



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

Ms Penelope Crouch

By email to: request-904463-b352d01a@whatdotheyknow.com

20 January 2023

Annex: Request for internal review

Dear Ms Crouch,

FREEDOM OF INFORMATION ACT 2000 (FOIA): INTERNAL REVIEW AMENDMENT

INFORMATION COMMISSIONER'S OFFICE CASE REFERENCE: IC-204975-H2F7
DHSC CASE REFERENCES: IR-1424826 (FOI-1420207)

You originally wrote to the Department of Health and Social Care (DHSC) on 30 September 2022 (FOI-1420207) with the following three questions:

Please provide me with the scientific advice and evidence that was used when making the changes announced to the shielding policy in Sajid Javid's letter of 27 September 2021.

Please detail which bodies and senior individuals in the DHSC/NHS and Government had input into or review/sign off for in this letter, the dates of each of their input, review/sign off.

Please provide all briefing documents, annexes, internal emails (or other electronic communications) and any attachments that informed the content of this letter

We originally responded to you on 26 October. Looking back over our records, I see that we focused on the second and third of your questions at the expense of the first. I also note that on review of IR-1424826 in the accompanying annex, we overlooked your refinement to point 3. DHSC apologises for those errors.

In light of the above, please find attached a copy of the submission entitled "Future of shielding policy and clinically extremely vulnerable Cohort" and dated 23 July 2021 that went to Ministers. This submission contains the senior scientific advice you requested included that provided by the then Deputy Chief Medical Officer for Health Protection and the Chief Executive of UKHSA.

You will see that some of the information in the submission has been redacted under sections 35 and 40 of the FOI Act.

DHSC recognises the general public interest in making this information available for the sake of greater transparency and openness.

However, DHSC takes the view that the section 35 exemption is intended to ensure that the possibility of public exposure does not deter from full, candid and proper deliberation of policy formulation and development, including the exploration of all options. Section 35(1)(a) of the FOIA provides protection for the information that relates to the formulation or development of government policy. Section 35 is a qualified exemption and requires consideration of the public interest test.

Civil servants and subject experts need to be able to engage in the free and frank discussion of all the policy options internally, to expose their merits and demerits and their possible implications as appropriate. Their candour in doing so will be affected by their assessment of whether the content of such discussion will be disclosed. Disclosure of information protected under section 35 could prejudice good working relationships and the neutrality of civil servants.

Section 40(2) of the FOIA provides for the protection of personal information. Section 40 prohibits a public body from disclosing personally identifiable information, as doing so would contravene data protection principles.

In response to the second question in FOI-420207, you mention "this letter". By that I assume you meant "this submission". The above response answers that question.

With regard to the third question in FOI-420207 where you asked DHSC to ***provide all briefing documents, annexes, internal emails (or other electronic communications) and any attachments that informed the content of this letter***, we maintain that the application of section 12(1) is correct as per our previous replies due to the disproportionate amount of time it would take to provide the information. However, now that you have the scientific advice as summarised in the submission, we hope you feel that the request for this amount of detail is no longer necessary.

Should you wish to raise any further concerns you are at liberty to contact the ICO. For ease, the guidance on contacting the ICO can be found at <https://ico.org.uk/global/contact-us>.

Yours sincerely,

Stuart Cochrane
Senior FOI Manager
Freedom of Information Team
freedomofinformation@dhsc.gov.uk

Annex: Request for internal review

From: Penelope Crouch request-904463-b352d01a@whatdotheyknow.com

Sent: 03 November 2022 15:33

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

Subject: Internal review of Freedom of Information request - Sajid Javid's letter of 27 September 2021 changing the COVID shielding policy for the clinically extremely vulnerable

[You don't often get email from request-904463-b352d01a@whatdotheyknow.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

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 'Sajid Javid's letter of 27 September 2021 changing the COVID shielding policy for the clinically extremely vulnerable' (response provided by letter dated 26 October).

I would like to request an internal review on the following basis:

1. How can it be insurmountable to review 164 documents within the 24 hour budget limit?

Assuming you spent 5 minutes reviewing each document then that would only take 820 minutes (out of a budgeted 1440 minutes).

2. I am also confused by your reference to documents being held by "Arm's Length Bodies" - who are these bodies and what does it mean being at "Arms Length" in this case?

If they are truly at arms length, in the sense that you have no possession or control of these documents, then I would not consider that you would be obliged to search/disclose these in any event. However your response seems to suggest that you would have to request these documents from the relevant bodies as a further reason why compliance with the request would be unduly onerous. Some clarification would therefore be most helpful. If you can also name these "Arm's Length Bodies" I can send them an FOI directly to speed this up.

3. I note that in your response you state that "Due to the reasons above, I am unable to suggest how you might refine question to bring it under the section 12 limit"

As an interim response pending your internal review you could, at the least, provide me with any complete briefing note(s) prepared for senior DHSC staff to brief the then Secretary of State Sajid Javid to satisfy him that he could sign the letter of 27 September. That would (presumably) have come from one person at a high level in the DHSC and not from a plethora of different departments.

I consider that my information request was clear, but in summary I want to understand the background and context of the letter of 27 September, what the complete review and sign off process for this letter was and what information informed the content of this letter.

I look forward to hearing from you.

A full history of my FOI request and all correspondence is available on the Internet at this address:

https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.whatdotheyknow.com%2Frequest%2Fsajid_javids_letter_of_27_septe&data=05%7C01%7Cdhmail%40dhsc.gov.uk%7C503b779949124086664408dabdbb7711%7C61278c3091a84c318c1fef4de8973a1c%7C1%7C0%7C638030910087391455%7CUnknown%7CTWFPbGZsb3d8eyJWlloiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ik1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=pLepQqpT1Pr3XNC%2F9Dg6SANHijwdLo8QdPGIjCt33Fc%3D&reserved=0

Yours faithfully,

Penelope Crouch