Decision Notice

Decision 08/2025: Ministry of Health Headquarters

Records related to COVID-19 vaccine adverse events

Reference no: **2021025**
Decision date: **21 February 2025**

Summary

The Applicant made a request under the Public Access to Information (**PATI**) Act 2010 to the Ministry of Health Headquarters (**Ministry Headquarters**) for various records related to COVID-19 vaccine adverse events, including the memorandum of understanding (**MOU**) between the United Kingdom and the Government of Bermuda for deployment of the vaccines. The Ministry Headquarters disclosed a number of responsive records but withheld the MOU under the exemption in section 25(1)(c) (adverse effect on commercial interests) and, in the alternative, section 29 (deliberation of public authorities). The Ministry Headquarters also relied on administrative denials in sections 16(1)(a) (record did not exist) and 16(1)(f) (records available in public domain) as well as the personal information exemption in section 23(1) to deny the other parts of the PATI request.

During the Information Commissioner's review, third parties relied on the exemptions in section 25(1)(c) and (b) (information with commercial value) to object to disclosure of their information in the records.

The Information Commissioner has found the Ministry Headquarters was not justified in relying on the exemptions in sections 25(1)(c) and 29(1) to withhold the records but has found that parts of the records were exempt under section 23(1). The Information Commissioner has further found that, save for a certain part of the PATI request, the Ministry Headquarters was not justified in relying on the administrative denials in section 16(1)(a) and (f). Finally, the Information Commissioner has found that one third party did not justify application of the exemptions in section 25(1)(b) and (c) to withhold its information. The Information Commissioner has ordered the Ministry Headquarters to grant access to records 1 and 2 with the exempt personal information removed, and to conduct a reasonable search for records responsive to items 1, 2a-2e, 3a, 3c and 4 of the PATI request and issue a new initial decision, on or before **Friday, 4 April 2025.**

Relevant statutory provisions

Public Access to Information Act 2010: section 16(1)(a) (record does not exist or cannot be found), section 16(1)(f) (information already in public domain), section 21 (public interest test), section 23(1) (personal information), section 24 (definition of personal information), section 25(1)(b) (commercial value), section 25(1)(c) (commercial interests), section 29 (deliberations of public authorities).

Public Access to Information Regulations 2014: regulation 5 (reasonable search).

The Appendix provides the text of these statutory provisions and forms part of this Decision.

Background

1. This Decision relates to the Government of Bermuda's vaccination programme implemented in 2020 to combat the COVID-19 pandemic. On 13 December 2020, the Minister of Health announced that there were two sources for procuring vaccines against COVID-19.[1] The first source was the supply of the Pfizer vaccine "through the Foreign Commonwealth Office…facilitated by Government House and through direct talks between the Chief Medical Officer and Public Health England".[2] The second source was through Gavi, the Vaccine Alliance Geneva, which administered the COVID-19 Vaccine Global Access Facility, and was to provide a supply of the AstraZeneca and Moderna vaccines. The first shipment of the Pfizer vaccine arrived in Bermuda on 8 January 2021.[3]

2. In the same Ministerial Statement, it was announced that a COVID-19 Vaccination Steering Committee had been convened, with representatives from the Expanded Programme for Immunisation (**EPI**), and that the Steering Committee was collaborating closely with the Bermuda Advisory Committee on Immunisation Practices (**BACIP**).

3. The Applicant in this Information Commissioner's review received two doses of the Pfizer vaccine in 2021. Within weeks of receiving the vaccine, the Applicant was diagnosed with severe cardiomyopathy. The Applicant claimed that the cardiomyopathy had been caused by the Pfizer vaccine. The Applicant received advice from a clinician in the government that they could submit a claim to the United Kingdom (**UK**) Vaccine Damage Payment Scheme (**VDPS**) for damages caused by the vaccine. The Ministry Headquarters confirmed during this review that Bermuda does not have a vaccine damage payment scheme equivalent to the UK's VDPS.[4]

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[1] See the Ministerial Statement to the House of Assembly by the Honourable Kim N. Wilson, JP, MP, Minister of Health, COVID-19 Vaccine for Bermuda, 13 December 2020.

