

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 October 2022

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 risk assessments related to India carried out by the Joint Biosecurity Centre. The above public authority ("the public authority") relied on section 35 of FOIA (development of government policy) to withhold the requested information.
2. The Commissioner's decision is that section 35 is engaged and that the balance of the public interest favours maintaining the exemption. The public authority breached sections 10 and 17 of FOIA as it failed to confirm that it held information or issue its refusal notice within 20 working days.
3. The Commissioner does not require further steps.

Request and response

4. On 24 June 2021, the complainant wrote to the DHSC and requested information in the following terms:

"please provide any risk assessments related to India by the Joint Biosecurity Centre or its members in April 2021."
5. The public authority responded on 18 August 2021. It relied on section 35 of FOIA to withhold the requested information – a position it upheld at internal review.

Reasons for decision

6. The Commissioner is satisfied that the information the DHSC holds engages section 35 as it is related to the development of government policy.
7. Whilst the government did have an over-arching policy in place concerning travel at the time of the request, decisions as to which countries would be placed on the "red" list (from which travel would be banned) would be taken at ministerial level – they were not purely administrative decisions. The analysis of the Joint Biosecurity Centre would be used to support such decisions, so would form part of the policy development process.
8. Turning to the public interest, the Commissioner recognises that the Delta variant of Covid-19, which was widespread in the UK during the summer of 2021, was first recorded in India. There would thus be a strong interest in understanding what ministers were told about this new variant and what travel-related advice was provided to them in April. This would help the public to understand whether the restrictions ministers placed on travel from India were sufficient and timely.
9. However, the Commissioner recognises that the request was made in summer 2021, when the Delta variant was at its peak and options relating to travel restrictions were still being mooted. The government still needed to ensure that it was providing clear, consistent messaging about travel restrictions and threat assessments.
10. The Commissioner has previously accepted that information relating to the consideration of travel restrictions engages this exemption and that the balance of the public interest favoured maintaining a safe space for that consideration.¹ He has also, though in other contexts, accepted that when Covid-19 restrictions remained in place, the public interest in allowing the government to debate options in private, but maintain clear, consistent guidance to the public, was very strong.² Releasing earlier assessments risks causing confusion as to what advice should be followed – especially in environment where risks fluctuated frequently.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4021366/ico-136815-x0j9.pdf>

² See, for example: <https://ico.org.uk/media/action-weve-taken/decision-notice/2021/4017785/ico-72508-q4b0.pdf>

11. The Commissioner also notes that he has previously ruled that the public interest favoured withholding Joint Biosecurity Committee minutes (which would have covered similar matters – albeit at an earlier time) whilst the pandemic was ongoing.
12. The Commissioner notes that matters have moved considerably since the public authority issued its refusal notice. Given the removal of Covid-19 restrictions, were this request to be made today, the balance of the public interest may well have moved towards disclosure. However, he is satisfied that, at the point the request should have been responded to (which is the point at which he is required to assess the balance of the public interest) the public interest favoured maintaining the exemption.

Procedural matters

13. The Commissioner finds that the DHSC breached section 10 of FOIA as it failed to confirm whether it held information within 20 working days of receiving the request.
14. The Commissioner finds that the DHSC breached section 17 of FOIA as it failed to issue its refusal notice within 20 working days of receiving the request.

Right of appeal

15. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

16. 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.
17. 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

Roger Cawthorne
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