



Mr David Osborn

By email to: request-1144651-2e711966@whatdotheyknow.com

7 August 2024

Dear Mr Osborn,

Freedom of Information Request Reference FOI-1518648

Thank you for your request dated 6 July to the Department of Health and Social Care (DHSC), a copy of which can be found in the accompanying annex.

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

This was a follow up to your original request of 17 February, to which we responded on 15 May (our ref: FOI-1497474), and a subsequent Internal Review of FOI-1497474 (our ref: IR-1513267, dated 31 May).

DHSC holds the information you have requested relating to the PPE Clearance Board, which is provided in the five documents attached.

Please note that some names and contact details have been redacted, as the personal data of officials and staff below senior level is exempt from disclosure pursuant to section 40(2) of the FOIA. Section 40(2) 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.

Further information has also been redacted under section 43(2) of the FOIA, which 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.

We recognise the general public interest in making information available in the interests of greater transparency and openness, and a valid public interest in disclosing information about services that are procured using public money. However, we also take into account the fact that this information is commercially sensitive. Disclosure of certain information may place a third party at a commercial disadvantage, which would discourage future commercial partner relationships with DHSC, and consequently undermine DHSC's ability to fulfil its role in securing best value for money. Therefore, DHSC takes the view that, in this case, the public interest lies in ensuring that this information is not disclosed.

A small number of redactions have also been made under section 23 (security matters), and section 31 (law enforcement) of the FOIA.

Section 23 relates to information supplied by, or relating to, bodies dealing with security matters. DHSC is applying this exemption as some of the information 'relates' to the National Crime Agency (NCA). The NCA is one of the bodies listed in section 23(3) of the FOIA.

Section 31 relates to Law Enforcement. We have made a small number of redactions under section 31(1)(a)(b)(c) and (g) of the FOIA, which is where disclosure of information may prejudice: a) the prevention or detection of crime; b) the apprehension or prosecution of offenders; c) the administration of justice; and g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2). These redactions have been made to the document headed "Update the deals log: Daily PPE Clearance Process Minutes and Actions", and we have indicated in the margin of the document where redactions have been made under this exemption, and where those redactions have been applied, we also consider that information to be exempt under section 23 (security matters) as referred to above.

Regarding our use of 31(1)(g), where section 31(2) is engaged, we are claiming the following purposes:

- a) ascertaining whether any person has failed to comply with the law; and
- b) ascertaining whether any person is responsible for any conduct which is improper.

Section 31 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 is aware that there is a clear public interest in disclosure of information and recognises that openness in government may increase public trust in and engagement with government. It also recognises a public interest in assuring the public that effective arrangements are in place for the prevention and detection of crime.

However, our assessment is that the release of this information, at this time, may undermine an ongoing investigation, and/or prejudice the outcome of any future court proceedings. It may also be contrary to the public interest to disclose information which would facilitate the commission of crime. Consequently, DHSC is satisfied that this information remains exempt under section 31(1)(a)(b)(c) and (g) of the FOIA.

With reference to your query about whether the document referred to as "Update the deals log: Daily PPE Clearance Process Minutes and Actions" originated from the Cabinet Office, we can confirm that it did. In our response to FOI-1497474, we had misinterpreted your request to be referring to the PPE Clearance Board (not the "DHSC PPE Decision Making Committee"), and that is the reason we suggested that you may wish to contact the Cabinet Office for minutes of any further meetings. We apologise for any confusion this may have caused.

With regard to a letter you refer to from the ICO to DHSC on 1 September 2021 which mentioned evidential requirements around section 43 (commercial interests), we do not have that particular letter readily to hand, as we are in regular and constant

communication with the ICO, as you will understand. But we are obviously aware of the requirements around the application of section 43, as with all the other exemptions.

