

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

### **Decision notice**

**Date:** 17 June 2024

**Public Authority:** UK Health Security Agency  
**Address:** 10 South Colonnade  
London  
E14 4PU

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

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1. The complainant has requested information about deceased people who had been removed from the NHS Immunisation Management Service (NIMS) database since December 2020. The UK Health Security Agency ('UKHSA') provided some of the requested information but relied on section 38 of FOIA (health and safety) to withhold some of the information in the detail specified.
2. The Commissioner's decision is that UKHSA was entitled to rely on section 38(1)(a) of FOIA to withhold some of the requested information.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 4 August 2023, the complainant wrote to UKHSA and requested information in the following terms:

"Please can you provide data on people who are no longer included in the published NIMS database but are held by you because they died prior to the latest publication but after December 2020.

This request is only for adults over the age of 20 and the age information can be given in the categories used in the NIMS dataset to ensure anonymity.

Please provide the following data for people who have been removed after death since December 2020:

1. Age at first dose
2. Date of each dose of covid vaccine that they were given
3. Date of death

In order to make the dates of death anonymous please do the following. For each data of death add a value to the date randomly selected from this range (-3, -2, -1, +1, 2, 3). It will then be impossible to determine who the record relates to.”

5. UKHSA responded on 4 September 2023. It stated that it was relying on section 40(2) of FOIA (third party personal information) to refuse the request.
6. Following an internal review UKHSA wrote to the complainant on 25 October 2023, and upheld its position.
7. Upon engaging with the Commissioner as part of his investigation process, UKHSA decided to withdraw its reliance on section 40(2) of FOIA. It wrote to the complainant on 30 April 2024 and disclosed some of the requested information. However, UKHSA advised that it was relying on section 38 of FOIA to present the information by age band, week of vaccination and month of death rather than exact age and dates as requested.
8. On 1 May 2024, the complainant wrote to the Commissioner to advise that were not satisfied with the information provided.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 2 November 2023 to complain about the way their request for information had been handled.
10. Through the course of the Commissioner’s investigation, UKHSA revised its position and withdrew its reliance on section 40(2) of FOIA. It explained that it intended to disclose the requested information but felt unable to provide it in the level of detail requested, so it was instead relying on section 38(1)(a) of FOIA to withhold the exact information on age at vaccination, date of vaccination and date of death.
11. The Commissioner therefore considers that the scope of his investigation is to determine whether UKHSA was entitled to rely on section 38(1)(a) of FOIA to withhold some of the requested information.

## **Reasons for decision**

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### **Section 38 – health and safety**

12. Section 38 of FOIA states:

(1) 'Information is exempt information if its disclosure under this Act would be likely to –

(a) endanger the physical or mental health of any individual, or

(b) endanger the safety of any individual.'

13. In order to satisfy the Commissioner this exemption is engaged the public authority must demonstrate that there is a causal link between the endangerment and disclosure of the information.

14. The public authority must also show that disclosure would or would be likely to endanger the health and safety of any individual. The effect cannot be trivial or insignificant. Endangering physical health usually means an adverse physical impact and often involves medical matters, this can relate to either individuals or a group of people. Endangering mental health implies that the disclosure of information might lead to a psychological disorder or make mental illness worse. This means that it must have a greater impact than causing upset and distress.

### **UKHSA's position**

15. UKHSA has explained that disclosing the requested information in the detail specified would lead to the likelihood of endangerment to two cohorts of individuals.

16. First, it considered that disclosing the information in the requested detail would present a real risk to the mental health of those linked to the deceased individuals featured in the information. UKHSA explained that the withheld information contains the date of vaccination and death of identifiable individuals. The families and close associates of the deceased individuals would have no expectation that UKHSA would place information into the public domain which could cause them distress or lead to a deterioration of their mental health. It argued that those families concerned would not want painful reminders of the deaths of their loved ones. UKHSA considers that disclosing the type of information that has been requested would be insensitive and would result in a loss of confidence in UKHSA's ability to protect the well-being of the families and friends of those who have died.

17. As part of its preparation to provide its response of 30 April 2024, UKHSA, along with colleagues from the Office for National Statistics, carried out a number of exercises to check if any of the individuals featured in the data could be identified. It found that providing information in the level of detail requested risked individuals being identified. UKHSA found that presenting the information by both date of death and week of death could still lead to some individuals being identifiable.
18. UKHSA added that disclosure of the information could lead to the families of the deceased being subjected to unsolicited approaches by the media and anti-vaccine campaigners. These family members would have no expectation that data relating to their loved ones would be disclosed into the public domain and may be forced to revisit their loss, should details of their deceased family members be disclosed.
19. UKHSA considers that there is a risk that individuals within the anti-vaccine community could turn a family's tragedy into a powerful anecdote inside anti-vaccine forums. It explained that narratives like this, shared online without forewarning, would be likely to have a significant negative impact on the mental health of those individuals who have been bereaved. Specifically for those families who suffered sudden and unexpected bereavement.
20. Second, UKHSA considered the effects of the release of information in the requested detail and the potential adverse effects that misinformation would have on the wider public and to public health, particularly on vaccine uptake.
21. UKSHA has explained that it does not hold the cause of death in these data, so it is not possible to exclude events that are clearly unrelated (such as accidents), or those linked to an underlying condition that existed prior to the vaccination. It explained that, without a clear and plausible hypothesis on the timing of such information, analysis of such a large dataset would likely generate associations due to random chance.
22. UKHSA added that, in the context of very high vaccine coverage in the population, a large number of deaths will occur, coincidentally, in the period after vaccination. It added that this is especially true because vaccination had been prioritised to individuals who are more at risk of severe COVID-19 disease, particularly older age groups and those with underlying medical conditions. UKHSA considers that is likely, therefore, that the rate of deaths due to unrelated causes will be higher in vaccinated people than in unvaccinated individuals.