[2] In December 2020, the United Kingdom Government authorised the use of the Pfizer vaccine under regulation 174 of the Human Medicine Regulations 2012 (**2012 Regulations**), which provided Pfizer with an indemnity against civil liability for the vaccine under regulation 345 of the 2012 Regulations.

[3] See the Ministerial Statement, COVID-19 Vaccine Arrives in Bermuda, 8 January 2021.

[4] The Ministry Headquarters confirmed that a member of the public wishing to claim damages from the Government of Bermuda for an adverse event caused by a vaccine would need to pursue a civil action against the government. The Ministry Headquarters also confirmed that, in response to COVID-19, the Government of Bermuda expanded its indemnity coverage to include mass vaccination for damages caused by an incorrect administration of a vaccine, and not injuries caused by the vaccine product.

4. In 2022, the Applicant's claim was rejected by the UK VDPS on the basis that vaccines administered outside of the UK and the Isle of Man were not covered under the scheme. The Applicant forwarded the rejection letter to the Chief Medical Officer (**CMO**) in the Ministry Headquarters who had stated that Bermuda was covered under the scheme because Bermuda was using UK-supplied vaccines. The CMO indicated, but did not confirm, that the coverage was specified in an memorandum of understanding between the Secretary of State for Business, Energy and Industrial Strategy (**BEIS**), the UK Health Security Agency, the Secretary of State for Foreign, Commonwealth and Development, and the Government of Bermuda, for the deployment of vaccines under the contracts between BEIS and the vaccine suppliers (**COVID-19 Vaccine MOU**).

5. The Applicant was later advised that, for their claim to be progressed, the Applicant's physician had to make an Adverse Events Following Immunisation (**AEFI**) report.[5] The COVID-19 AEFI reporting was introduced in Bermuda in accordance with the COVID-19 Vaccines: Safety Surveillance Manual published by the World Health Organisation (**WHO**).[6]

6. As per Bermuda's COVID-19 Primary Care Guideline (November 2021), any report of an AEFI was to be investigated and reviewed by an expert committee. In a COVID-19 daily release, the Minister of Health stated that BACIP was the body responsible for reviewing reported adverse events. During this review, the Ministry Headquarters clarified that a COVID-19 AEFI Sub-Committee (**the Sub-Committee)** was established under the AEFI Committee, which was a part of the Office of the CMO. The Sub-Committee met regularly

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For injuries caused by the vaccine itself, a member of the public would need to bring a civil case against the manufacturer of the vaccine. As noted in footnote 2 above, although Pfizer was indemnified by the UK Government, an individual could still pursue a legal claim against the manufacturer. The indemnity establishes that in certain circumstances, one party to the agreement will pay the other party's losses arising from a claim. For example, there is currently a case being brought against AstraZeneca for adverse events claimed to have been caused by AstraZeneca's COVID-19 vaccine.

[5] An 'AEFI' is understood as any untoward medical event that follows immunization and that does not necessarily have a causal relationship with the use of the vaccine. The adverse event may be any unfavourable or unintended sign, abnormal laboratory finding, symptom or disease. The WHO defines a serious AEFI as an adverse event that results in death, hospitalization, or prolongation of an existing hospitalization, persistent or significant disability or incapacity, congenital anomaly/birth defect, or is life-threatening or is a medically important event or reaction.

