

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 25 June 2012

**Public Authority:** Department for Business, Innovation & Skills  
**Address:** 1 Victoria Street  
London  
SW1H 0ET

#### Decision (including any steps ordered)

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1. The complainant requested information concerning the Department for Business, Innovation & Skills' (BIS) facilitation of banking and insurance services to Huntingdon Life Sciences (HLS).
2. The Information Commissioner's decision is that BIS was entitled to withhold the information within the scope of part one of the complainant's request under section 21 of the FOIA (information reasonably accessible), section 35(1)(b) of the FOIA (ministerial communications) and section 43(2) of the FOIA (prejudice to commercial interests of any person). He considers that the public interest in maintaining the exemptions under section 35(1)(b) of the FOIA and section 43(2) of the FOIA outweigh the public interest in disclosing the information. The Commissioner also considers that BIS was entitled to withhold the information within the scope of part five of the complainant's request under section 43(2) of the FOIA. He considers that the public interest in maintaining the exemption under section 43(2) of the FOIA outweighs the public interest in disclosing the information.
3. The Commissioner does not require any steps to be taken as a result of this decision.

## Request and response

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4. On 24 April 2011, the complainant requested the following information:
  - '1 For what purpose have banking and insurance services been provided to HLS since 2001?
  - 2 If the banking and insurance services provided to HLS by your department since 2001 were provided free of charge or has a charge been applied?
  - 3 If the banking and insurance services were provided free of charge to HLS, what the monetary value of the services was; ie how much has it cost the taxpayer? How much would the services etc have cost HLS if a charge had been applied?
  - 4 If the banking services provided to HLS included any loans or grants?
  - 5 If any pay-outs have been made to HLS under the terms of the insurance services?'
5. BIS responded on 26 May 2011. It provided the complainant with some information in relation to part one of her request. In relation to part four of the complainant's request it confirmed that BIS had not made any loans or given any grants to HLS. It refused to provide any information within the scope of parts two, three and five of the complainant's request under section 43(2) of the FOIA.
6. The complainant asked for an internal review on 5 June 2011.
7. Following an internal review BIS wrote to the complainant on 4 July 2011 upholding its original decision.

## Scope of the case

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8. The complainant contacted the Commissioner to complain about the way her request for information had been handled.
9. On receipt of the Commissioner's initial enquiries BIS reconsidered the complainant's request and provided the complainant with a further response on 9 December 2011. It provided some further information in relation to part one and part two of the complainant's request. As a result of the information provided in relation to part two of the complainant's request, it explained that part three of the request was no longer relevant.

10. In light of the further information provided by BIS, the complainant agreed to restrict the scope of the Commissioner's investigation to the following issues:
  - whether BIS had disclosed all of the information it held within the scope of part one of the request; and
  - whether BIS was entitled to withhold the information within the scope of part five of the request under section 43 of the FOIA.
11. The Commissioner proceeded with his investigation on this basis. Based on BIS's initial submissions the Commissioner contacted BIS outlining his preliminary conclusion that it appeared unlikely that BIS had identified all of the information within the scope of part one of the complainant's request. In particular, the Commissioner explained that he considered any information BIS held concerning the reasons why BIS facilitates the provision of banking and insurance services to HLS would fall within the scope of part one of the complainant's request.
12. BIS reconsidered part one of the complainant's request and identified further information which appeared to be within the scope of the request outlined by the Commissioner. Having reviewed this information the Commissioner considers that further information was within the scope of the complainant's request. Following further consultation, BIS did not seek to challenge the scope of part one of the complainant's request as outlined by the Commissioner.
13. In relation to the further information within the scope of part one of the complainant's request, BIS has disclosed some of this information to the complainant. The remaining information has been withheld under section 21 of the FOIA, section 35(1)(a) of the FOIA (the formulation or development of government policy), section 35(1)(b) of the FOIA, section 38 of the FOIA (health and safety), section 40(2) of the FOIA (third party personal data) and section 43(2) of the FOIA to withhold the information. The information within the revised scope of part one of the complainant's request and the information within the scope of part five of the complainant's request is identified in confidential annex A with reference to the documents containing the information.
14. BIS's further response provided the complainant with some additional information and hard copies of the information it is withholding under section 21 of the FOIA which consists of two parliamentary questions. BIS has also referred the complainant to three further parliamentary questions, which it does not hold, relating to the same matters. Finally, BIS has explained the exemptions it is now relying on in relation to the further information that it has now agreed is within the scope of part one of the complainant's request.

