

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

### **Decision notice**

**Date:** 23 January 2023

**Public Authority:** UK Health Security Agency (Executive Agency of the Department for Health and Social Care)

**Address:** Wellington House  
133-155 Waterloo Road  
London  
SE1 8UG

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

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1. The complainant has requested information relating to COVID-19.
2. The UKHSA refused to comply with the request, citing section 12(1) (cost of compliance exceeds appropriate limit) of FOIA.
3. The Commissioner's decision is that the UKHSA is entitled to refuse the request under section 12(1).
4. The Commissioner does not require the public authority to take any steps.

## Request and response

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5. On 19 July 2022, the complainant wrote to the UKHSA and requested the following information:

"This is a formal request for access to general records, made under the Freedom of Information Act.

### **Description of Requested Records:**

All records in the possession, custody or control of the UK Health Security Agency that scientifically proves the existence of SARS-COV-2 virus.

### **Scientific proof is NOT**

- Opinions
- Speculation
- Review papers
- Descriptive papers

### **Scientific Proof is**

- Experiments that follow the scientific method
- Repeatable experiments that produce identical results
- Experiments all have valid control groups

### **Scientific Method**

The scientific method is a process used to prove or disprove hypotheses. My request requires the hypothesis to include the claim of existence of SARS-COV-2 particles. If the records do not have a hypothesis or do not have a hypothesis that claims the existence of SARS-COV-2, then these records are disqualified from my request.

### **Repeatability**

I am requesting records that only use the scientific method and where the experiments have been repeated multiple times where the results were 100% the same. For any of the SARS-COV-2 Genome Sequences, multiple experiments must have been conducted and produced a 100% match for the SARS-COV-2 genome sequence the researchers found. Records that have not been repeated with 100% matches for the SARS-COV-2 genome are disqualified from my request.

## Controls

A control experiment is an experiment that has exactly the same parameters of the experimental group sans the variable being tested. For cell culture experiments, the control group should have exactly the same composition sans the SARS-COV-2 viruses. Experiments that do not have a valid control as defined are disqualified from my request.

## Summary

Please provide all records that scientifically prove the existence of SARS-COV-2 as defined in this request. If any records match the above description of requested records and are currently available to the public elsewhere, please provide enough information about each record so that I may identify and access each one with certainty (i.e. title, author(s), date, journal, where the public may access it). Please provide URLs where possible.”

6. The UKHSA responded on 16 August 2022. It refused to comply with the request, citing section 12(1). However, it did signpost the complainant to publicly available information<sup>1</sup> which it thought would be of interest.
7. On 17 August 2022 the complainant wrote to the UKHSA and raised a complaint about their request. They asked more questions about the links previously provided to them and claimed they were ‘pseudoscience’.
8. On 14 September 2022 the UKHSA provided the outcome to its internal review, upholding its reliance on section 12(1). It signposted the complainant to more publicly available information.<sup>2</sup>
9. On 14 September 2022 the complainant wrote to the UKHSA and asked specific questions about the ‘scientific method’ under which these studies had been conducted.
10. On 15 September 2022 the complainant wrote to the UKHSA and asked more questions, again relating to the ‘scientific method’ of the studies. The complainant explained ‘I will also modify my request to reduce the

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<sup>1</sup> [Eurosurveillance | Duration of infectiousness and correlation with RT-PCR cycle threshold values in cases of COVID-19, England, January to May 2020; What do we know about the new COVID-19 variants? - UK Health Security Agency \(blog.gov.uk\)](#)

<sup>2</sup> [Investigation of SARS-CoV-2 variants: technical briefings - GOV.UK \(www.gov.uk\); Eurosurveillance | Detection of 2019 novel coronavirus \(2019-nCoV\) by real-time RT-PCR](#)

burden on HSA. I will modify my request from **ALL** to **ANY** records.  
(emphasis added by the Commissioner).

## Scope of the case

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11. The Commissioner has considered the follow up questions that the complainant submitted on 17 August 2022, 14 September 2022 and 15 September 2022. The complainant is demanding explanations, relating to why these studies have been conducted using 'the proper scientific method' and making accusations that they represent pseudoscience.
12. FOIA gives individuals the right to seek information that a public authority holds in recorded form. It does not give individuals the right to demand explanations or justifications from a public authority or the right to have questions answered. For that reason, the Commissioner does not consider these questions represent valid requests for information and so he won't consider them any further.
13. The complainant is also concerned that the UKHSA has failed to process their amended request; asking for any records instead of all records. However, the following section 12 analysis will explain why this change in language doesn't represent an amended, or refined, request.