[6] See the Government of Bermuda's Reporting Form for AEFI, which is based on the WHO AEFI form. Member countries of the WHO Programme for International Drug Monitoring (PIDM) may provide the AEFI forms to the WHO, which are added to VigiBase, the WHO's global database of adverse event reports for medicines and vaccines. VigiBase is accessible to member countries of WHO PIDM and individuals with a health profession degree. Public access to limited information in VigiBase is available at VigiAccess.

to monitor adverse effects caused by COVID-19 vaccines. The Sub-Committee also considered individual AEFI reports to classify the cause of the AEFI.[7]

7. On 29 June 2022, the Applicant made a public access to information (**PATI**) request (no. 683) to the Ministry Headquarters, asking for the COVID-19 Vaccine MOU and other records. The PATI request specifically sought:

   a. All versions of the COVID-19 Vaccine MOU, including the last known revision in February 2022 (**item 1a**) and any additional supporting information discussing the MOU (**item 1b**).

   b. All information on the liability for damages caused by a COVID-19 vaccine provided by the UK to Bermuda including information on any money for damages, and including information on the damage claim process (**item 2a**), claims made (**item 2b**), claims paid (**item 2c**), claims denied and reasons for denial (**item 2d**), and all references to the UK's VDPS and any Bermuda equivalent (**item 2e**).

   c. All information on the creation of the online AEFI form, and on collecting, reporting, recording and analysing the data (**item 3a**), including the names and biographies of people on the Sub-Committee[8] who reviewed the AEFI data (**item 3b**), and any information discussing vaccine adverse events, effects or side effects, and the reporting of the same (**item 3c**).

   d. Anonymised data from the COVID-19 vaccine adverse effects database showing all information in the database (**item 4**).

8. On the same day, the Applicant made a separate PATI request (no. 684) to the Ministry Headquarters for records containing the Applicant's personal information and all COVID-19 pandemic models with supporting documents and documents used to justify measures taken during the COVID-19 pandemic. The Ministry Headquarters' response to this other request is considered in Decision 09/2025.

9. The Applicant did not receive an initial decision on their PATI request within the statutory timeline. On 14 August 2022, after the expiry of the statutory timeline, the Ministry

[7] The classification was carried out in accordance with the WHO's Causality assessment of an adverse event following immunization (AEFI): user manual for the revised WHO classification (2nd ed., 2019 update).

[8] The Applicant's PATI request referred to the "panel of experts". However, based on clarification from the Ministry Headquarters in this review, this would have meant the COVID-19 AEFI Sub-Committee.

Headquarters attempted to extend the deadline to issue an initial decision to 21 September 2022.

10. On 30 August 2022, the Applicant asked for an internal review. The Ministry Headquarters acknowledged the internal review request on the next day and enquired with the Applicant about the scope of the request.

11. On 29 September 2022, the Ministry Headquarters issued an initial decision out of time. In its initial decision, the Ministry Headquarters:

    a. refused access to items 1a and 1b under sections 25(1)(c) (commercial interests) and 29 (deliberations of public authorities);

    b. refused access to item 3c under section 23(1) (personal information);

    c. administratively denied item 4 under section 16(1)(f) (available in the public domain);

    d. granted access to the names of the members of the Sub-Committee, which was believed to satisfy part of item 3b;

    e. informed the Applicant that the biographies of the Sub-Committee members (responsive to part of item 3b) and the records responsive to items 2c and 2d did not exist, effectively denying these parts under section 16(1)(a); and

    f. stated that the records responsive to items 2a, 2b, 2e and 3a were disclosed by the Ministry Headquarters in response to the Applicant's other PATI request.

12. On 11 October 2022, the Ministry Headquarters issued an internal review decision, which upheld the initial decision in full.

13. On 20 October 2022, the Applicant made a timely application for an independent review by the Information Commissioner, challenging the Ministry Headquarters' reliance on the administrative denials and exemptions.

Investigation

14. The Information Commissioner's Office (**ICO**) accepted the application as valid on 14 November 2022, on the basis that the Applicant had made a PATI request to a public authority and had asked that public authority for an internal review.

15. On 18 November 2022, the Applicant confirmed the issues they wanted the Information Commissioner to review.

16. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate for this application, because the public authority's formal submission was required to justify its reliance on the above-noted provisions.

