



Department of Health & Social Care

Freedom of Information Team
Department of Health and Social Care
39 Victoria Street
London SW1H 0EU

www.gov.uk/dhsc

Mr JJ Evans
[request-547303-
7e82373a@whatdotheyknow.com](#)

9 April 2019

Annex A: DHSC's response to initial request dated 22 March 2019

Annex B: Request for internal review dated 25 March 2019

Dear Mr Evans,

FREEDOM OF INFORMATION ACT (FOIA): INTERNAL REVIEW CASE REFERENCE IR 1164378

You originally wrote to the Department of Health and Social Care (DHSC) on 25 January requesting copies of all correspondence between Jane Ellison and The Scottish Government in 2015 that related to the Penrose Inquiry. We responded to you on 22 March (our ref: FOI-1164378), refusing your request under section 12(1) of the FOIA (exceeds costs). A copy of our response, including the full text of your request, is at Annex A.

You subsequently emailed DHSC on 25 March requesting an internal review into the handling of your original request. A copy of your email is at Annex B.

The purpose of an internal review is to assess how your FOI request was handled in the first instance and to determine whether the decision given to you was correct. This is an independent review as I was not involved in the original decision.

Application of section 12(1)

The Information Commissioner's Office (ICO) advises that when a public authority is estimating whether the appropriate cost limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the *Fees Regulations* can be satisfied. Those conditions require the requests to be:

- made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
- made for the same or similar information; and
- received by the public authority within any period of 60 consecutive working days.

Regulation 5(2) of the *Fees Regulations* requires that the requests which are to be aggregated relate “to any extent” to the same or similar information. This can be applied where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested. DHSC believes that all eight of your requests made between 4 January and 15 February were for information relating to the ongoing Infected Blood Inquiry. The Department therefore asserts that all the criteria set out by the *Fees Regulations* have been met.

Conclusion

After careful consideration, I have concluded that the response you received was compliant with the requirements of the FOIA and I uphold DHSC’s refusal of your request under section 12(1). A comprehensive calculation to justify the use of section 12(1) was provided to you, along with advice on how to refine your request to potentially bring it within the cost limit.

The review is now complete.

If you are not content with the outcome of your complaint, you may apply directly to the 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

<https://ico.org.uk/concerns>

Yours sincerely,

Charlene Carter
Casework Manager
Freedom of Information Team
FreedomofInformation@dhsc.gov.uk

Annex A: DHSC's response to initial request

Mr JJ Evans
request-545678-42a4af06@whatdotheyknow.com

22 March 2019

Dear Mr Evans,

Freedom of Information Request Reference FOI-1161821, FOI-1163322, FOI-1164367, FOI-1164378, FOI-1165468, FOI-1165486, FOI-1166075, FOI-1167299

Thank you for your requests which you sent to the Department of Health and Social Care (DHSC). These requests are listed and detailed in Annex A. I would like to apologise for the delay in answering your requests.

Your requests have been handled under the Freedom of Information Act (FOIA). To provide the information as is the requests are currently framed would exceed the appropriate cost limit as set out in the FOIA.

Section 12(1) of the FOIA provides that public authorities are not obliged to comply with a request for information if it estimates the cost of complying would exceed the appropriate limit. Paragraph 1, Schedule 1, Part 1 of FOIA and regulation 3 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the 2004 Regulations) set the appropriate limit for the DHSC at £600.

Where two or more requests for the same or similar information are made to a public authority by one person, within a period of sixty working days, regulation 5(1) and (2) of the FOI and Data Protection (Appropriate Limit and Fees) Regulations 2004 allows that public authority to aggregate those requests.

Regulation 4(3) of the 2004 Regulations provides that a public authority may take into account the cost of determining whether it holds the information, locating, retrieving and extracting the information. We have estimated it would take the following amount of time to find and extract the information you have requested:

- Number of electronic files to be searched = 100 (@ approx. 30 mins per file)
- Number of manual files to be searched = 50 (@ approx. 60 mins per file)
- Number of business units to contact 4= (@ 30 mins per unit)
- Time needed to estimate the number of files= 180 mins.

We have estimated the total number of hours needed to find and extract the information requested would be 102. Regulation 4(4) of the 2004 Regulations provides that the cost of persons undertaking these activities is to be estimated at £25 per person per hour. As such, this would cost over £2,600. We are therefore unable to answer your request as it is currently formulated.

Although we cannot answer your request at the moment, we may, however, be able to answer a refined request within the cost limit. You may wish to consider, for example, selecting one or two requests from those you have made. Please be aware that we cannot guarantee at this stage that a refined request would fall within the FOIA cost limit, or that other exemptions will not apply. 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 submitted within two months of the date of receipt of the response to your original letter and should be addressed to the address at the top of this letter, or

the email address at the end of this letter.