15. Therefore, as part of his investigation the Commissioner has considered whether BIS was entitled to withhold the information within the agreed revised scope of part one of the complainant's request. He has also considered whether BIS was entitled to withhold the information within the scope of part five of the complainant's request.
16. In the course of his investigation the Commissioner has considered all of the arguments made by the complainant and BIS including those not specifically referenced within this decision notice.

## **Reasons for decision**

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### **Part one of the complainant's request**

#### **Section 21 of the FOIA**

17. Section 21 of FOIA states that information which is reasonably accessible to the applicant otherwise than under the FOIA is exempt. Section 21 is an absolute exemption and is not subject to a public interest test.
18. BIS has applied section 21 of the FOIA to the information contained in the replies to two written parliamentary questions that would fall within the scope of part one of the complainant's request. The Commissioner considers that the parliamentary questions are reasonably accessible to the applicant as they are recorded in the Official Report (Hansard). He also notes that BIS has provided the complainant with hard copies of this information. Therefore, despite the fact that the information has been provided to the complainant, the Commissioner considers that this information was exempt under section 21 of the FOIA and BIS was not required to disclose it to the complainant under the FOIA.

#### **Section 35(1)(b) of the FOIA**

19. Section 35(1)(b) of the FOIA states that information held by a government department is exempt if it relates to Ministerial communications. Ministerial communications is defined in section 35(5) of the FOIA and includes any communications between Ministers of the Crown. Section 35(1)(b) of the FOIA is a qualified exemption which means that exempt information must be disclosed unless the public interest in the maintaining the exemption outweighs the public interest in disclosing the information.
20. The information withheld under section 35(1)(b) of the FOIA is contained within document 2 and 3 as described in confidential annex A.

The Commissioner considers that this information relates to Ministerial communications for the reasons outlined in confidential annex A.

21. BIS recognises that there are public interest factors in favour of disclosing the information. It accepts that there is a general public interest in openness. It also recognises that, in principle, transparency may contribute to a greater public understanding of and participation in public affairs. In this particular case it considers that transparency would contribute to greater public understanding of the role of Ministers in developing and implementing policy in relation to HLS and the Life Sciences industry in general. It also considers that there is a public interest in understanding why BIS used public resources to facilitate the provision of banking and insurance services to HLS.
22. BIS has also argued that there are public interest factors in favour of maintaining the exemption and that these significantly outweigh the public interest factors in favour of disclosing the information. It has argued that the information is sensitive due to its candid nature and that there is a need for Ministers to have a safe space to be able to discuss sensitive policy issues in a free and frank manner. It has also argued that the communications would have been far less candid had the author known that the information would be disclosed into the public domain. BIS considers that the sensitivity of the information has not diminished over time and that disclosing the information would have a chilling effect on the provision of policy advice in relation to issues concerning the Life Sciences sector and a wider effect on the provision of policy advice in general.
23. The complainant has argued that the public interest favours disclosing the information. She has argued that there is a particular public interest in transparency in relation to the government's decision to facilitate the provision of banking and insurance services to HLS. The complainant has also made a number of allegations against HLS and the government which she argues are relevant public interest factors in favour of disclosing the information.
24. In relation to HLS the complainant states:

*'Huntingdon life sciences is implicated in the deaths of thousands of people by virtue of its passing as safe a multitude of drugs that went on to kill people. This is pertinent to the public interest test and should not be dismissed or ignored.'*
25. The complainant went to make a number of specific allegations relating to various drugs which she believes were likely to have been tested by HLS.