17. The ICO notified the Ministry Headquarters of the valid application on 13 December 2022 and, based on information known at that time, asked for the records responsive to item 1 only. In response, on 18 January 2023, the Ministry Headquarters submitted an unsigned copy of the COVID-19 Vaccine MOU responsive to item 1a of the PATI request (record 1). On 17 July 2024, the Ministry Headquarters provided an earlier version of the COVID-19 Vaccine MOU (record 2) which was also responsive to item 1a. The Ministry Headquarters did not provide any records responsive to item 1b (additional supporting information discussing the MOU) or item 3c (information discussing COVID-19 AEFIs and the reporting of the same).

18. As required by section 47(4) of the PATI Act, the parties were invited to make representations to the Information Commissioner. On 8 May 2024, the ICO invited the Ministry Headquarters' submission on the exemptions in sections 25(1)(c) and 29(1) and the administrative denials in section 16(1)(a) and (f), including answers to specific questions. In July 2024, the ICO invited the Ministry Headquarters to answer additional questions about its search for records responsive to items 1b and 3b and for a copy of records responsive to item 3c (which had been withheld under section 23).[9]

19. The Ministry Headquarters confirmed on 21 May 2024 that it would not make further submissions and relied on the information it had provided earlier in the PATI process, including its initial decision. On 28 May 2024, the Ministry Headquarters provided information on the reason for its decision to withhold the COVID-19 Vaccine MOU; and on 17 and 19 July 2024, it provided responses to specific questions, in particular on items 3b and 3c.

20. On 3 May 2024, the ICO invited the Applicant's submission. The Applicant responded on 16 May 2024 and had also made various additional submissions and provided additional information for the Information Commissioner to consider throughout the review.

[9] The ICO did not invite submissions on section 23(1) because the Ministry Headquarters did not provide any records responsive to item 3c.

21. The ICO invited the Foreign Commonwealth Development Office (**FCDO**), the UK Health Security Agency (**UK HSA**), the UK Department for Science, Innovation and Technology,[10] Pfizer, Moderna and AstraZeneca to make submissions as Third Parties.

22. UK HSA and AstraZeneca made submissions on 6 and 7 June 2024, respectively. UK HSA proposed redactions of some parts of records 1 and 2 which it believed to contain personal information. AstraZeneca objected to the disclosure of its information within the COVID-19 Vaccine MOU on the basis that it contained commercial information.[11] Pfizer requested a copy of the COVID-19 Vaccine MOU from the Ministry Headquarters, but did not make submissions for the Information Commissioner to consider. The other Third Parties did not respond to the ICO's invitation to make submissions.

Information Commissioner's analysis and findings

23. The Information Commissioner has considered all relevant evidence, being satisfied that no matter of relevance has been overlooked.

Record did not exist or could not be found – section 16(1)(a)

24. Public authorities are entitled under section 16(1)(a) to administratively deny a request if a requested record does not exist or cannot be found after all reasonable steps have been taken to find it.

25. Regulation 5 of the PATI Regulations 2014 requires public authorities, through their Information Officers, to make reasonable efforts to locate records responsive to a PATI request. Regulation 5(2) requires a public authority to document its efforts if it has been unable to locate any record.

26. When a public authority denies a PATI request under section 16(1)(a) because a record does not exist or cannot be found, the Information Commissioner's review does not determine to a point of certainty if a record exists or can no longer be located. Rather, the Information Commissioner is required to assess whether the public authority took all reasonable steps to find a record. Further, section 16(1)(a) does not concern whether a public authority should hold a record as a matter of good public administration.

[10] The ICO's original correspondence was sent to BEIS, but BEIS was disbanded in 2023 to form the Department for Business and Trade, the Department for Energy Security and Net Zero, and the Department for Science, Innovation and Technology. The ICO was later informed that responsibility for COVID-19 vaccine supply had been moved from BEIS to a team in the UK HSA, which had been invited to make submissions.