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: David Osborn <request-1144651-2e711966@whatdotheyknow.com>
Sent: Saturday, July 6, 2024 6:47 PM
To: FreedomofInformation <freedomofinformation@dhsc.gov.uk>
Subject: Freedom of Information request - DO-22 Request meetings of PPE Clearance Cttee

Dear Department of Health and Social Care,

Dear DHSC

Thank you for your message of 6 June 2024 via WhatDoTheyKnow.com:

https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.whatdotheyknow.com%2Frequest%2Fdo_17_request_minutes_of_ppe_dec%23incoming-2674635&data=05%7C02%7Cdhmail%40dhsc.gov.uk%7C5401fa2bb440434a625f08dc9f341f73%7C61278c3091a84c318c1fef4de8973a1c%7C1%7C0%7C638560293412186122%7CUnknown%7CTWFpbGZsb3d8eyJWljoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=%2B%2Bslq1g%2FVnQzVRbfDSXBKzwZWRTJWOHWJvaaPgTL0k%3D&reserved=0

In this message you invited me to submit a new request for the information I had asked for in my request for an internal review but which you refused because it was unrelated to the original Fol request. You said “Questions relating to material that was not relevant to your request will not be addressed as part of the review; only to state that it was released erroneously.”

The information you had “erroneously sent to me” were 5 pdf files relating to the approval of purchase orders for PPE (including FFP3 respirators). They may be found here : https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.whatdotheyknow.com%2Frequest%2Fdo_17_request_minutes_of_ppe_dec%23incoming-2656427&data=05%7C02%7Cdhmail%40dhsc.gov.uk%7C5401fa2bb440434a625f08dc9f341f73%7C61278c3091a84c318c1fef4de8973a1c%7C1%7C0%7C638560293412202595%7CUnknown%7CTWFpbGZsb3d8eyJWljoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=j4wtlQk8UB4ZqiZ4iy67i%2F6yCpZFv32XvG%2FnPKWASiQ%3D&reserved=0 .

There were a significant number of redactions in these documents and I had simply requested that you “review the exemptions which you claimed under the public interest test for redaction under section 43(2) and section 31(a)(b)(c) and (g) to ensure that they are valid and lawful”. It is this which you refused to do as it was not related to my original request (which was for minutes of the PPE Decision Making Committee). I fully understand that you were within your rights to do that, and I am grateful to you for suggesting that I might wish to submit a new request via the usual channels – which is the purpose of this request.

This Fol request is therefore ask you to send me the following documents:

1) DHSC PPE Clearance Board Minutes Wednesday 1st July 2020

This was file you sent me

previously: https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.whatdotheyknow.com%2Frequest%2Fdo_17_request_minutes_of_ppe_dec%2Fresponse%2

[F2656427%2Fattach%2F6%2F20200702%2520CB.pdf&data=05%7C02%7Cdhmail%40dhsc.gov.uk%7C5401fa2bb440434a625f08dc9f341f73%7C61278c3091a84c318c1fef4de8973a1c%7C1%7C0%7C638560293412212841%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C0%7C%7C%7C&sdata=4sZU9Bnd5E3ew17ncc0vYK0Dq5%2BYw8AbVXcqzempDo8%3D&reserved=0](https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.whatdotheyknow.com%2Frequest%2Fdo_17_request_minutes_of_ppe_dec%2Fresponse%2F2656427%2Fattach%2F6%2F20200702%2520CB.pdf&data=05%7C02%7Cdhmail%40dhsc.gov.uk%7C5401fa2bb440434a625f08dc9f341f73%7C61278c3091a84c318c1fef4de8973a1c%7C1%7C0%7C638560293412212841%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C0%7C%7C%7C&sdata=4sZU9Bnd5E3ew17ncc0vYK0Dq5%2BYw8AbVXcqzempDo8%3D&reserved=0)