26. In relation to the government the complainant argues that it is "*corrupt*" and:

*'By providing HLS with free banking and insurance services DBIS is giving HLS an unfair advantage over its competitors, and holding back progress.'*

27. The Commissioner considers that there are public interest factors in favour of disclosing the withheld information. He considers that there is a general public interest in transparency and accountability in decision making and attributes some weight to this. In this particular case he considers that there is a strong public interest in understanding the reasons why the government decided to use public resources to take the unprecedented step of facilitating the provision of banking and insurance services to a private business. He has attributed significant weight to this factor. The Commissioner does not consider that the allegations made by the complainant are of any weight as the complainant has not provided or referred the Commissioner to any independent evidence to support these allegations.
28. The Commissioner considers that there are public interest factors in favour of maintaining the exemption. He considers that to some extent the information relates to live issues. However, at the time of the request the relevant policy decision to which the information relates, for the government to facilitate the provision of banking and insurance services to HLS, had been made some time ago. Therefore, he considers that the importance of preserving a safe space with regard to that particular policy issue has diminished over time as the policy position has become more certain. The Commissioner has attributed little weight to the public interest in maintaining a safe space in relation to this particular issue.
29. Taking into account the nature of the withheld information, the Commissioner considers that the chilling effect arguments put forward by BIS are particularly strong in the circumstances of this case. He considers that whilst the overall policy issues to which the information relates have been determined and implemented there are related live issues which were ongoing at the time of the request. He considers that the disclosure of this information would have a highly detrimental effect on the frankness and candour with which relevant parties would be willing to make contributions to discussions relating to these live issues. He also considers that the disclosure of the information could have a wider effect on the frankness and candour of contributions in relation to policy debates in relation to HLS and the Life Sciences sector in general. He has attributed significant weight to these factors.

30. In addition to the public interest factors in favour of maintaining the exemption outlined above the Commissioner has considered additional arguments and evidence provided by BIS in confidential annex B.
31. On balance, despite the strong public interest factors in favour of disclosing the information the Commissioner considers that the public interest in favour of maintaining the exemption significantly outweighs the public interest in disclosing the information. BIS is therefore not required to disclose this information.

### **Section 43(2) of the FOIA**

32. Section 43(2) of the FOIA states that information is exempt if its disclosure under the FOIA would, or would be likely, to prejudice the commercial interests of any person. Section 43(2) of the FOIA is a qualified exemption which means that exempt information must be disclosed unless the public interest in the maintaining the exemption outweighs the public interest in disclosing the information.
33. The information within the scope of part one of the complainant's request, which was withheld under section 43(2) of the FOIA, is contained within document 4 as described in confidential annex A.
34. BIS has argued that disclosing this information would be likely to prejudice the commercial interests of HLS. The Commissioner considers that when determining whether there would be any prejudice to a third party's commercial interests, it will not be sufficient for the public authority to put forward speculative arguments. The arguments about the prejudice that would, or would be likely, to be caused by disclosing the information should either originate from the third party itself or be based on the public authority's prior knowledge of the third party's concerns.
35. BIS formulated its arguments in relation to HLS's commercial interests based on its detailed prior knowledge of HLS's concerns and it has provided evidence of consultation with HLS which confirms that its concerns are genuinely reflected by BIS's arguments. Therefore, although BIS formulated the arguments in relation to the prejudice to HLS's commercial interests it has provided clear evidence that HLS concurs with BIS's submissions.
36. In all of the circumstances, the Commissioner considers that disclosing this information would be likely to prejudice HLS's commercial interests. The reasons for this are outlined in confidential annex B. The Commissioner has therefore gone on to consider the public interest test.
37. BIS has argued that there are public interest factors in favour of disclosing the information. It considers that there is a degree of public

interest in understanding in detail why the public resources have been and are being used to support HLS and, in turn, the UK life sciences industry.

38. BIS has also argued that there are very strong public interest factors in favour of maintaining the exemption. It considers that there is a strong public interest in withholding information which is likely to have a detrimental effect on the commercial interests of HLS. In HLS's case, it argues that the detrimental effect on its business would impact on a vital part of the UK life sciences sector. It argues that there is a public interest in maintaining the health of the UK life sciences sector.
39. The public interest arguments provided by the complainant in favour of disclosing the information are the same as those outlined above in relation to section 35(1)(b) of the FOIA.
40. The Commissioner considers that there are public interest factors in favour of disclosing the withheld information. He considers that there is a general public interest in transparency and accountability in decision making and he attributes some weight to this. The Commissioner also considers that disclosing this information would provide the public with a greater understanding of the reasons why the government decided to use public resources to take the unprecedented step of facilitating the provision of banking and insurance services to a private business. He has attributed significant weight to this factor.
41. For the reasons outlined above in relation to section 35(1)(b) of the FOIA, the Commissioner does not consider that the allegations the complainant has made about HLS are of any weight in considering the balance of the public interest.
42. The Commissioner considers that there are public interest factors in favour of maintaining the exemption. He considers that the detrimental impact on HLS's commercial interests that would be likely to occur if the information were to be disclosed could be significant and enduring. He has attributed significant weight to this. The detailed reasons for this are outlined in confidential annex B.
43. For the reasons outlined above and in confidential annex B, on balance, the Commissioner considers that the public interest in maintaining the exemption outweighs the public interest in disclosure. BIS is therefore not required to disclose this information.