[11] AstraZeneca did not respond to the ICO's follow up question sent on 21 June 2024 to clarify its position.

27. In determining whether a public authority's search was reasonable, the Information Commissioner considers the following:

    [1] the quality of the public authority's analysis of the PATI request;

    [2] the scope of the search that it decided to make on the basis of that analysis; and

    [3] the rigour and efficiency with which the search was then conducted.

28. The specific circumstances in each case will inform the Information Commissioner's assessment.

29. Finally, the public authority bears the burden to establish, on the balance of probabilities, that responsive records do not exist or cannot be found after all reasonable steps have been taken to find them.

Public authority's submissions

Items 2c, 2d and part of item 3b

30. The Ministry Headquarters' position was that records relating to claims paid (item 2c), claims denied and the reasons for denial (item 2d) as well as the biographies of the members of the Sub-Committee responsive to item 3b did not exist.

31. In its initial decision, the Ministry Headquarters explained that records responsive to items 2c and 2d did not exist because, at the time of the PATI request, only one claim had been made for damages and that claim was by the Applicant.

32. In its submission of 17 July 2024, the Ministry Headquarters explained that it contacted the Chair of the AEFI Committee, which the Sub-Committee was part of, to locate the biographies of the members of the Sub-Committee. The Chair of the AEFI Committee confirmed that it only had a terms of reference which contained the names of the core Sub-Committee members as well as their job title and/or affiliation. The Ministry Headquarters also searched the relevant shared document drives using the search terms 'AEFI', 'AEFI Committee', 'Bermuda Advisory Committee on Immunization Practices', 'BACIP' and the names of the Sub-Committee members. None of these searches yielded any results.

Items 2a, 2b, 2e and 3a

33. The Ministry Headquarters' initial decision informed the Applicant that records of information covering the damage claim process (item 2a), claims made (item 2b), references to the UK's VDPS and Bermuda equivalent (item 2e), and records on the

creation of the online entry form and on collecting, reporting, recording and analysing the data (item 3a) were all disclosed in its response to the Applicant's other PATI request (no. 684). In other words, the Ministry Headquarters claimed that no further records existed.

34. During a meeting with the ICO on 3 July 2024, the Ministry Headquarters confirmed that Bermuda does not have a vaccine damage scheme equivalent to the UK VDPS. It further confirmed that any members of the public wishing to claim damages from the Government of Bermuda for adverse events caused by vaccines would need to pursue regular civil action (i.e. by filing a lawsuit).

35. The Ministry Headquarters' initial decision also explained that its response to item 3a was based on the WHO's guidance on managing and investigating AEFIs. The Ministry Headquarters' initial decision shared a URL link to the relevant guidance. The Ministry Headquarters explained that Bermuda's online AEFI form was based on a pdf document titled 'Covid-19 reporting form of adverse events following immunisation (AEFI)', which was disclosed as part of the Ministry Headquarters' response to the Applicant's other PATI request (no. 684).

Items 1b and 3c

36. The Ministry Headquarters did not make submissions on the reasonableness of its search to locate records responsive to items 1b and 3c.

Applicant's submissions

General submissions

37. The Applicant submitted that the Ministry Headquarters did not look outside its public authority to look for the records responsive to items 2a, 2b, 2e and 3a as well as part of item 3b of the PATI request. The Applicant believed that, because government liability issues were raised, the AEFI Committee, the Cabinet Office and the Attorney-General must have been informed of the Applicant's claim and the Applicant's name or information must have been recorded in legally required meeting minutes and emails. The Applicant noted that most of the records disclosed were those that the Applicant had sent to the Ministry Headquarters.

