



Department of Health & Social Care

Freedom of Information Team
Department of Health and Social Care
39 Victoria Street
London
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www.gov.uk/dhsc

Ms Hilary Aked
[request-585169-974aa6ef@whatdotheyknow.com](#)

22 January 2020

Dear Ms Aked,

Freedom of Information Request Reference FOI-1195121

I refer to your requests dated 26 June, 11 July, 20 August and 16 September 2019 to the Department of Health and Social Care (DHSC) (our refs: FOI 1181312, FOI 1182897, FOI 1187641, and FOI 1190511 respectively).

Your original request of 26 June 2019 (FOI 1181312) was as follows:

"Subject: Freedom of Information request - Scoping of NHS visitor charging under Labour government

At a hearing of the Health Social Care Committee yesterday (25 July 2019), Ben Bradshaw MP made reference to advice received by the ministry during his tenure as Minister of State in the Department of Health which suggested that healthcare charging for migrants/overseas visitors would lead to harm and therefore led him not to adopt a policy similar to the current NHS Overseas Visitor Charging Regulation.

He said: When I was in the ministry we had the same policy put before us and all the advice we had said it would lead to exactly the harm we're hearing about now. (Link here: <https://www.parliamentlive.tv/Event/Index/f2708123-1556-4b12-aa64-6a04f1ff7049>)

My understanding is that Mr Bradshaw's term in office was 28 June 2007 – 5 June 2009.

Therefore, using this time period as the range, I would like to request a copy of all materials (including documents, powerpoint presentations, and emails) held by the department from this period related to the proposal, consideration, and assessment and rejection of such a policy.

Please note, if this proves too large a request within the time/cost limit, I'd like to narrow the scope to one year only, specifically June 2008 - May 2009 inclusive."

Following your subsequent requests and our responses (FOI 1182897, FOI 1187641, FOI 1190511, and an Internal Review of FOI 1190511) the scope of your request was narrowed to searches of files relating to the overseas visitor charging regulations during the period that Mr Bradshaw was a minister at DHSC using the keyword "harm" only (this narrowed request being processed under our reference number FOI 1195121).

This narrowed request (FOI 1195121) has been handled under the Freedom of Information Act (FOIA).

I can confirm that we hold information relevant to your request.

However, we consider that this information is exempt from release under Section 36 (2)(b)(i) and (ii) of the FOIA, which states that information is exempt if, in the opinion of a 'qualified person', in this case a Minister of the Crown, its disclosure would prejudice the free and frank provision of advice or exchange of views for the purposes of deliberation; or would otherwise prejudice the effective conduct of public affairs. We have sought the view of the qualified person, who is of the reasonable opinion that section 36(2)(b)(i) and (ii) is indeed engaged.

Section 36 is a qualified exemption and requires consideration of the public interest test.

There is public interest in openness as well as understanding how the government plans and implements its strategy for selection of its policies.

Against this, there is a stronger public interest in maintaining the existing constitutional convention of Ministerial accountability. The integrity of the system underlying the convention must be preserved. The advice ministers receive must be detailed, frank and candid for it to be of value and Ministers must be satisfied that advisers are free of any inhibitions that might interfere with their ability to give full, and occasionally unwelcome, advice. These extraneous concerns necessarily include the apprehension that the advice will be exposed prematurely to public scrutiny or comment. It would not be in the public interest for officials to be made publicly accountable for the advice they gave in this formal manner. This could in effect limit the advice they could give, and we therefore consider that the public interest balance lies in favour of withholding this information.

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 this letter and sent to FreedomOfInformation@dhsc.gov.uk, or to the address at the top 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.

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,

Dorothy Crowe
Freedom of Information Officer
E: freedomofinformation@dhsc.gov.uk