## **Part five of the complainant's request**

### **Section 43(2) of the FOIA**

44. The provisions of section 43(2) of the FOIA are outlined in paragraph 32 above.
45. BIS has argued that disclosing the information within the scope of part five of the request would be likely to prejudice HLS's commercial interests. BIS considers that this information would provide potential customers and suppliers, as well as potential competitors, with commercially sensitive information which would be likely to have a negative impact on HLS's future commercial negotiations and would damage HLS's position in relation to its competitors. It notes that information about insurance claims is not public information and is not known by competitors.
46. BIS formulated its arguments based on its detailed prior knowledge of HLS's concerns and it has provided evidence of consultation with HLS which confirms that the arguments outlined by BIS genuinely reflect its concerns.
47. The Commissioner notes that this information is only held by BIS due to the circumstances that have led the government to consider it necessary to facilitate the provision of insurance services to BIS. He considers that disclosing information about insurance claims paid to HLS would be likely to prejudice its competitive position in relation to its competitors which would not have to disclose information about its insurance claims. Therefore, the Commissioner considers that section 43(2) of the FOIA is engaged.
48. BIS has argued that there is little public interest in disclosing this information other than the general public interest in promoting transparency and accountability. It considers that this is especially the case as any insurance payments would not be made from public funds.
49. BIS considers that there are strong public interest factors in favour of maintaining the exemption due to the detrimental effect on HLS's commercial interests and the fact that no other business would be required to disclose information about its insurance claims. It considers that the detrimental effect on HLS's business would impact on a vital part of the UK life sciences sector. It argues that there is a public interest in maintaining the health of the UK life sciences sector. BIS considers that the balance of the public interest is overwhelmingly in favour of maintaining the exemption.

50. The public interest arguments provided by the complainant in favour of disclosing the information are the same as those outlined above in relation to section 35(1)(b) of the FOIA.
51. The Commissioner considers that there is a general public interest in the disclosure of information to promote transparency and accountability. He has attributed some weight to this factor. However, he does not consider that there is a particular public interest in transparency and accountability in this case as the information relates to insurance claims made by a private company. He notes that BIS only holds this information due to the circumstances that have led to the government facilitating the provision of insurance services to HLS. Therefore, he does not consider that there is a particular public interest in transparency and accountability in disclosing the withheld information in the particular circumstances of this case and he has attributed little weight to this factor.
52. For the reasons outlined above in relation to section 35(1)(b) of the FOIA, the Commissioner does not consider that the allegations the complainant has made about HLS are of any weight in considering the balance of the public interest.
53. The Commissioner considers that there are public interest factors in favour of maintaining the exemption. Revealing details of insurance claims would be likely to be highly detrimental to HLS's position in relation to its competitors which would not have to disclose this information. The Commissioner has attributed considerable weight to this factor as disclosing the information would be likely to cause HLS commercial detriment as a result of the circumstances that have led to the government facilitating the provision of insurance services to HLS. The Commissioner also notes that any insurance payments would not be made from public funds and so disclosing information relating to insurance payments would not enhance transparency and accountability in government spending or decision making.
54. In the Commissioner's view BIS has not provided sufficient evidence to demonstrate that the prejudice to HLS's commercial interests would be so severe so as to have a wider detrimental effect on the UK Life Sciences sector in general. However, in the circumstances of this case there is little public interest in disclosing commercially sensitive information relating to any insurance payments made to a private business where its competitors would not have to disclose this information and where the payments would not be made out of public funds. The Commissioner considers that, on balance, the public interest in maintaining the exemption significantly outweighs the limited public interest in disclosing the information. BIS is not required to disclose this information.

## 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

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.

**Signed .....**

**Graham Smith  
Deputy Commissioner  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**