 2022 to complain about the way their request for information had been handled.
8. During the Commissioner's investigation DHSC claimed a late reliance on section 14 of FOIA, on the basis of the time and cost to redact the requested information. The Commissioner will now decide if DHSC is entitled to rely on this exemption or not.

### **Reasons for decision**

---

9. Section 14 of FOIA states that a public authority may refuse to comply with a request that is vexatious. This exemption can be used by public authorities where the cost and time to redact exempt information would create an oppressive burden on its resources. The threshold for the application of this exemption on this basis is very high. There must be a

significant amount of information falling in the scope of the request, the public authority must demonstrate that it contains exempt information scattered throughout and the task of redaction would be burdensome.

10. DHSC said that fresh searches were carried out as a result of the Commissioner's investigation and this revealed a total of 148 mailboxes that contain information relating to one or more of the three case reference numbers highlighted in the request. DHSC confirmed these numbers were established after individual searches in outlook accounts, in addition to its legacy team being commissioned to search accounts of staff that have moved teams or left the department since the requests referenced. Under these searches it said a total of 1241 emails were identified, some of which had attachments.
11. It commented further that the legacy team are only able to search and handover emails on dormant accounts, all live accounts have to be checked and reviewed by the member of staff. DHSC estimates that it would take each individual staff and legacy team at least two minutes to search each of the three case reference numbers in the mailboxes, equating to 5.5 hours.
12. It estimates that it would take at least 20 seconds per email for each individual to forward that email and any attachments on or transfer it into a shared folder. This would therefore take an additional 6.9 hours.
13. DHSC then said that once this is completed it is then necessary for the reviewer to check that the emails and associated attachments align to the requisite information, ensuring that they are in scope and then store them in a folder or file. It has estimated that this would take a further 10.3 hours to complete.
14. Once it has pulled all of this together, the reviewer would then need to enter each email onto an Excel spreadsheet to record whether it is fully in scope and to weed out any duplicates, as it does anticipate that there will be a lot of duplication. DHSC advised that for each email (and any attachments) this would take a conservative 2.5 minutes. A further 57.7 hours would therefore be required.
15. It stated that all records are held electronically and that its estimates are based on the most efficient method of gathering the requested information. DHSC commented that it would need to isolate duplicate emails because if it was then preparing them for disclosure it would need to apply redactions to every email, especially in relation to section 40 of FOIA (personal data). It felt this would be the quickest way to review and prepare the requested information for disclosure. Prior to actual disclosure, it would also need additional time to obtain clearance from senior officials.

16. The Commissioner questioned why DHSC would need to search so many email accounts, why it would be necessary to search all case references mentioned and why it was not possible to retrieve all the requested information from the FOIA case file for FOI-1372744. It was suggested that it would not be necessary to search both IC reference numbers if all recorded information relating to the handling of information request FOI-1372744 was held on the FOIA case file.
17. DHSC agreed that all commissioning emails and key responses to and from its policy teams are held in a central file within the FOIA team. However, it pointed out that this will not be all of the emails that a caseworker could hold in their outlook account. For example, a caseworker may have had 10 key emails on a given case and filed these in the FOIA central file but they could have in total 125 email chains in their outlook account, with the remainder not being on the central FOIA file because they were not classed as key emails.
18. Additionally, DHSC said when a caseworker (and this happens frequently) has to reach out to others (mostly policy teams) to work on a case, the caseworker is not always copied into all emails and therefore they would not be aware of such ongoing conversations/work. They will only receive the policy team's response back from which they are then expected to respond to the FOIA request.
19. In relation to the information request the subject of this request, DHSC confirmed that the caseworker referred the matter to six Private Office inboxes so there is potential for quite a lot of forwarding on/discussions that the caseworker and FOIA team were not copied in to. To obtain all the requested information falling in scope DHSC would be required to complete the wide and far reaching searches detailed above, as it is confident that the central FOIA file will not contain all that is held.
20. DHSC commented further that it is not always clear (as in this case) how far teams have reached out to others. This is why it commissioned its legacy team to search for any emails held containing the original FOIA number and the two IC case reference numbers and why it established that 1241 email chains are held (including some attachments). The large amount of emails illustrates that not everything will be held on the central FOIA file.
21. It provided a sample of emails to the Commissioner to highlight that they will contain exempt information and at the very least personal data which will require redaction under section 40 of FOIA. It also demonstrated why it would need to check each email to see if it is in scope, as the search revealed communications which are not specifically about the handling of the FOIA request but more related to departmental data collation.

22. DHSC has said to sift through 1241 email chains (some with attachments) to first identify duplicates and then to redact exempt information would be a significant task and one which would be burdensome in terms of time and cost. At three minutes per email chain it would take it just over 62 hours to prepare the information for disclosure.
23. It does not consider the request has sufficient purpose or value that would warrant the expenditure of such time and resource.
24. The Commissioner is satisfied that section 14 of FOIA is engaged. He accepts that the searches required would be as far reaching and as wide as DHSC has explained. DHSC has clarified and demonstrated that it would not be able to rely on the central FOIA file for all recorded information held and how it is very likely that some of the recorded information will be held in various email accounts across the department. He accepts that the FOIA team or the relevant caseworker would not have been copied into all discussions that took place and email circulations, when it commissioned the relevant areas to assist with the request. Instead the FOIA team and caseworker will have only received the key response and it will be this information that is held on the central FOIA file only.
25. He also accepts that it is necessary to first sift for duplicates emails and attachments to make the task of redaction easier, more accurate and overall less time consuming. In addition, DHSC has demonstrated that the email chains will contain exempt information (at least under section 40) scattered throughout. The Commissioner considers three minutes per email chain plus associated attachments is a reasonable and realistic estimate (to download each email chain plus attachments, check for duplicates and then redact exempt information) and therefore that it would take DHSC over 60 hours to prepare the requested information for disclosure.
26. It is understood that the complainant has concerns over how this original FOIA request was handled and why there were delays in its handling. It does therefore have some value and purpose. But the Commissioner does not consider the value and purpose identified in this case outweighs the level of burden, in terms of time and resource, that compliance would require.

### **Procedural matters**

27. It is noted that DHSC did not respond to the complainant's request within 20 working days of receipt. The Commissioner has therefore recorded a breach of section 10 of FOIA in this case.

## **Right of appeal**

---

28. 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)

29. 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.
30. 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**