

Freedom of Information Act 2000 (FOIA) Decision notice

Date: 29 November 2022

Public Authority: Department for Business, Energy & Industrial
Strategy
1 Victoria Street
London
SW1H 0ET

Decision

1. The complainant has requested information relating to the cost of Covid-19 vaccines. The Department for Business, Energy & Industrial Strategy ('BEIS') refused to release information in scope of the request and cited section 43(2) of FOIA to withhold the information.
2. The Commissioner's decision is that the withheld information engages section 43(2) of FOIA and the public interest favours maintaining the exemption.
3. No steps are required as a result of this decision notice.

Request and response

4. The complainant made the following information request to the BEIS on 15 September 2021:

"In a previous FoI request made to DHSC, that department stated that it did not hold information related to the cost of procurement of vaccines to immunise people against Covid-19. See the following reply in which the department states that this request should be made to BEIS:

<https://www.whatdotheyknow.com/request/7...>

I also note that the most recent contract to procure vaccine supplies from Pfizer is with BEIS:

<https://www.contractsfinder.service.gov....>

I would therefore like to ask BEIS how much has so far been paid for the vaccine supplies it has purchased in response to Covid-19. Could you also break this total down and list how much has been paid to each of the companies that have developed the vaccines bought by the UK government."

5. The BEIS responded on 30 September 2021 and cited section 43(2) of FOIA to withhold the requested information.
6. The complainant set out their grounds for an internal review on 21 October 2021 and argued that the cost of every other medical product is published, so please explain why these costs are confidential. The BEIS responded on 25 October 2021 and upheld its initial stance regarding the withheld information.

Reasons for decision

7. This reasoning covers whether the BEIS was correct to refuse to disclose the withheld information in scope of the request.

Section 43(2) – commercial interests

8. Section 43(2) states:

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)."

9. The Commissioner's guidance¹ states 'A commercial interest relates to a legal person's ability to participate competitively in a commercial activity. The underlying aim will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent.'
10. Section 43(2) is a qualified exemption. This means that, even if the exemption is engaged, the information can only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosure.
11. In its refusal notice the BEIS said "It is important that vaccine suppliers are able to share commercially sensitive information with Government in the confidence that that information will not then enter the public domain and damage their wider commercial interests and opportunities. Disclosure of the requested information in this case would be contrary to legitimate expectations of confidentiality and would be likely to damage the commercial interests of the companies."
12. The Commissioner acknowledges the complainant's argument that costs for other medical products are published and that if a simple total figure could be given, then publishing this information would not prejudice commercial interests, as a total figure is not specifying how much was given to different companies.
13. However, he considers that the vaccine itself is a sensitive issue and along with information already in the public domain, the total costs and any breakdown of individual costs would likely lead to issues with the future production and supply of vaccines in general.
14. The Commissioner agrees with the BEIS that disclosure of this information would be likely to damage or undermine the commercial interests of vaccine suppliers and therefore, likely adversely impact on future business. Disclosure would provide other potential customers with an insight into previous prices the suppliers had sold vaccine products at thus giving other third-party suppliers an advantage in any price negotiation.
15. Even though the BEIS is first and foremost a public authority, it must still be able to operate in a commercially competitive environment. Any

¹ [Section 43 - Commercial interests | ICO](#)

information that may strengthen an organisation's negotiating position also has the potential to prejudice the BEIS's ability to obtain value for money as there is a real likelihood of revealing the price paid previously.

16. Since the Commissioner considers the exemption is engaged, he will now go onto consider whether the public interest lies in maintaining the exemption or in disclosure.
17. On the one hand, the matter involves a significant amount of money and relates directly to the extremely sensitive issues around Covid-19 vaccines and a significant public interest in government actions and strategies around the purchase of vaccines. With this comes the need for openness, transparency, and accountability. On the other hand, there is the prejudice that disclosure would cause as outlined above.
18. The Commissioner considers that the public interest in this matter has been met, to a certain extent, by the information that the BEIS has provided in response to the request. It has provided as much information as possible without prejudicing its commercial interests, it has explained why the information cannot be disclosed due to the facts of the sensitive nature of the subject matter and that it is still very much a live and ongoing situation which increases the risks outlined in paragraphs 13 and 14 above.
19. Ultimately, bearing in mind the government work that the BEIS undertakes, the Commissioner considers that the public interest lies in maintaining the exemption and not compromising the UK governments, and therefore BEIS's ability to enter into negotiations with any third party, and that there is a clear public interest in ensuring that the commercial interests of private companies are not harmed and fairness of competition is not undermined.

Right of appeal

20. 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: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

21. 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.
22. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
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SK9 5AF