23. UKHSA added that the small proportion of the eligible population who do not have a record of vaccination are also likely to be systematically different to those who have a record of vaccination. For example, they may no longer be UK residents, or they may be a duplicated record with mis-recorded details. In both examples, it may not be possible to link a record of death to the individual on the database.
24. UKHSA has therefore argued that all of these factors would invalidate the use of this database for comparison of mortality by vaccination status and mean that conclusions drawn from an analysis of this data are highly likely to be misleading.
25. UKHSA explained that, in order to mitigate against the effects misinformation would have on public health, it provided some information in aggregated form with an explanatory narrative of the information being released, to make clear the importance of public health messaging in this case and the context of the disclosed information.

### **Complainant's position**

26. The complainant has argued that by only providing month of death UKHSA has presented the information in a way to hide signals within it. The complainant has explained that they originally asked UKHSA to use barnardisation to anonymise the information, but UKHSA advised that it considered this to be creation of new information.
27. The complainant has argued that the information provided is out of date and there is consequently a lag in the number of deaths that had not been fully registered. The complainant argued that this makes the information unusable.

### **The Commissioner's position**

28. The Commissioner acknowledges the complainant's frustration that UKHSA did not present the information in the level of detail requested and that it considered the suggested approach of barnardisation to involve creating information. The Commissioner notes that while UKHSA did not consider barnardisation an appropriate format for anonymisation, it has attempted to provide the information in an anonymised format, and in doing so has identified the potential identification of some of the individuals featured.
29. The Commissioner has considered the potential adverse effects which UKHSA has set out to the Commissioner in detail. While he recognises that the potential identification of deceased individuals would be likely to cause distress to their families, he considers it difficult to determine if this alone would extend to causing harm to physical and mental health

at a level that would engage the exemption. However, he considers that when combined with the arguments about misinformation to cause potential harm to the health of the wider public and the impact on public health, the exemption is engaged.

30. While the Commissioner has not received any indication from the complainant that they intend to use the requested information to dissuade people from participating in Covid-19 vaccination programmes, he is mindful that disclosure of information is to the public at large and other people may use the information with this intention.
31. The Commissioner is satisfied that there is a causal link between disclosure of the information, and endangerment of the health of individuals. Furthermore, the Commissioner accepts disclosure 'would be likely' to prejudice the health and safety of individuals.

### **Public interest test**

32. As section 38 is a qualified exemption, the Commissioner will consider whether, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Public interest arguments in favour of disclosing the information**

33. UKHSA has acknowledged that increased transparency makes government more accountable and increases trust from members of the public.
34. It added that there is a public interest in citizens being confident in the decisions that are made regarding vaccines and that these decisions are taken based on the best available information.

### **Public interest arguments in favour of maintaining the exemption**

35. UKHSA considers that disclosure of this information may have negative consequences on the mental health of the families of those deceased individuals to whom this information relates.
36. UKHSA considers that there is a real and present risk that, if disclosed, some of data will be presented out of context, and without supplied caveats, by anti-vaccine proponents which could lead to potentially wide-spread public health consequences. UKHSA explained that malicious actors may use the requested information to create harmful narratives that would have a detrimental effect on the surviving family members of the deceased.
37. UKHSA explained that it is currently monitoring the spread of misinformation related to the COVID-19 vaccine. UKHSA considers that

this issue is leading to the ongoing erosion of vaccine confidence in small groups and communities who are already distrustful of the vaccination programmes and receptive to misinformation.

38. UKHSA stated that disclosure of the requested data could be used by anti-vaccine theorists or campaigners in their efforts encourage members of the public to abstain from vaccination against COVID-19. Therefore, it considers that there is a risk that disclosure of the information in the requested detail would be likely to undermine public adherence in current and future COVID-19 vaccination programs.

### **Balance of the public interest**

39. The Commissioner acknowledges that there is a strong public interest in information concerning mass vaccination programmes, particularly those connected to Covid-19.
40. The Commissioner will invariably place significant weight upon protecting individuals from risk to their physical and mental wellbeing. Clearly in any such situation where disclosure would be likely to lead to endangerment to health and safety, there is a public interest in avoiding that outcome. The natural consequence of this is that disclosure under FOIA will only be justified where a compelling reason can be provided to support the decision.
41. The Commissioner acknowledges that the complainant is dissatisfied that the information UKHSA has disclosed is not useful to them. However, they have not presented any public interest arguments for the information's disclosure.
42. The Commissioner has determined that the strength of the arguments favouring disclosure is outweighed by the public interest in maintaining the exemption in order to safeguard individuals' health and safety. He considers that the information UKHSA has disclosed satisfies the general public interest in transparency to a satisfactory degree.
43. The Commissioner's decision is the balance of the public interest favours maintaining the exemption, and UKHSA was entitled to rely on section 38 of FOIA to withhold the details of age at vaccination, date of vaccination and date of death.

## **Right of appeal**

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44. 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)

45. 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.
46. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Keeley Christine**  
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