

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 18 November 2022

**Public Authority:** Department of Health and Social Care  
**Address:** 39 Victoria Street  
London  
SW1H 0EU

#### **Decision (including any steps ordered)**

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1. The complainant has requested the DHSC's record of processing activity ('ROPA').
2. The DHSC refused to comply with the request, citing section 14(1) (vexatious request) of FOIA.
3. The Commissioner's decision is that the request is vexatious and the DHSC is entitled to rely upon section 14(1) to refuse it.
4. The Commissioner does not require the public authority to take any steps.

#### **Request and response**

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5. On 27 June 2021 the complainant wrote to the DHSC and requested the following information:  

"Please could you provide me with any Data Protection Impact Assessments ('DPIA') you hold for CCTV processing activities.

Please could you also provide a Records of Processing Activity ('ROPA') for the Department of Health."
6. The DHSC responded on 14 December 2021. It confirmed that it held information relevant to the request but that it was exempt under section 43(2) (commercial interests) of FOIA.

7. The complainant requested an internal review on 15 December 2021.
8. The DHSC provided the outcome to its internal review on 23 December 2021. It confirmed that it did not hold a DPIA for CCTV processing activities. It upheld its original position that section 43(2) applied to the ROPA.
9. The Commissioner understands that DHSC is in the process of conducting a DPIA for its CCTV processing activities. Since this information was not held at the time that the request was made, the Commissioner won't consider this matter any further.
10. On 6 October 2022, the DHSC wrote to the complainant and clarified that it did not hold a single, stand-alone ROPA, as per the request. It confirmed it held a 'suite of documents' that, when put together, fulfilled the DHSC's obligations under Article 30 of the UK GDPR.
11. The Commissioner informed the DHSC that it was not a requestor's responsibility to know exactly what information a public authority holds, or in what format, in response to a request.. The Commissioner explained that he was satisfied that this 'suite of documents' fell within the scope of the complainant's request and therefore, the DHSC should either disclose it or provide a valid refusal.
12. On 9 November 2022, the DHSC wrote to the complainant and confirmed that it was refusing the request under section 14(1).

## **Reasons for decision**

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### **Section 14(1) (vexatious requests)**

13. Section 14 of FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."

14. A request might be vexatious if the public authority can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden. When providing an estimate as to how long compliance with the request would take, the Commissioner expects this estimate to be based on cogent evidence which usually involves the public authority conducting a sampling exercise.
15. There is a high threshold for refusing a request on such grounds. The Commissioner considers that a public authority will have the most viable case to do so where:

- the requester has asked for a substantial volume of information; **and**
  - the public authority has real concerns about potentially exempt information, which it is able to substantiate, if asked to do so by the ICO; **and**
  - the public authority cannot easily isolate any potentially exempt information because it is scattered throughout the requested material.
16. Article 30 of the UK GDPR states that a data controller needs to maintain a record of its processing activities. Article 30 also states that a ROPA needs to be in written, electronic form and must be produced to the Commissioner upon request.
  17. The DHSC has explained to the Commissioner that 'We hold a collection of documentation across different formats which, when put together, fulfils our obligation under Article 30 of the GDPR to record and document all of our personal data processing activities.'
  18. The DHSC acknowledged that 'whilst other organisations have taken the approach of interpreting the text of Article 30 to mean that such information needs to be recorded within a single document or location, it is our view that Article 30 does not explicitly require this.'
  19. The DHSC has explained to the Commissioner that, when it refers to this 'suite' of documents, it is actually 'referring to every data protection impact assessment, privacy notice, data sharing agreement, data processing agreement, contract and memorandum of understanding that the Department holds in relation to all of its data processing activities that involve personal data.'
  20. It has elaborated that 'to locate, retrieve and extract all of this documentation would involve a manual trawl of the whole organisation and each document would then need to be reviewed to check for content such as personal data, commercially sensitive data and any other information that would otherwise not be appropriate to place into the public domain.'
  21. The DHSC hasn't conducted a sampling exercise or provided an estimate in this instance and the Commissioner acknowledges why it can't. The DHSC is a large organisation that processes a significant amount of personal data. Its record of processing activities is represented by each and every single document that outlines its processing activities, for every single processing activity that it undertakes.
  22. The DHSC has elaborated, 'To provide some further context on the scale of the above task, our latest complete reporting data shows that in the