2) 02/07/2020- PPE Board Meeting

https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.whatdotheyknow.com%2Frequest%2Fdo_17_request_minutes_of_ppe_dec%2Fresponse%2F2656427%2Fattach%2F6%2F20200702%2520CB.pdf&data=05%7C02%7Cdhmail%40dhsc.gov.uk%7C5401fa2bb440434a625f08dc9f341f73%7C61278c3091a84c318c1fef4de8973a1c%7C1%7C0%7C638560293412221264%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C0%7C%7C%7C&sdata=J5pPTD%2BXwcM08k%2FMSugBjEgB8LN%2F3%2FDhZ9KKsQ6dUkY%3D&reserved=0

3) DHSC PPE Clearance Board Minutes Friday 3rd July 2020

https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.whatdotheyknow.com%2Frequest%2Fdo_17_request_minutes_of_ppe_dec%2Fresponse%2F2656427%2Fattach%2F7%2F20200703%2520CB.pdf&data=05%7C02%7Cdhmail%40dhsc.gov.uk%7C5401fa2bb440434a625f08dc9f341f73%7C61278c3091a84c318c1fef4de8973a1c%7C1%7C0%7C638560293412228947%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C0%7C%7C%7C&sdata=IGlCySpCNLCN6inVW7inZ3r%2BfKAZZPlDrxjoi5dWvk%3D&reserved=0

4) PPE Clearance Board meeting minutes 14/07/20

https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.whatdotheyknow.com%2Frequest%2Fdo_17_request_minutes_of_ppe_dec%2Fresponse%2F2656427%2Fattach%2F8%2F20200714%2520CB%2520Redacted.pdf&data=05%7C02%7Cdhmail%40dhsc.gov.uk%7C5401fa2bb440434a625f08dc9f341f73%7C61278c3091a84c318c1fef4de8973a1c%7C1%7C0%7C638560293412236569%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C0%7C%7C%7C&sdata=xjEMraFMhju0cWGlu37kGp5wB4tnlflklOnBJpEK1KIE%3D&reserved=0

5) Update the deals log : Daily PPE Clearance Process Minutes and Actions

https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.whatdotheyknow.com%2Frequest%2Fdo_17_request_minutes_of_ppe_dec%2Fresponse%2F2656427%2Fattach%2F4%2F6052020%252030062020%2520from%2520CO%2520redacted%252020240424.pdf&data=05%7C02%7Cdhmail%40dhsc.gov.uk%7C5401fa2bb440434a625f08dc9f341f73%7C61278c3091a84c318c1fef4de8973a1c%7C1%7C0%7C638560293412243517%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C0%7C%7C%7C&sdata=RZcz7Tel4y7%2BkHGoBx9hwbNZZ44z4IYCcA5HJW39ull%3D&reserved=0

Judging by the file name including "CO" the document appears to have been received by you from the Cabinet Office. However I note that there is no evidence within the document that the document did, in fact, originate from the Cabinet Office. This may have been in some of the text which you redacted, but I would remind you that it is not within your power to redact names of organisations associated with the data request. Please therefore

provide some confirmation, if only in the text of your letter of reply that the document did originate from the Cabinet Office.

I am seeking this confirmation because, in a letter the Cabinet Office sent to me, they say that they were not involved in matters pertaining to the PPE Decision Making Committee – and thereby contradict your assertion that it is they who hold the PPE DMC minutes.

It should not take you long to send me this information since you have already sent it to me. However, since you would not include issues relating to these documents in the previous internal review you are forcing me through this route.

Although I do not need to signal my intentions in making this request, in fairness and by way of full disclosure, my purpose is to ask the ICO review the redactions you have made in order to verify for themselves that your redactions were in fact lawful and in line with their guidance, since it appears that there have been issues with DHSC reliance on exemptions in the past.

In this respect I refer to the letter sent to you by the ICO on 1 September 2021 and, in particular, their mention of Section 43 (commercial interests) and the evidential requirements that the ICO expects before this exemption can be used. If you no longer have a copy of that letter, either I or the ICO will be able to provide it for you.

You will appreciate that I cannot refer this matter to them until we have been through the internal review process. However, you have made it clear that this will not happen unless I submit a fresh Fol request. This is it.

Yours faithfully,

David Osborn