Dear Mr Speight

FREEDOM OF INFORMATION ACT (FOIA): REQUEST FOR INTERNAL REVIEW
DH CASE REFERENCE IR 927802

Thank you for your email dated 16 April in which you asked for an Internal Review into the handling of your original request (DE00000927802).

Chronology

You originally wrote to the Department of Health (DH) on 17 March to request the following:

“I would like to find more background about the recent announcement of the devolution of health funding to Manchester. See, for example, the following report from 25 February 2015: http://www.bbc.co.uk/news/uk-england-manchester-31615218
In particular I would be grateful for the following information on this topic:
- Communications from the relevant finance and/or policy teams to Ministers, the Permanent Secretary and Special Advisors.
- Communications between Ministerial Private Offices and Special Advisors.
- Communications between Ministerial Private Offices and officials at No10, Cabinet Office and HM Treasury.
- Communications between the relevant finance and/or policy teams in the Department and officials at No10, Cabinet Office and HM Treasury.
I appreciate that there might be quite a lot of information here - I would therefore suggest that the request is limited to information from the beginning February 2015 to the current date.”
The DH replied to you on 16 April as follows:

“Thank you for your request of 17 March 2015 under the Freedom of Information Act (2000). Your exact request was:

[See above for brevity]

I can confirm that the Department of Health holds information relevant to your request.

However, we consider that this information is exempt under Section 35(1)(a) of the FOI Act, which provides protection for information that relates to the formulation or development of government policy. Section 35(1)(a) is a qualified exemption and requires consideration of the public interest test.

The Department recognises the general public interest in making this information available for the sake of greater transparency and openness. However, the Department believes that the public interest lies in protecting the policy-making process and preserving the ability of officials in the Department to engage in free and candid discussion of policy options without apprehension that suggested courses of action may be held up to scrutiny before they have been fully developed or evaluated.

If you have any queries about this email, please contact me. Please remember to quote the reference number above in any future communications.

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to:

Head of the Freedom of Information Team
Department of Health
Room G18
Richmond House
79 Whitehall,
London
SW1A 2NS
Email: freedomofinformation@dh.gsi.gov.uk

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner (ICO) for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the Department. The ICO can be contacted at:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
You wrote again on 16 April to request an Internal Review in the following terms:

“I am writing to request an internal review of Department of Health’s handling of my FOI request ‘Information on devolution of health funds to Manchester’. I am shocked that the Department still considers it appropriate to use blanket exemptions and to let me know on the 20 day deadline - it is clearly not the case that all of the information is subject to section 35 and given that the policy has been announced there is a clear public interest in understanding the decision making process.

Please could you reconsider my request and follow best practice. I hope to avoid a referral to the ICO but if you continue to apply the provisions of the FOI Act inappropriately I will have no choice but to do so.

Alongside my internal review I would also like to submit a new request for all internal communications relating to the handling of the initial request - I am keen to understand if the Department actually spent any time locating and considering the merits of releasing any of this information and the extent to which withholding this information may have been subject to interventions from senior officials or Ministers.

A full history of my FOI request and all correspondence is available on the Internet at this address: https://www.whatdotheyknow.com/request/information_on_devolution_of_health_funds_to_Manchester”

The Review

The Department of Health (DH) has undertaken a review into the handling of your original request (DE00000927802).

I should remind you that we have replied to the fresh request (DE00000932914) you made within the terms of your request for Internal Review on 15 May. The remit of this internal review is to consider our handling of your original request (DE00000927802).

During the course of the review, we have now reconsidered the information DH wishes to protect that falls within scope of the request.

A careful review of the information and the redactions (including the exemptions) has been undertaken into the information held by the DH within scope of your request, which has concluded we will not be able to provide you with any further information.

Unfortunately, the redactions on material deemed by DH to be relevant to section 35 (1) (a) policy in formulation and to section 40 (2) personal data have meant that any
release of the information in separate pdf format to you would be meaningless and follows the Information Commissioner’s Office guidance.

Section 35 (1) (a)

I should reiterate that this information is exempt under Section 35(1) (a) of the FOIA, which provides protection for information that relates to the formulation or development of government policy. Section 35(1) (a) is a qualified exemption and requires consideration of the public interest test.

The Department recognises the general public interest in making this information available for the sake of greater transparency and openness. However, the Department believes that the public interest lies in protecting the policy-making process and preserving the ability of officials in the Department to engage in free and candid discussion of policy options without apprehension that suggested courses of action may be held up to scrutiny before they have been fully developed or evaluated.

It is in the public interest that Ministers and their officials should be free to discuss policy options with the knowledge that (when appropriate) the contents of that correspondence will remain private.

Clearly the public interest test needs to be considered on a case by case basis and there is a general public interest in the transparency of policy discussions. However, there is a very strong public interest in ensuring that there is a safe space within which Ministers and senior officials are able to discuss issues, freely and frankly. Putting this information in the public domain would mean that officials may be impeded from offering full and frank advice in the future potentially resulting in poorer decision making and public services.

Also if Ministers and officials worked under the assumption that of all their correspondence was accessible under FOI then it is likely to have a profound chilling effect upon frank and open communication within the range of central and local government bodies and other public authorities subject to the Act, as well as on the full and accurate recording of that communication.

The expectation that all correspondence could be made public could adversely impact on how Government conducts its day to day business resulting in a reduction of recorded decision making with written decision making and Ministerial input replaced by off the recorded meetings and conversations.

We have considered whether the balance of public interest favours disclosure of this information. Our conclusion is that the balance of the public interest is against disclosure. It may be helpful if I indicate the public interests we have considered. There is a public interest in openness and transparency. There is also a public interest in understanding how the Government interacts with other public bodies and increase trust in the decision-making process.

On the other hand, there is a public interest in Ministers and officials being able to express their views and concerns freely and frankly when developing policy. We
consider that these interests outweigh the public interest in disclosure in this particular case.

Releasing this information also has the potential to make it more difficult for Greater Manchester and NHS England to deliver their current plans thereby affecting the local health economy to the detriment of local health care provision and at a potential cost to the tax payer. This is also a sensitive period whereby Greater Manchester, NHS England and key third parties are negotiating how to turn the memorandum into more definite plans. The release of the information could also result in damage to the development of other future local health plans if the relevant parties thought their initial discussions and negotiations would be made public.

Section 40 (2)

DH is also protecting information that is the personal data of those officials and individuals who are not graded at Senior Civil Service (SCS). Section 40 prohibits a public authority from disclosing personally identifiable information as doing so would contravene data protection principles.

The review is now complete.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner (ICO) for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the Department. The ICO can be contacted at:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Yours sincerely

TONY DOOLE
Senior Casework Manager
Freedom of Information Team