five months from April – August 2022, the Department's data protection team assisted with the completion of circa 130 new data protection impact assessments alone, each a minimum of 20 pages, which would be over 2600 pages of information to be reviewed just in DPIAs alone for a four month period.'

23. The Commissioner acknowledges that the above information would not be included within the scope of the request, since it was not held at the time that the request was received. However, the Commissioner is satisfied that this 2600 pages, over a four-month period, would be a typical representation of such a task at any point in time.
24. Furthermore, since the request covers the COVID-19 pandemic, the DHSC has explained that there is likely to be an increase in information within scope for this period, since the DHSC was required to process personal data, relating to tracking the spread of the virus and vaccinations, in an unprecedented manner and on an unprecedented scale.
25. When considering whether section 14(1) applies, the Commissioner must balance the value and serious purpose that the request represents with the burden that compliance with the request would cause. The request is not without serious value or purpose.
26. The Commissioner's guidance<sup>1</sup> on Records of Processing Activities and Lawful Bases states 'Taking stock of what information you have, where it is and what you do with it makes it much easier for you to improve your information governance and comply with other aspects of data protection law (such as creating a privacy notice and keeping personal data secure). It is a clear way to show what you are doing in line with the accountability principle.'
27. However, the DHSC doesn't possess a single, stand-alone document that demonstrates its processing activities which it could easily consider for disclosure. It holds a considerable number of documents across all of its departments.
28. When applying section 14, on the grounds that compliance with the request would impose too great a burden, the Commissioner expects the public authority to work with the requestor to see if a less burdensome request can be complied with.

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<sup>1</sup> [Records of processing and lawful basis | ICO](#)

29. The Commissioner notes that, in the DHSC's correspondence to the complainant dated 9 November 2022, it explained:

"If it would help; information relevant to the requirements as stated in Article 30(1) (a-f) would be documented in a Privacy Notice (see link Article 30). DHSCs Privacy Notice can be found at:

<https://www.gov.uk/government/publications/dhsc-privacy-notice/dhsc-privacy-notice>

It may help DHSC answer the request if you could specify what exactly it is you would like that is not already covered in the Privacy Notice."

30. The DHSC has explained to the complainant that a lot of the information that they have requested, relevant to Article 30, would be included in its privacy notice. The DHSC then suggested if the complainant was concerned with a specific processing activity, or a specific document relating to that activity, they make this clear to the DHSC so it can assist them.
31. Whilst it hasn't been able to provide a quantifiable estimate as to how long compliance with the request would take, taking into account the explanation provided in paragraph 23, the Commissioner has no doubt that compliance with the request would be grossly oppressive and, weighing up this burden with the information that is included in the DHSC's privacy notice, and the assistance it has provided to the complainant, he is satisfied that the value doesn't justify this burden. The request is therefore vexatious and the DHSC was entitled to refuse it as such. He is also satisfied that the DHSC has offered the complainant with an alternative route of requesting the information they are concerned with.

## **Other matters**

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32. This decision notice looks at the DHSC's compliance with FOIA only and the Commissioner cannot order the DHSC to take any action under any other legislation.
33. However, as the regulator of both FOIA and data protection legislation in the UK, the Commissioner feels duty bound to note that, if the DHSC cannot comply with the request because it would impose a grossly oppressive burden to do so, it is unlikely that the DHSC would be able to provide its ROPA to the Commissioner, which is a requirement under Article 30 of the UK GDPR, without that same burden.

## **Right of appeal**

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34. 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)

35. 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.
36. 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**

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