



Department of Health

A.E.

<mailto:request-255006-37a061f6@whatdotheyknow.com>

21 July 2015

Dear A E

FREEDOM OF INFORMATION ACT (FOIA): REQUEST FOR INTERNAL REVIEW DH CASE REF: IR 930435

Thank you for your email dated **28 April** in which you requested an Internal Review into the handling of your original request dated (DE00000930435). I apologise for the delay in replying.

Chronology

You originally wrote to the Department of Health (DH) on 28 March as follows:

"... I repeat, I request under FOI a copy of Lord Rose's report, in whichever form it has been recorded as per my original request."

The DH replied to you on **28 April** as follows:

"Thank you for your request of 28 March 2015 under the Freedom of Information Act (2000). Your exact request was:

[See above for brevity]

The Department has responded to you in previous correspondence on two separate occasions (Ref: DE00000925684, DE00000925685 & DE00000925686 and Ref: DE00000926197) and we hold no further information to satisfy this request.

Our use of Section 22 in relation to your previous request(s) was subject to application of the necessary public interest test. The Department maintains its decision to withhold "a copy of Lord Rose's report" under Section 22, which states that public bodies are not obliged to disclose information that is intended for future publication. For your convenience, a verbatim summary is provided below:

“Section 22 is a qualified exemption, and we are required to assess as objectively as possible whether the balance of public interest favours disclosing or withholding the information.

In general, there is a strong public interest in information being made as freely available as possible. However, further work took place on the review to reflect an expanded remit to take into account the NHS Five Year Forward View publication.

Our view that Section 22 applies to your request is based on the judgement that the public interest will be better served by general publication, in due course, of information describing the outcome of the review when it is complete rather than by disclosure now, to a single individual, of incomplete and therefore potentially misleading information. As such, we consider that releasing this information before its expected publication date would not be in the public interest. The full report will be published in due course.”

The Department thus considers its duties under the FOI Act complete, both with regards to the request at hand and those answered previously (Ref: DE00000925684, DE00000925685 & DE00000925686 and Ref: DE00000926197).

Please note that any subsequent requests you submit for similar information received within a 60 working day period will be eligible for aggregation.

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

I would like to reiterate the fact that 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 520
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
Cheshire SK9 5AF

Yours sincerely,

You subsequently wrote again on **28 April** to request an Internal Review in the following terms:

"Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Department of Health's handling of my FOI request 'Lord Stuart Rose's February 2014 Review Report of NHS Management'.

I do not believe it is for the DoH to arbitrarily decide what the balance of public interest is, it is for the public to decide how interested we are in the information.

I repeat my statement that DoH has misused sections of the law to avoid providing the information as all the criteria have not been met."

You wrote again on 16 July:

"Well, you have grossly missed the deadline on the internal review. Am I to take it this is the requested report?

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445738/Lord_Rose_NHS_Report_acc.pdf

Yours sincerely"

The Review

The Department of Health (DH) has now undertaken a review into the handling of your original request (DE00000930435).

First, I can confirm you are correct in your assertion in the terms of your request for Internal Review that the Lord Rose report has been published and on the above hyperlink you provided.

Section 22 of the FOIA

Following our review, the DH maintains that section 22 of the FOIA was properly engaged.

You may find it helpful if I explain that Lord Rose was asked by Secretary of State in February 2014 to:

Review what might be done to attract and develop talent from inside and outside the health sector into leading positions in the NHS

And to:

Recommend how strong leadership in hospital trusts might help transform the way things get done.

He was to report his findings by the end of the calendar year 2014 with a view to his report being published, although no date was agreed at that time. Lord Rose handed to Secretary of State a draft report in December 2014.

However, the remit of the review was then expanded to take into account the NHS Five Year Forward View, which was published after Lord Rose's review had begun. The original draft report that was submitted to the DH in December 2014 was not a separate piece of work; as it was revised to reflect matters arising since the Report was originally commissioned.

Section 22 of the FOI Act is a qualified exemption which states that public bodies are not obliged to disclose information that is intended for future publication. The DH had responded publically to all correspondence that it intended to publish the report once complete (<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-02-23/224934/> ; <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-02-24/225236/> ; <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2014-10-30/212719/>)

As the report was not yet complete at the time of processing your original request, a final copy had not been presented to the Secretary of State and it was the DH's view that Section 22 should be upheld.

Section 22 is a qualified exemption and subject to a public interest test.

DH acknowledges the need for openness and transparency wherever appropriate. However, we considered that the public interest would be fully met by general publication, in due course, of information describing the outcome of the review when completed rather than by disclosure at an earlier stage of incomplete and therefore potentially misleading information that could prejudice the findings and recommendations of the report which Lord Rose was requested to provide. Premature reporting of information may deter experts in the future from providing comprehensive advice in the future. The outcome of the review could have been seriously prejudiced if the report had been open to premature public debate, especially when the organisations and stakeholders referred to in the review had not at that stage been exposed to its findings and recommendations. The public interest has been better served though the publication of a final considered report by Lord Rose to the general public at an appropriate time.

As such, we considered that releasing this information before its expected publication date would not have been in the wider public interest.

Section 8 (1) of the FOIA

Also having now reviewed your original request, it is clear that it was not a valid legitimate request because it did not meet the key provisions within the FOIA. This is because section 8 (1) of the FOIA provides for the following:

Request for information

8. (1) In this Act and reference to a “request for information” is a reference to such a request which –

(a) is in writing

(b) states the name of the applicant and an address for correspondence; and

(c) describes the information requested

Your original initial request was therefore not valid to be submitted to the DH as the relevant public body under the FOIA.

I should also point out that the ICO’s guidance is clear on the issue (pages 4, 5 and 8 and paragraphs 5-6, 9-10 and 27) here: <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

Page 25 sets of that guidance sets out that:

*“Any variation of the requester’s title or first name combined with their surname (e.g. Mr Smith or John Smith) will be sufficient to meet this requirement. However, a first name or surname provided in isolation, **or a set of initials**, will not.”*

Please note that in these circumstances outlined above, the ICO will not accept a complaint unless and until the provisions of section 8 (1) have been fully met.

Finally, I should explain that the DH would be content to process any future FOI request you may wish to submit, subject to that request complying fully with the provisions of section 8 (1) of the FOIA.

I hope you find the above explanation helpful.

The review is now complete.

Yours sincerely

TONY DOOLE
Senior Casework Manager
Freedom of Information