

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 June 2024

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 information relating to a consultation run by the Department of Health and Social Care entitled "Creating a smokefree generation and tackling youth vaping". The Department of Health and Social Care ('DHSC') provided links to the requested information that was already available, advised that some information was not held and that it was relying on section 27(2) of FOIA (international relations) and section 35 of FOIA (formulation of government policy) to withhold the remainder of the requested information.
2. The Commissioner's decision is that DHSC was entitled to rely on section 27(2) of FOIA to withhold some of the information concerning question two of the request.
3. The Commissioner does not require further steps.

Request and response

4. On 14 November 2023, the complainant wrote to DHSC and requested information in the following terms:

"This letter is a request for information under the Freedom of Information Act 2000 ("FOIA") on behalf of our client relating to the Department of Health and Social Care's ("DHSC") consultation on

"Creating a smokefree generation and tackling youth vaping" (the "Consultation").

Please can you confirm whether the DHSC holds information that relates to the following for the period from February 2022 to date:

1. The modelling that forecasts smoking prevalence in all smokefree generation scenarios, including the underlying data sets used, and any description of all of the steps performed with that data (including all assumptions and calculations made) to produce the final outputs shown in Figure 9 in the Command Paper (Stopping the start: a new plan to create a smokefree generation) published on 4 October 2023 (the "Command Paper").
2. The modelling of New Zealand's smokefree generation policy that is referred to at Annex 1 of the Command Paper and is used as the basis for the assumed reduction in instigation rates in the "smokefree generation - scenario 4" model shown in Figure 9 in the Command Paper.
3. The research on vape disposal by YouGov commissioned by Material Focus that is cited in the Command Paper and Consultation document, including any underlying data, reports and description of the methodology and outcomes of the research.
4. Any assessment or analysis of the environmental impact of disposable vape products in England and / or the UK conducted or commissioned by the DHSC or any other government department.
5. Any assessment or analysis that the DHSC has conducted or commissioned regarding schemes to reduce the amount of waste produced by disposable vapes in England and / or the UK.
6. Any assessment or analysis that the DHSC has conducted or commissioned regarding alternative policy options to the proposed legislation making it an offence to sell tobacco products to anyone born on or after 1 January 2009 which is set out in the Consultation.
7. Any assessment or analysis that the DHSC has conducted or commissioned regarding alternative policy options to the proposal to prohibit the sale and supply of disposable vape products which is set out in the Consultation.
8. Any assessment or analysis conducted or commissioned by the DHSC or any other government department, regarding the selection of the three (3) options included in the Consultation for which flavours vapes should be limited to."

5. DHSC responded on 12 December 2023. It stated that information regarding the first three questions of the request was already available and it provided the relevant website links. For the second question it advised that it held further information, but it was withholding this under section 27(2) of FOIA. DHSC advised that it did not hold information relating to questions four, five and seven and signposted the complainant to the Department for Environment, Food and Rural Affairs. For questions six and eight, DHSC advised that it held information but it was relying on section 35 of FOIA to withhold it.
6. Following an internal review DHSC wrote to the complainant on 22 January 2024. It stated that it was upholding its use of sections 27 and 35 of FOIA to withhold some of the requested information.

Scope of the case

7. The complainant contacted the Commissioner on 13 February 2024 to complain about the way their request for information had been handled.
8. In its submission to the Commissioner, DHSC advised that the information previously withheld under section 35 of FOIA was now publicly available. This information includes the Tobacco and Vapes Bill Impact Assessment¹ published on 20 March 2024, and the Government response to the "Creating a smokefree generation and tackling youth vaping" consultation² published on 29 January 2024.
9. The Commissioner wrote to the complainant on 29 May 2024 to check if they were satisfied that the published information fulfilled the parts of their request that had previously been refused under section 35. The Commissioner did not receive a response from the complainant, so he has proceeded on the basis that the complainant is satisfied with the published information.
10. As the complaint originally focused on DHSC's reliance on sections 27 and 35 of FOIA to withhold information, the Commissioner has not considered DHSC's response that some of the requested information is already accessible and that some information is not held.

¹ [Impact Assessment template \(parliament.uk\)](https://www.parliament.uk)

² [Creating a smokefree generation and tackling youth vaping consultation: government response - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

11. The Commissioner considers that the scope of his investigation at this point is therefore to determine if DHSC is entitled to rely on section 27(2) of FOIA to withhold part of the requested information.

Reasons for decision

Section 27 – international relations

12. Section 27(1) and (2) state:

- 1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice -

- a) relations between the United Kingdom and any other State,

- b) relations between the United Kingdom and any international organisation or international court,

- c) the interests of the United Kingdom abroad, or

- d) the promotion or protection by the United Kingdom of its interests abroad.

- 2) Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.

13. In its initial response to the complainant DHSC explained that some information concerning question two was already available and provided the relevant links. It advised that it held further information in relation to this question, but it was relying on section 27 to withhold it.

14. In its submission to the Commissioner, DHSC explained that it had received the withheld information from New Zealand Ministry of Health ('NZMoH') and, although there is no formal agreement in place between the UK and New Zealand, DHSC and NZMoH have a close working relationship.

15. DHSC further explained that as part of DHSC's work to create a smokefree generation, NZMoH shared modelling and background information to support the development of its policy and the UK Tobacco and Vapes Bill. DHSC added NZMoH officials specifically asked DHSC not to share the information it provided too widely. DHSC explained that it does not wish to prejudice the relationship between the UK and New Zealand.

