



Mr Nigel Cook

By email to: request-987419-a6aafe9b@whatdotheyknow.com

7 August 2023

Dear Mr Cook,

Freedom of Information Request Reference FOI-1457970

Thank you for your request dated 5 June to the Department of Health and Social Care (DHSC), a copy of which can be found in the accompanying annex.

This was a follow up to your request of 15 May, to which we responded on 2 June (ref: FOI 1455197).

We should point out that in that previous response (FOI 1455197, copy attached for ease of reference) a contract between DHSC and NHS Employers and the NHS Confederation was referred to, but not a contract between DHSC and NHS Providers, so we have interpreted your new request to be referring to the contract between DHSC and NHS Employers and the NHS Confederation.

Your request has been handled under the Freedom of Information Act 2000 (FOIA).

Questions 1 and 2

DHSC holds information relevant to these questions. DHSC has a contract in place with the NHS Confederation for services provided by its subsidiary, NHS Employers. Please find attached a copy of that contract.

Please note that a small number of names of individuals are being withheld from this document, because we consider that information to be exempt from disclosure pursuant to section 40(2) of the FOIA. Section 40 provides for the protection of personal information which would not otherwise be available in the public domain, as disclosing this information would contravene data protection principles. These redactions of names of officials below senior level have been made to pages 51, 52, 173, 175 and 176. (Please note the numbering we refer to is from the electronic numbering displayed in the tool bar).

Additionally, a small number of redactions have been made to the contract under section 43(2) (commercial interests) and an Annex to the contract is also being withheld under section 43 (2) (as indicated on page 86). Section 43 (2) exempts from the general duty to release information which would, or would be likely to, prejudice the commercial interests of any entity, including the public authority holding the information.

Section 43 is a qualified exemption and, as such, we are required to assess the public interest in withholding this information against that of its release.

DHSC recognises the general public interest in making information available in the interests of greater transparency and openness, as this increases public trust and engagement. However, disclosing this information would be damaging to the contracting parties, and we therefore consider that the balance of the public interest lies in ensuring that this information is not disclosed

For the avoidance of doubt, Annex A (which is referred to on page 86) was already excluded from this contract. This is referred to on page 83 where it says “*Annex A shall be deleted and the title at Annex A shall be amended to read NOT USED.*”

Question 3

DHSC holds the information you have requested.

The DHSC contract with the NHS Confederation is currently an annually rolling contract. A business case is submitted for approvals on an annual basis, and this is an internal DHSC document which aligns with all internal due processes.

Please find attached a copy of the latest business case for 2023/24.

Please note that some redactions of have been made to this document under section 42 (Legal Professional Privilege), section 35(1)(a) (policy in development), section 40 (personal information) and section 43 (commercial interests).

We have indicated in the margin of the document where we have redacted information under section 42 and section 35(1)(a).

Section 42 is a qualified exemption and, as such, we are required to assess the public interest in withholding this information against that of its release.

LPP covers confidential communications between lawyers and clients, along with certain other information that is created for the purposes of litigation, or for the purposes of obtaining legal advice or assistance in relation to rights and obligations. DHSC recognises that there is a general public interest that is served in making information available to promote greater transparency and accountability in the DHSC’s decision-making process. However, DHSC considers that there is also a compelling public interest in upholding the established principle of confidentiality in communications between lawyers and their clients, and therefore upholding the principle of LPP.

Furthermore, it is DHSC’s view that waiving LPP would impede its decision-making process, which would be contrary to the public interest and also contrary to a very settled practice which is recognised by the Courts and the Information Tribunal.

Therefore, taking all these factors into account, we have concluded that the public interest in withholding this information outweighs any public interest that there might be in releasing it.

With regard to the paragraphs redacted under section 35(1)(a) (policy in development), we consider that disclosing this information would affect DHSC’s ability to make decisions on live policy areas.

Section 35 is a qualified exemption and, as such, we are required to assess the public interest in withholding this information against that of its release.

DHSC recognises a general public interest in promoting openness and transparency in government. However, the purpose of the exemption at section 35 is to protect the internal deliberative process as it relates to policy making. In other words, the exemption is intended to ensure that the possibility of public exposure does not deter Ministers, officials and subject experts from full and candid discussion and debate of policy issues, including the exploration of all options, the keeping of detailed records and the taking of difficult decisions. Premature disclosure of information protected under section 35 could prejudice good working relationships, and, ultimately, the quality of government, and we have therefore determined that the balance of public interest favours withholding this information.

The remaining redactions that have been made to the document are those of names of officials under section 40 (personal information), and a small number of redactions under section 43 (commercial interests). Additionally, we are withholding all four Annexes to this document (Annexes A to D) under section 43. Our reasons for withholding this information are the same as set out under section 43 in Questions 1 and 2 above.

Outside of the scope of the FOIA, and on a discretionary basis, you may be interested to know that there is no contract between DHSC and NHS Providers.

If you are not satisfied with the handling of your request, you have the right to appeal by asking for an internal review. This should be sent to freedomofinformation@dhsc.gov.uk or to the address at the top of this letter and be submitted within two months of the date of this letter.

Please remember to quote the reference number above in any future communication.

If you are not content with the outcome of your internal review, you may complain directly to the Information Commissioner's Office (ICO). Generally, the ICO cannot make a decision unless you have already appealed our original response and received our internal review decision. You should raise your concerns with the ICO within three months of your last meaningful contact with us.

Guidance on contacting the ICO can be found at <https://ico.org.uk/global/contact-us> and information about making a complaint can be found at <https://ico.org.uk/make-a-complaint>.

Yours sincerely,

Freedom of Information Team
freedomofinformation@dhsc.gov.uk

Annex

From: Mr Cook <request-987419-a6aafe9b@whatdotheyknow.com>

Sent: 05 June 2023 16:05

To: FreedomofInformation <freedomofinformation@dhsc.gov.uk>

Subject: Freedom of Information request - Contracts between DHSC and NHS Providers and NHS Confederation

Dear Department of Health and Social Care,

Under a recent FOI response (DHSC Reference FOI-1455197) the DHSC notified that DHSC has a contract in place between DHSC and the NHS providers and another contract in place between DHSC and NHS Confederation. I write under the FOIA for the following information:

1. A copy of the contract between DHSC and NHS Providers.
2. A copy of the contract between DHSC and NHS Confederation.
3. A copy of the internal DHSC Business Case/s that raised the requirement, assessed options and approved funding for each relevant contract.

Yours faithfully,

Mr Nigel Cook