

## Freedom of Information Act 2000 (FOIA) Decision notice

**Date:** 3 November 2021

**Public Authority:** Department for Business, Energy and Industrial Strategy (BEIS)

**Address:** 1 Victoria Street  
London  
SW1H 0ET

### Decision (including any steps ordered)

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1. The complainant has requested emails and attachments that include mention of the 'Kent' variant of Covid-19.
2. The Commissioner's decision is that Department for Business, Energy and Industrial Strategy (BEIS) has correctly cited section 12 FOIA – cost of compliance exceeds the appropriate limit, in response to the request.
3. The Commissioner does not require BEIS to take any steps.

### Request and response

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4. On 4 January 2021, the complainant wrote to BEIS and requested information in the following terms:  
  
*"All emails and attachments sent to or received by the Chief Scientific Officer to the Government including mentions of a) "new variant", b) "H69/V70", c) "VUI-202012/01", d) "VOC-202012/01" or e) "lineage "B.1.1.7" in emails between September 20th 2020 and December 31st 2020. Speech marks denote the precise search terms but are not search terms in their own right".*
5. BEIS responded on 1 February 2021 and refused to provide the requested information citing section 12 FOIA as its basis for doing so. It advised: *"In this instance you may wish to refine your request narrowing its scope by reducing the time scale or search terms, specifying a type of document. Once you have narrowed the scope, we will give due*

*consideration to our obligations under the Freedom of Information Act ("the Act") in respect of that request."*

6. Following an internal review BEIS wrote to the complainant on 12 February 2021 and maintained its position. It further stated: *"you may wish to refine your request by narrowing its scope by reducing the time scale or search terms, specifying a type of document. If you are requesting for emails between the Government Chief Scientific Adviser and other parts of Government, you may wish to contact Government Office for Science Contact@go-Science.gov.uk the relevant Department"*.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 23 February 2021 to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of this case to be to determine if BEIS is entitled to rely on section 12 FOIA to refuse the request.

## **Background**

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9. BEIS provided the following background;

*The Government Chief Scientific Adviser (CSA) sits within the Government Office for Science (GO Science) who are also subject to the FOI Act and handle FOI requests made to them separately to BEIS. BEIS does not hold nor have access to the CSA's mailbox, his teams' mailboxes or any shared mailboxes within GO Science, so the complainant was advised that if he was interested in emails between the CSA and other parts of government (other than BEIS) he may wish to contact GO Science. Due to the nature of the information sought the FOI request was assigned to the Vaccines Taskforce (VTF). During the period of the request (20 September and 31 December 2020), the VTF comprised of 263 staff and the team also used a number of shared mailboxes. Emails sent by the CSA to the VTF from either his personal mailbox or shared mailboxes within GO Science, in relation to the requested information could have been sent to any or all of the personal or shared mailboxes across the VTF."*

## Reasons for decision

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### Section 12 – cost of compliance

10. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit.
11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for public authorities such as the university.
12. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 24 hours for the public authority.
13. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
  - determining whether the information is held;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
14. In its submission to the Commissioner BEIS explained that during the period 20 September to 31 December 2020, the CSA could have sent emails in scope of the request from his own personal mailbox or via shared mailboxes within GO Science to a large number of individuals or shared mailboxes across the VTF, including all Directors and Deputy Directors within the taskforce, the Director General, an unknown number of staff who may have been in contact with the CSO for individual matters, plus shared mailboxes.
15. It further stated that although the specified time period is relatively short, this was a busy period for the VTF and therefore there may be a large amount of information in scope of the request.
16. BEIS conducted a sampling exercise on just one Director's mailbox. This showed that during this period she received 5,450 emails. Using an estimate of 3 minutes to perform the search on a mailbox, searching 263 mailboxes would take 13.3 hours just to identify emails received in the requested period.

17. Using the Directors email volume as a proxy, to open and review the contents of each email and then to extract any in scope of the request of one inbox alone, considering this search, would equate to 272 hours and 30 minutes plus a further 3 minutes for any attachments. As such, it considered this search request unfeasible within the £600 cost limit set out under section 12 FOIA.

### **The Commissioner's view**

18. The Commissioner notes the complainant's view that *"Despite a clear precedent for providing this information and there being minimal searches required, the authority has refused to provide the information."*
19. However, the complainant has not provided any evidence in support of the precedent he has referred to. In addition it is rarely as simple as searching one individual's email account to locate all relevant information that may fall within the scope of the request.
20. The Commissioner does not consider that BEIS would have to search email accounts of hundreds of individuals to locate information within the scope of the request, as it clearly states *"All emails and attachments sent to or received by the Chief Scientific Officer to the Government"*. A search of the CSO's email account should be sufficient to locate any relevant information.
21. Nevertheless, based on the assumption that the CSO receives and sends a large number of emails themselves it is highly likely to take a significant amount of time to locate, extract and retrieve any information within the scope of the request.
22. Using the sampling exercise carried out by BEIS and ignoring its estimate of searching 263 mailboxes, it would still far exceed the cost limit to provide the information requested. Even in the unlikely event that the CSO's mailbox contained only 2000 emails, it would significantly exceed the 24 hour limit permitted in the Fees Regulations.
23. Based on all the above, the Commissioner considers that BEIS was entitled to rely on section 12(1) in order to refuse the request.

### **Other matters**

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#### **Section 16 – Duty to provide advice and assistance**

24. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the Section 45

Code of Practice<sup>1</sup> ("the Code") issued by the Secretary of State, it will have complied with section 16(1).

25. The Code advises that, where an authority is not obliged to comply with a request for information because, under section 12(1) and the regulations made for that section, the cost of complying would exceed the appropriate limit, it should provide the requestor with reasonable advice and assistance.
26. The Commissioner's guidance<sup>2</sup> states that the minimum a public authority should do in order to satisfy section 16(1) is indicate if it is able to provide any information at all within the appropriate limit. Communicating this to a complainant may avoid further and futile attempts to refine the request to bring it under the appropriate limit. If the requestor understands the way in which the estimate has been calculated to exceed the appropriate limit, it should help them decide what to do next.
27. The Commissioner notes that BEIS advised the complainant on two occasions that they may wish to refine their request "*by reducing the time scale or search terms, specifying a type of document.*" She is therefore satisfied that it has complied with its obligations under section 16(1) FOIA.

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<sup>1</sup><https://ico.org.uk/for-organisations/foi-guidance/section-45-code-of-practice-request-handling/>

<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1624140/duty-to-provide-advice-and-assistance-foia-section-16.pdf>

## Right of appeal

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28. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Susan Duffy**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**