## Reasons for decision

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14. Section 12(1) of FOIA states that a public authority does not have to comply with a request if it estimates that to do so would exceed the appropriate limit.
15. The appropriate limit is charged at a flat rate of £25 per hour, with a total limit of £600, or 24 hours work, for a public authority such as the UKHSA.
16. When considering section 12, a public authority can only take into account the following costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004<sup>3</sup> ('the Regulations'):
  - (a) determining whether it holds the information,

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<sup>3</sup> [The Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004](https://www.legislation.gov.uk/uksi/2004/1000/contents/part-1/section-12) (legislation.gov.uk)

- (b) locating the information, or a document which may contain the information
- (c) retrieving the information, or a document which may contain the information, and
- (d) extracting the information from a document containing it.”
17. When citing section 12, the Commissioner expects a public authority to provide a reasonable estimate as to how long compliance with the request would take. This estimate should be based on cogent evidence, on the quickest method of gathering the requested information and usually will involve the public authority conducting a sampling exercise.
18. The UKHSA has explained to the Commissioner that, upon receipt of the request, it:
- ‘identified two very large mailboxes containing an extensive volume of material held by UKHSA in relation to virology and activity associated with the isolation of the SARS-CoV-2 virus. Preliminary searches of these mailboxes conducted by officials indicated that to identify, retrieve, extract and review the information held within them on these subjects would in all likelihood exceed the appropriate limit of 24 working hours as set out in Section 12(1) of the Act.’
19. The UKHSA has also explained that ‘it would not be possible to meaningfully distil search terms from the request, which could be used to perform searches that would enable us to answer the request in the way specified.’
20. Returning to paragraph 17, the Commissioner expects a public authority to provide an estimate as to how long compliance with the request would take. He notes that the UKHSA has not done so in this instance. However, the Commissioner accepts that due to the broad nature of this request, the role of the UKHSA during the pandemic and the sheer volume of information relevant to the request that the UKHSA holds, the quickest method of retrieval appears to be a manual search of records held in these two mailboxes.
21. Whilst the UKHSA has not put forward a figure, the Commissioner is under no doubt that compliance with the request would exceed 24 hours. In reaching this decision, he has taken into account the absence of a more specific search term for the UKHSA to use, more specific steer from the complainant, and the other systems or inboxes that the UKHSA would likely have to search.
22. The complainant’s willingness to change their request for ‘all’ records to ‘any’ records has no relevance; it is the exact same request just phrased

differently and there is just too voluminous an amount of information to consider.

## **Section 16 – advice and assistance**

23. When refusing a request under section 12, a public authority needs to offer meaningful advice and assistance to the complainant where reasonable. The aim of this advice and assistance is to help the complainant refine their request to one that might be able to be dealt with within the appropriate limit.
24. Considering the nature of the request, the UKHSA's role during the pandemic and the time it would take to search and manually review the relevant systems, the Commissioner doesn't see how the request could be meaningfully refined. Therefore, the Commissioner is satisfied that there's no section 16(1) breach in this instance.
25. The UKHSA has explained 'We recognise it is not UKHSA's role to convince the requester of the existence of the isolation of the SARS-CoV-2 virus, or to convince him to adopt our understanding of it. However, we consider that the requester's line of questioning is based on particular individual views on virus isolation which UKHSA does not recognise or share. UKHSA is therefore unable to answer this request in the way specified.'
26. It's not the Commissioner's role to comment on a requestor's beliefs and FOIA is purpose blind. Whilst the Commissioner recognises that the UKHSA is unable to align its own views with the complainant's, it clearly has in mind information, or at least a type of information ('virology and activity associated with the isolation' of COVID-19) that it envisages would be relevant to the request, either the complainant's interpretation or the UKHSA's. Therefore, it can answer the request but, as explained above, it is not obligated to do so.

## **Right of appeal**

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27. 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)

28. 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.
29. 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**

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