38. The Applicant submitted that the Ministry Headquarters had access to emails of individuals within other public authorities' @gov.bm accounts. The Applicant argued that the circumstances in this case were different from those considered by the Information Commissioner in Decision 11/2018, Bermuda Police Service. In Decision 11/2018, the

Information Commissioner considered emails related to the Bermuda Police Association, which was not a public authority, held by the Bermuda Police Service (**BPS**) on its @bps.bm accounts. The Applicant argued that, in their case, emails that would have been responsive to their PATI request were stored on the government email system (i.e. @gov.bm).

39. The Applicant emphasised that records held by public authorities are owned by the public. Public authorities, particularly their information officers, are simply the gatekeepers for PATI requests. As the gatekeepers, public authorities and the information officers see the entire database of emails and other records in "plain view". This means public authorities (or their information officers) have a duty to either retrieve the emails or within five days contact the appropriate public authority (or information officer) to obtain the emails. Any emails seen outside of the public authority (in this case, the Ministry Headquarters) fall under "inadvertent discovery".

40. The Applicant explained that the "in plain view" doctrine refers to a location or field of perception in which something is plainly apparent which, in this case, would have been displayed on a computer screen. The Applicant submitted that this is a doctrine that permits the search, seizure and use of evidence obtained without a search warrant when such evidence was plainly perceptible in the course of lawful procedure and the police had probable cause to believe was incriminating. The Applicant explained that "inadvertent discovery" refers to an unexpected finding of incriminating evidence in plain view by the police. The Applicant submitted that evidence found by inadvertent discovery may be seized under the plain view exception to the warrant requirement for searches and seizures. The Applicant referred to various courts' decisions from the UK and the USA on the "plain view" and "inadvertent discovery" doctrines. The Applicant proposed that, in this case, any reference to the police in those cases should be read as the public authority's information officer.

41. The Applicant referred to various decisions on the UK Freedom of Information Act 2000, highlighting the importance of public access to information related to public health and safety, disclosure of anonymised data, principles of transparency and accountability particularly in policy-making and the public decision-making process.

Items 2a-2e

42. The Applicant explained that items 2a-2e of the PATI request asked for records on vaccine damage claims made under the UK's VDPS and the Bermuda equivalent.

43. On item 2a, the Applicant submitted that, while the UK's VDPS process was known, the Bermuda scheme seemed to be secretive and was not publicly known.

44. The Applicant submitted that no records responsive to items 2a, 2b and 2e were disclosed by the Ministry Headquarters in response to their other PATI request (no. 684).

45. The Applicant highlighted that the Ministry Headquarters did not disclose any internal documents discussing any vaccine damage claim fund. The Applicant found it hard to believe that no such records existed. The Applicant highlighted that the disclosures made in response to PATI request (no. 684) did not include any records of discussions by the AEFI Committee, the Sub-Committee, the Ministry Headquarters or the Cabinet Office about the Applicant and/or their claim. The Applicant submitted that there was no attempt made by the Ministry Headquarters to obtain the relevant records from the Sub-Committee or the AEFI Committee members.

46. The Applicant explained that items 2b, 2c and 2d were meant to capture records containing information on whether other persons in Bermuda applied to the UK's VDPS or an equivalent scheme in Bermuda, the outcome of their claims, the details of their claims, and other relevant emails or documents. The Applicant queried whether the Government was required to honour any COVID-19 vaccine damage payments if a claim to the UK's VDPS was rejected, and vice versa.

47. The Applicant submitted that certain individuals within the Ministry Headquarters, including the CMO, were aware of the UK's refusal of the Applicant's VDPS claim. Given this, the Applicant questioned the Ministry Headquarters' claim that no records responsive to item 2d existed at the time of the PATI request. No emails or documents were produced that indicated the Ministry Headquarters' officers and the CMO had made any effort to resolve the claim rejection with the UK VDPS. Further, the Applicant noted that the UK VDPS administrative and management contracts were not disclosed.

