



Department of Health & Social Care

Freedom of Information Team
Department of Health and Social Care
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www.gov.uk/dhsc

Mr Wynne Jones
cj-editor@biggeesblog.cymru

1 April 2021

Annex A: DHSC's response to initial request dated 2 March 2021
Annex B: Request for internal review dated 2 March 2021

Dear Mr Jones,

FREEDOM OF INFORMATION ACT (FOIA): INTERNAL REVIEW CASE REFERENCE IR 1271828

You originally wrote to the Department of Health and Social Care (DHSC) on 4 January requesting "a copy of the DPIA in respect of the genetic data [DNA] currently being harvested under the COVID-19 TTP programme". We responded to you on 2 March (our ref: FOI-1271828), withholding information under section 35(1)(a) of the FOIA (formulation or development of government policy). A copy of our response, including the full text of your request, is at Annex A.

You subsequently emailed DHSC on 2 March requesting an internal review into the handling of your original request). A copy of your email is at Annex B.

The purpose of an internal review is to assess how your FOI request was handled in the first instance and to determine whether the decision given to you was correct. This is an independent review as I was not involved in the original decision.

I have undertaken discussions with the team that has responsibility for your request, and we have taken the opportunity to consider it again. I apologise for the delay in doing so, which I acknowledge has fallen short of expectations.

Conclusion

After careful consideration of the subject matter and the public interest, I have concluded that the response you received was compliant with the requirements of the FOIA and I uphold DHSC's decision to withhold the requested information under section 35(1)(a).

Section 35(1)(a) covers information relating to the formulation and development of government policy and is used to protect the integrity of the policymaking process, and to prevent disclosures which would undermine this process and result in less robust, well considered or effective policies.

The DPIA is continually being reviewed and updated and is subject to continual change, therefore section 35 applies in this case.

The review is now complete.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner (ICO) for a decision. The ICO can be contacted at:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

<https://ico.org.uk/concerns>

Yours sincerely,

Charlene Carter
Casework Manager
Freedom of Information Team
FreedomofInformation@dhsc.gov.uk

Annex A: DHSC's response to initial request

Mr Wynne Jones
cj-editor@biggeesblog.cymru

2 March 2021

Dear Mr Jones,

Freedom of Information Request Reference FOI-1271828

Thank you for your request dated 4 January in which you asked the Department of Health and Social Care (DHSC):

“Your attention is drawn to my request for information previously forwarded to Public Health England [P H E] and the outcome of Internal Review as set out in the email correspondence below and attached letters from P H E. You will note that I have now been advised that the information requested is held by D H S C. Accordingly, I would be grateful if you could arrange to provide the following information at your earliest convenience.

A copy of the D P I A undertaken by D H S C in respect of the genetic data [DNA] currently being harvested under the Covid-19 T T P programme.

If you require further clarification you are welcome to contact me at any time. Thank you.”

Your request has been handled under the Freedom of Information Act (FOIA).

The DHSC has the information you have requested, specifically a risk assessment and an equality impact assessment. However, we consider that these are exempt under Section 35(1)(a) of the FOIA, which provides protection for information that relates to the formulation or development of Government policy. Section 35 is a qualified exemption and requires consideration of the public interest test.

The DHSC recognises the general public interest in making this information available for the sake of greater transparency and openness. However, the DHSC takes the view that the section 35 exemption is intended to ensure that the possibility of public exposure does not deter from full, candid and proper deliberation of policy formulation and development, including the exploration of all options. Civil servants and subject experts need to be able to engage in the free and frank discussion of all the policy options internally, to expose their merits and demerits and their possible implications as appropriate. Their candour in doing so will be affected by their assessment of whether the content of such discussion will be disclosed. Premature disclosure of information protected under section 35 could prejudice good working relationships.

Outside of the Act and in the interests of transparency, may we suggest looking at Test and Trace Privacy Notice which informs you how Test & Trace processes and store your data. You can find this on the link below.

<https://www.gov.uk/government/publications/nhs-test-and-trace-privacy-information>

If you are not satisfied with the handling of your request, you have the right to appeal by asking for an internal review. This should be submitted within two months of the date of receipt of the

response to your original letter and should be addressed to the address at the top of this letter, or the email address at the end of this letter.

Please remember to quote the reference number above in any future communications. If you are not content with the outcome of your internal review, you may complain directly to the Information Commissioner's Office (ICO). Generally, the ICO cannot make a decision unless you have already appealed our original response and received our internal review decision. You should raise your concerns with the ICO within three months of your last meaningful contact with us.

The ICO can be contacted at:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow SK9 5AF
<https://ico.org.uk/concerns>

Annex B: Request for internal review

Wynne Jones cj-editor@biggeesblog.cymru

02 March 2021

Dear Ed Franklyn

Subject: C J 53: D P I A for genetic data harvested under Covid 19 T T P programme. Your ref: FOI-1271828

Thank you for responding to my request for information in your letter dated 2 March 2021, as attached. I am disappointed with your decision to claim an exemption under S.35 [1] [a] of the Act. The "Data Protection Impact Assessment" [D P I A] is not considered to fall within the category of government policy that is currently being formulated and under development. The assessment has previously been concluded and is not a "draft" policy. I have reason to believe that "genetic personal data" may now be harvested under the Covid 19 T T P programme and shared with international organisations. It remains unclear how "data subjects" can now access personal genetic data held in UK and International databases, and whether the data is being processed in accordance with the data management principles set out in the Data Protection Act 2018 and G D P R. Accordingly, I would be grateful if you could arrange to undertake an internal review of your decision to withhold the information requested, and advise me of the outcome of your review at your earliest convenience. The I C O has previously advised that 20 working days is considered a reasonable timeframe for internal review. I would therefore hope to receive the outcome of your review within that timeframe. Thank you.

Yours sincerely

Wynne Jones