

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

### **Decision notice**

**Date:** 21 February 2023

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

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

### **Decision**

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1. The Commissioner's decision is that UK Health Security Agency (UKHSA) has complied with section 1(1) of FOIA in respect of the request for information about COVID-19 testing equipment. There was no breach of section 16(1), which concerns advice and assistance, but UKHSA did breach section 10(1) in respect of the timeliness of its response. It is not necessary for UKHSA to take any steps.

### **Request and response**

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2. On behalf of their client, the complainant, a legal firm, made the following information request to the Department of Health and Social Care (DHSC) on 10 November 2021:

"Pursuant to sections 1(1) and 3 Freedom of Information Act 2000, we request that you provide the following information:

1. Please confirm (a) what testing equipment was borrowed by the UK Government since March 2020, (b) from whom was this equipment borrowed, and (c) to whom was it loaned;
2. In March 2020, the UK government announced that it would launch a national testing scheme via their establishment of a

network of "mega" diagnostic testing laboratories, known as "Lighthouse Labs". Please confirm:

(a) (i) the total cost of the development and use of the Rosalind Franklin laboratory in Leamington Spa, to the UK public since March 2020, and (ii) what has been the highest sample output per day since March 2020 at the Rosalind Franklin laboratory in Leamington Spa;

(b)(i) the total cost of the development and use of the Alderley Park Laboratory to the UK public since March 2020, and (ii) what has been the highest sample output per day since March 2020 at the Alderley Park Laboratory;

3. Please provide us with (a) the details of the UK Government's contract with Deloitte LLP in relation to the Covid-19 testing programme and (b) the details of the output delivered by Deloitte LLP under this contract, since March 2020."
3. DHSC passed the request to UKHSA to deal with and UKHSA responded to the request on 27 April 2022. It directed the complainant to relevant published information within scope of Q1 and asked the complainant to clarify Q2. UKHSA did not address Q3.
4. UKHSA provided an internal review on 13 December 2022 following the Commissioner's intervention. It acknowledged that it had not responded to the request within the required timescale. UKHSA advised it does not hold the information requested in Q1. It suggested the complainant contact DHSC for that information (despite UKHSA having received the request from DHSC originally) and provided a link to DHSC's website.
5. UKHSA addressed Q2. Regarding Q3, UKHSA said the information requested in Q3a was exempt under section 21 of FOIA as it is already accessible to the complainant via links to published information about the Deloitte LLP contract for the National Testing Programme.
6. UKHSA confirmed it does not hold the information requested in Q3b saying that it, "...can confirm that it does not hold this information in the **format** described... [Commissioner's emphasis]".
7. Finally, UKHSA provided general information about the Deloitte contract.

## Reasons for decision

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8. In their complaint to the Commissioner, the complainant said that they were dissatisfied with the following:

- The timeliness of UKHSA's initial response to the request and that it overlooked part of the request in the initial response.
  - That UKHSA did not confirm whether or not it held the requested information in its initial response.
  - The timeliness of UKHSA's internal review response.
  - That, with regard to Q1, the complainant had been directed to UKHSA from DHSC but then UKHSA directed them back to DHSC.
  - UKHSA has not satisfactorily addressed Q3b of the request; it has not indicated what format it does hold relevant information in (if it holds any relevant information) or provided adequate advice and assistance on that matter. The complainant considers UKHSA holds the information requested in Q3b.
9. This reasoning focusses on whether UKHSA holds information within scope of Q1 and Q3b of the request. The Commissioner will also consider the timeliness of UKHSA's response and whether there was a breach of section 16 of FOIA in UKHSA's general handling of the request.
10. Under Other Matters the Commissioner will consider UKHSA's handling of the internal review and advise the complainant regarding a future request to DHSC.

**Section 1 – right of access to information held by public authorities /  
Section 10 – time for compliance**

11. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled a) to be told if the authority holds the information and b) to have the information communicated to them if it is held and is not exempt information.
12. Under section 10(1) a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
13. Regarding Q1, the complainant was passed back and forth between DHSC and UKHSA as to which was responsible for addressing this question.
14. In its submission to the Commissioner, UKHSA noted that the request was originally directed to UKHSA from DHSC because COVID-19 testing and Lighthouse laboratories are topic areas which fall within UKHSA's remit.
15. UKHSA confirmed that, having reviewed its previous responses to this request and conducted further searches of its records, it does not hold any information relevant to Q1 - ie details of testing equipment borrowed by the UK Government since March 2020 and where it was loaned - as that matter extends significantly beyond UKHSA's remit.