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

If you are not content with the outcome of your internal review, you may complain directly to the Information Commissioner (ICO) who may decide to investigate your concerns. Generally, the ICO cannot make a decision unless you have already appealed our original response, and received our internal review response. The ICO will not usually investigate concerns where there has been an undue delay in bringing it to their attention. You should raise your concerns with them within three months of your last meaningful contact with us.

The ICO can be contacted at:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
<https://ico.org.uk/concerns/>

Yours sincerely,
Edward Franklyn
Freedom of Information Officer
E.FreedomOfInformation@dh.gov.uk

ANNEX A

FOI-1161821

Dated 4 January 2019
Subject: Freedom of Information request - YMH/146 File
Dear Department of Health and Social Care,
Under FOI, I am requesting the following information:
a) Copies of the first 30 pages of the following file -
YMH/146 Private Office : M(PH) - Archer Inquiry

FOI-1163322

Dated 18 January 2019
Subject: Freedom of Information request - Initial List
Dear Department of Health and Social Care,
Under FOI I am requesting the following:
The latest version (at the time of this request) of the master list of files to be released as described in the DHSC Finance and Group Operations File Retrieval Processes – Infected Blood Final Internal Audit Report.
Supplementary to my request, I do understand that you may wish seek to avoid the need to publish a list and make subsequent revisions to it, in case the methods used in compiling the list omitted records which ought to have been included. However, in the interests of transparency and ensuring the most accurate outcome possible I do believe it is within the Public Interest to provide a copy of this list now.

FOI-1164367

Dated 25 January 2019

Subject: Freedom of Information request - Query about Files

Dear Department of Health and Social Care,

Under FOI I am requesting the status, title(s) and date(s) of the following files:

HSS 5/1049/904/009

HSS 5/1049/904/010

HSS 5/1049/904/012

HSS 5/1049/904/013

TOA-APR A/0162/002

TOA-APR A/0162/003

ST-HS N/0013/001 ANNEX I PART B

ST-HS N/0013/001 ANNEX I PART C

*Where volumes may have been destroyed or are not available please provide detail of all review/destruction dates.

FOI-1164378

Dated 25 January 2019

Subject: Freedom of Information request - Jane E Corr 2015 on

Dear Department of Health and Social Care,

Under FOI, I am requesting the follow:

a) Copies of all correspondence between Jane Ellison and The Scottish Executive and/or The Scottish Government relating to the Penrose Inquiry during 2015.

FOI-1165468

Dated 1 February 2019

Subject: Freedom of Information request - MFT Corr Dec 18

Dear Department of Health and Social Care,

Under FOI, I am requesting the following information:

Copies of all correspondence between the Infected Blood Policy team at DHSC and the Macfarlane Trust during the period 1st December 2018 - 31st January 2019.

FOI-1165486

Dated 2 February 2019

Subject: Freedom of Information request - Keywords Feb 2

Dear Department of Health and Social Care,

Under FOI I am requesting the following information:

A 3 column table list of file reference numbers, titles and, if possible, approximate date ranges for files that appear in a free text search on IronMountainConnect using the following keywords:

Hyate

Cryoprecipitate

Fractionation

Travenol

FOI-1166075

Dated 6 February 2019

Subject: Freedom of Information request - Assurances Processes relating to Infected Blood

Dear Department of Health and Social Care,

Under FOI, I am requesting the following information:

a) Given that GIAA has advised today that it's audit of Infected Blood files is complete and that it has not been asked to undertake, nor has it undertaken any further work, please provide details of any Assurance Processes that are active in relation to Infected Blood files.

FOI-1167299

Dated 15 February 2019

Subject: Freedom of Information request - File Destruction Dates

Dear Department of Health and Social Care,

Under FOI, I am requesting to know the date(s) on which the following file volumes were destroyed. Whilst I am requesting in the first instance to know the specific date, if this is not available then please provide the year.

TCR 8 VOL 1
INB 3 VOL 14
INB 3 VOL 15
INB 3 VOL 18
INB 3 VOL 20
HIM 2 VOL 1
HIM 3 VOL 1
HIM 3 VOL 2
HIM 3 VOL 9
HIM 3 VOL 10
HIM 3 VOL 11

Annex B: Request for internal review

Dear Department of Health and Social Care,

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 and Social Care's handling of my FOI request 'Jane E Corr 2015 on'.

The information requested in relation to this FOI is not the same or similar to any other request and therefore I consider the application of aggregation to be invalid. This FOI should be dealt with in isolation. In order for aggregation to occur please demonstrate that the information requested in this FOI also falls in scope of another, or provide the information requested in this FOI request.

Yours faithfully,

JJ Evans