16. The Commissioner's guidance³ on section 27 acknowledges that there is some overlap between the different provisions set out in the exemption. It also recognises that the interests of the UK abroad, and the UK's international relations, cover a broad range of issues.
17. Section 27(2) is a class-based exemption and is not subject to the prejudice test. However, there is a clear overlap with the exemption provided by sections 27(1)(a) and (b). Disclosure of information that is confidential in the context of section 27(2) will in many cases result in prejudice to the UK's relations with the entity that provided that information.
18. The Commissioner acknowledges the importance of sharing information and maintaining international relationships when formulating policy on global issues like smoking and vaping. He has also reviewed the withheld information and correspondence between DHSC and NZMoH and is satisfied that the withheld information has been shared on a confidential basis.
19. He therefore finds that the exemption is engaged and will go on to consider the public interest test.

Public interest test

Public interest factors in favour of disclosing the requested information

20. DHSC has stated that it accepts that there is an inherent public interest in public authorities being transparent and accountable. DHSC also recognised the broad public interest in furthering public understanding of the issues which public authorities deal with.
21. DHSC has stated that there is particular public interest in the disclosure of factual information which has been used to provide an informed background to decision-taking. It acknowledged that smoking and in particular, the role of the tobacco industry, is a high-profile issue which generates significant discussion, and attracts public, parliamentary and media attention.
22. The complainant has argued that some information about the modelling of New Zealand's smokefree generation has already been published so they questioned why other information relating to the same modelling would be viewed by the State providing it as confidential. In their

³ [Section 27 - International relations | ICO](#)

request for internal review, the complainant argued that:

"The proposed legislation making it an offence to sell tobacco products to anyone born on or after 1 January 2009 which is set out in the Consultation (the "Generational Sales Ban") is a highly restrictive policy engaging fundamental rights for both manufacturers and consumers under the European Convention of Human Rights. The DHSC has chosen to rely on New Zealand's smoke free generation policy as the basis for its own modelling justifying the Generational Sales Ban. It is therefore critical that the public and affected parties have sufficient information to properly interrogate the modelling from New Zealand that the DHSC relies on when scrutinising the DHSC's proposal. Without disclosure of the information which we have requested, this process of full scrutiny is not possible. Disclosure of the information is even more important now that it has been reported that the Government of New Zealand has announced it no longer intends to proceed with its own generational sales ban. In the circumstances, the public interest weighs in favour of disclosing the information being sought."

Public interest factors in favour of maintaining the exemption

23. DHSC has stated that the public health effects of smoking and tobacco use are an international issue on which the UK government works with other like-minded governments to improve health outcomes. It explained that the UK is a member of the World Health Organization Framework Convention on Tobacco Control (FCTC). FCTC calls for the widest possible international cooperation, particularly with the transfer of knowledge, to help tackle the global tobacco epidemic. DHSC considers it absolutely necessary that DHSC cooperates with governments overseas and maintains an environment where information is able to be shared between parties.
24. DHSC has explained that the withheld information was used to inform one of several scenarios on the potential impact of the smokefree generation policy as part of DHSC's initial analysis and does not represent a complete picture of New Zealand's analysis of the policy. DHSC therefore considers that releasing the information into the public domain could have resulted in misconceptions about what the UK is expecting to be the outcome of the smokefree generation policies. It added that New Zealand has strong public health tobacco control measures and is the only other country to have explored a smokefree generation policy.
25. DHSC stated that it has been extremely useful for DHSC to draw on NZMoH's experiences. DHSC added that it is important to retain a positive relationship with New Zealand as similarly it is actively exploring mirroring some of the UK's policies to tackle youth vaping.

26. DHSC explained that the UK and New Zealand have a longstanding reciprocal healthcare agreement, established in the 1980s, which allows citizens and residents of both countries to receive necessary healthcare when visiting the other country. While this agreement ensures essential medical services are accessible, it also involves the exchange of sensitive and confidential information about healthcare providers and patients. DHSC considers that releasing information publicly could undermine the trust and integrity essential to maintaining good relations with New Zealand. It stated that ensuring the confidentiality of this data is crucial for the continued cooperation between the two countries.
27. DHSC added that both the UK and New Zealand are members of the Five Eyes intelligence alliance, which emphasizes the importance of maintaining strong and confidential diplomatic ties. The health sectors of both nations benefit from this alliance through shared public health strategies and information. DHSC stated that the confidentiality of these high-level discussions is paramount to fostering a trusted and collaborative relationship.
28. DHSC explained that publicly disclosing sensitive information from its meetings could strain diplomatic relations, not only between the UK and New Zealand but potentially with other Five Eyes member countries. DHSC therefore considers that maintaining the confidentiality of such engagements ensures that both countries can continue to collaborate effectively on public health matters while preserving broader diplomatic ties.

Balance of the public interest

29. The Commissioner acknowledges that DHSC's consultation and subsequent government response on a smokefree generation is high-profile and will potentially impact a lot of people. Therefore, there is a strong public interest in accessing the modelling information that has contributed to DHSC's decision-making process.
30. However, the Commissioner also acknowledges the importance of DHSC being able to share information and experiences concerning worldwide issues like tobacco use and vaping, and maintaining those international working relationships to tackle future issues.
31. The Commissioner also notes that DHSC has withheld part of the requested information because NZMoH explicitly asked for it not to be shared widely.
32. The Commissioner therefore considers that the public interest in maintaining good international relations between the UK and New

Zealand is greater than the public interest in transparency regarding the requested information.

33. The Commissioner therefore finds that the balance of the public interest favours maintaining the exemption and that DHSC is entitled to rely on section 27(2) to withhold the requested information.

Right of appeal

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

Website: 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.

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