16. UKHSA advised that it is DHSC that may hold some information about loans of COVID-19 testing equipment.
17. Regarding Q3b, UKHSA has told the Commissioner that it does not hold any relevant information at all for Phases 1-4 of the Deloitte NTP contract.
18. For Phase 5, UKHSA says it holds closedown reports for each of the 37 individual work packages; however, these reports only indicate the completion status for each specific activity within each package and contain no details on 'output' or results.
19. UKHSA says that it established the above by consulting with senior officials from its Commercial Directorate.
20. Q1 is for information on what testing equipment the UK Government borrowed since March 2020, where it was borrowed from and where it was loaned.
21. The Commissioner acknowledges the complainant's likely frustration at being passed back to DHSC but that appears to be the body that may hold information relevant to Q1. Having considered the matter further as a result of the complaint to the Commissioner, UKHSA has confirmed it does not hold this information.
22. Q3b is for details of the outputs Deloitte LLP delivered under a particular contract since March 2020. Quite reasonably, UKHSA's reference in its response to not holding information in "the format" requested indicated to the complainant that it did hold some relevant information. To repeat its submission, UKHSA has now confirmed that it does not hold any information for Phases 1-4 of that contract. The information it holds for Phase 5 is only the completion status for specific activities associated with the contract's 37 work packages.
23. These two parts of the complainant's request concern a specific area of work which UKHSA would know if it was responsible for, and a specific contract which would be straightforward for UKHSA to review for relevant information.
24. UKHSA has reconsidered the two parts. It has confirmed that it does not hold any information within scope of Q1 and, having consulted senior officials in the relevant Commercial Directorate, has confirmed that it does not hold the specific information requested in Q3b – it holds completion dates but no information about any 'outputs'.
25. The Commissioner is satisfied that UKHSA has now given the two parts of the request adequate consideration and consulted the relevant team. He has decided that, on the balance of probabilities, UKHSA does not

hold information within scope of questions 1 and 3b and has complied with section 1(1)(a) of FOIA.

26. UKHSA's internal review response indicates that it received the request from DHSC on 16 November 2021. A response was therefore due on 15 December 2021, but UKHSA did not provide one until 27 April 2022. This was far outside the required timescale and a breach of section 10(1) of FOIA.
27. Section 16(1) of FOIA places a duty on a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to an applicant who has made a request for information to it. Section 16(2) advises that if the authority conforms with the FOIA code of practice it is taken to have complied with section 16(1).
28. The [code of practice](#) discusses clarifying a request, reducing the cost of a request and transferring a request in relation to advice and assistance and section 16(1).
29. Regarding transferring a request, which is relevant here, the code of practice advises, "The public authority should, as best practice where they can, provide the contact details for the public authority they believe holds the requested information." UKHSA advised the complainant to contact DHSC about Q1 and provided a link to its website where the FOIA contact details can be found. Aspects of UKHSA's response were somewhat clumsy ie not addressing Q3 in its original response, seeking clarification about Q2 when this did not appear to have been necessary, referring to information's "format" in relation to Q3 and not clearly explaining why it was referring the complainant back to DHSC regarding Q1. However, because UKHSA conformed to the code of practice, he does not find there to have been a breach of section 16(1) of FOIA.

## **Other Matters**

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30. Provision of an internal review is not a requirement under FOIA but is a matter of good practice. The code of practice advises that an internal review should be provided within 20 working days of a request for one and, in the most complex cases only, in no longer than 40 working days.
31. In this case, the complainant requested an internal review on 9 May 2022 and UKHSA did not provide one until 13 December 2022, significantly longer than the advised timescale and only as a result of the Commissioner's intervention. The Commissioner has recorded this delay for monitoring purposes.

32. It will be frustrating for an applicant to be passed back and forth between different public authorities. In this case, the Commissioner is aware that it is not the first time that DHSC has passed a request to UKHSA only for UKHSA to have to pass it back to DHSC. The Commissioner advises the complainant to bring this notice to DHSC's attention if they submit a new request to DHSC for the information requested in Q1, and DHSC suggests it will refer the request to UKHSA.

## Right of appeal

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33. 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)

34. 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.
35. 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

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