

06 October 2017

Our ref: NIC-145599-X1Y7B in response to NIC-136626-R7V9M

Dear Lara Ten Caten,

**Re: Information Request – Freedom of Information Act (FOIA) 2000**

Thank you for your email dated 28<sup>th</sup> September 2017 requesting a review of our response to your FOI request ref NIC-136626-R7V9M.

*“We request an internal review of our FOIA request ref NIC-136626-R7V9M. The latest letter we received, dated 27 September 2017, set out your reliance on section 22 of the Freedom of Information Act 2000 in relation to our question 1.*

*As you are aware, in order to rely on section 22 of the Act, you must have held the information with a view to its publication at the time our request was made. But this is not enough of itself. In addition, for the exemption to apply it must be reasonable for the data to be withheld until the publication. You do not explain why you think it is reasonable for the information to be withheld or when publication is likely. We contend that this criterion is not met and that the exemption does not apply.*

*In any event we contend that you have got the balancing exercise wrong: the factors in favour of disclosure outweigh those against it. You acknowledge that there is public interest in the disclosure but cite fears as to the need for an assurance and review process and potential misrepresentation. Given that the MOU was developed as a result of the review, the contents of the review should be largely finalised, easily obtainable and should not require complex analysis. It should therefore be easy to ensure that the information meets the standards and requirements set for departmental publications. Furthermore, in a letter to Dr Wollaston on 6 March 2017, Noel Gordon stated that “this in depth review will be published shortly”, suggesting that the review report was not likely to require amendment, as you now suggest. However, nearly 7 months on, you have still not published or provided a date by which you intend to publish the report.*

*We therefore ask that you reconsider your reliance on the exemption and disclose the information requested now. If you still consider that it applies we ask that you explain why you consider that it is reasonable to withhold the information until publication and that you inform us when you intend to publish the information. We look forward to hearing from you on this point and in relation to our outstanding questions as soon as possible and in any event by 6 October 2017. If you cannot reply by then please explain by the same date why as your delay in replying is both unexplained and unreasonable.”*

We can confirm that a review has been conducted as requested, and the outcome is that at the time of receiving your original request our intention was that the review report would be published. The intention to publish remains in place and our aim is that the review will be published in November 2017.

As you are aware in our previous response to you dated 27<sup>th</sup> September 2017, a Public Interest Test was undertaken to determine factors for and against release. To reiterate, the findings from this are as follows:

### **Public interest considerations favouring disclosure**

- Releasing all drafts of the review report would increase transparency into the workings of public authorities and government. The drafts of the review report would also make public authorities and government more accountable to the electorate.
- It can be argued that releasing all the drafts of the review report would increase the public's trust and increase their confidence in the perceived ability of public authorities to carry out their functions.
- We also recognise that there is a general public interest in the subject matter of this report.

### **Public interest considerations favouring withholding the information**

- The public interest in permitting public authorities to publish information in a manner and form and at a time of their own choosing is important. It is part of the effective conduct of public affairs that the general publication of information is a conveniently planned and managed activity within the reasonable control of public authorities. Where they have taken the decision in principle to publish, public authorities do have a reasonable entitlement to make their own arrangements to do so.
- As the subject matter is of public interest, we feel that it is important that the public can access the report simultaneously rather than piecemeal by disclosure to a small number of individuals under the FOIA. Therefore, the wider public interest is in the ability of the public to access this information by adhering to the publication schedule and to receive information that has been reviewed and finalised.

Therefore, after careful consideration, we have concluded that Section 22 still applies in this case. We are preparing the review for publication and consider it reasonable to not disclose the information until that point.

In line with the Information Commissioner's directive on the disclosure of information under the Freedom of Information Act 2000 your request will form part of our disclosure log. Therefore, a version of our response which will protect your anonymity will be posted on the NHS Digital website.

Yours sincerely,

**Abigail Simpson**  
**Information Assurance Advisor**

Further information about your right to complain under the Freedom of Information Act is available from the Information Commissioner's Office, Wilmslow, Cheshire, and on The Information Commissioner's website [www.ico.org.uk](http://www.ico.org.uk).

NHS Digital values customer feedback and would appreciate a moment of your time to respond to our Freedom of Information (FOI) Survey to let us know about your experience. Please access the survey through this link [here](#)