

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 February 2023

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

Decision (including any steps ordered)

1. The complainant has requested the medical advice behind the decision to stop shielding for vulnerable individuals.
2. The Commissioner's decision is that the DHSC has provided all of the information that fell within the scope of the request and therefore complied with section 1 (general right of access).
3. The Commissioner does not require further steps.

Request and response

4. On 24 October 2022, the complainant wrote to the DHSC and requested:

"1. The expert medical opinion ('the medical advice') behind the decision to cancel the advice of shielding for those "... immunocompromised or immunosuppressed who may not respond as well to the COVID-19 vaccine as others" and replace the guidance for their protection with advice from GPs or clinicians.

2. The plan and the documentation behind the plan on how the GPs and clinicians were to be informed that they now had the responsibility

for the appropriate advice with regard to the safety of “patients who may not respond as well to the COVID-19 vaccine as others

3. The plan and the documentation behind the plan on how GPs or clinicians would identify patients “who may not respond as well to the COVID-19 vaccine as others
4. The plan and the documentation behind the plan on how patients “who may not respond as well to the COVID-19 vaccine as others” would be informed that their Covid-19 safety after step 4 would rest with the advice from their GPs and clinicians.”
5. The DHSC responded on 21 November 2022. It applied section 21 (information reasonably accessible to the applicant by other means) to parts 2, 3 and 4 of the request. In response to part 4 of the request, it disclosed a redacted copy of the document titled ‘Submission on the future of shielding’ (which was presented to Ministers on 23 July 2021) which included medical advice from Dr Jenny Harries and Professor Jonathan Van Tam, Deputy Chief Medical Officers at the time.
6. The complainant brought a complaint to the Commissioner, on the grounds that the DHSC had not provided the information that fell within part 1 of their request.. The Commissioner urged the complainant to withdraw their complaint, based on the analysis below, but they declined.

Reasons for decision

7. Section 1 of FOIA states:

“Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

8. In their internal review request, the complainant expressed concern that the vast majority of the submission had been redacted. They stated, ‘I do not believe that redacting the vast majority of the medical advice is in the public interest.’
9. The Commissioner explained to the complainant that FOIA covers information, not documents. If information does not fall within the scope of a request, it won’t be disclosed in response to it. The complainant did not request the submission presented to Ministers, or the information Ministers considered, when deciding the future of the shielding policy.

10. Since the complainant requested medical advice, the DHSC should have only disclosed medical advice in response to the request and the DHSC has confirmed to the complainant "The text redacted in the copy of the submission that went to ministers on 23 July 2021 'OFFSEN Submission on the future of shielding – redacted', was **not** (emphasis added by Commissioner) medical advice and therefore does not fall within the scope of your request. The unredacted text is the medical advice from Dr Jenny Harries and Professor Sir Jonathan Van-Tam, both then Deputy Chief Medical Officers."
11. The complainant is also concerned that the submission references medical advice, e.g., from the DCMO for Health Protection, the Chief Executive for UKHSA and further steer from Dr Jenny Harries and Professor Sir Jonathan Van-Tam. The complainant believes this proves there is further information held by the DHSC and the scope of their request would extend to capture this information.
12. The Commissioner notes that the request asked for the medical advice **behind** the decision to replace the guidance on shielding for the vulnerable with local advice from GPs or clinicians. The submission disclosed to the complainant, and the medical advice within, was placed before Ministers on 23 July 2021, which is when the decision regarding shielding was made.
13. The Commissioner is therefore satisfied that the medical advice contained within the submission (the document that will have directly informed the Ministers' decision) is the 'expert medical opinion behind the decision' that the complainant requested.
14. The Commissioner is therefore satisfied that the DHSC has interpreted the request correctly and has provided the information falling within the scope of the request.

Right of appeal

15. 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

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

16. 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.
17. 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
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Wilmslow
Cheshire
SK9 5AF