Item 3a and part of item 3b

48. The Applicant explained in their 18 July 2024 email that the Ministry Headquarters' response to item 3a was not satisfactory. They claimed that the link to the WHO guidance was not a responsive answer. The Applicant also explained that item 3a was meant to capture records that were produced in Bermuda. Item 3a would have included records which contained information about, for example, the creator of the online AEFI form and the parties (individuals, committees, etc.) who collected, recorded, entered and analysed the data. The Applicant noted that no legally required meeting minutes from the Sub-Committee were produced that discussed anything covered by the Applicant's PATI request, and the Applicant found this hard to believe because the Sub-Committee member list stated that minutes of each meeting were recorded by the Secretary or

delegate and that the minutes were circulated to Sub-Committee members at least two days before the next meeting.

49. The Applicant submitted that the Ministry Headquarters made no attempt to obtain the biographies responsive to item 3b of the PATI request from the members of the Sub-Committee. The Ministry Headquarters also did not provide a link to any website containing the information. The Applicant resorted to the Bermuda Hospitals Board's online physician database to locate the profiles of the members of the Sub-Committee, and found that a number of them were not included on the database. The Applicant also found through the database that there were five cardiologists, and two infectious diseases physicians listed in the database, but they were not part of the Sub-Committee. Further, the database had no listing for epidemiologists. According to the Applicant, there seemed to be no fully qualified person sitting on the Sub-Committee.

50. The Applicant asserted that the public still has no idea how any of the "experts" were selected for the Sub-Committee, BACIP, and other committees whose members' names were undisclosed. The names and backgrounds of these "experts" were never publicly disclosed.

Items 1b and 3c

51. The Applicant specifically requested any supporting information discussing the COVID-19 Vaccine MOU, including draft copies of the MOU. The CMO and Ministry Headquarters' employees stated to the Applicant in emails that vaccine injuries were covered in the MOU. However, the CMO had refused to release the MOU to the Applicant as supporting evidence for a claim. That inaction prompted the Applicant's two PATI requests. The Applicant expected the Information Officer would be thorough in following PATI protocols, but asserted that, as their submissions showed, the Information Officer was not. The Applicant noted that the liability issue and government failures during the COVID-19 pandemic were significant, controversial issues.

Discussion

52. The Information Commissioner considers the reasonableness of the Ministry Headquarters' searches for items 1b, 2a, 2b, 2c, 2d, 2e, 3a, 3b and 3c of the Applicant's PATI request.

[1] The quality of the public authority's analysis of the PATI request

53. To recap, the introductory sentence to items 2a-2e of the PATI request was "[a]ll information on the liability for damages caused by the [COVID-19] vaccine provided by

the UK to Bermuda including information on any money for damages." The relevant items then asked specifically for:

a. Item 2a: all records covering the damage claim process;

b. Item 2b: all records on claims made;

c. Item 2c: all records on claims paid;

d. Item 2d: all records on claims denied, along with the reasons for denial;

e. Item 2e: all references to the UK's VDPS and any Bermuda equivalent.

54. The Applicant wrote "Vaccine adverse events" in a new paragraph in the PATI request and specifically asked for:

a. Item 3a: records on the creation of the online entry form and on collecting, reporting and analysing the data;

b. Item 3b: the names and biographies of people on the Sub-Committee reviewing the data;

c. Item 3c: records discussing vaccine adverse events, effects or side effects and reporting of the same.

55. Based on the wording, the Information Commissioner accepts that it was clear for items 2a-2e the Applicant was seeking records that related to claims for damages resulting from COVID-19 vaccines, while in items 3a-3c they were seeking records related to COVID-19 vaccine adverse events. As the Ministry Headquarters explained during the review, these were two different processes: the first being a process in which a member of the public could seek compensation for adverse events caused by a COVID-19 vaccine, while the other being a process in which an adverse event that might have been caused by COVID-19 vaccine is recorded, investigated and possibly reported to the relevant authorities.

56. The Ministry Headquarters did not make any submission on its understanding of the scope of items 1b, 2a-2e, 3a and 3c as well as part of item 3b. For this reason, the Ministry Headquarters' initial decision on these items is considered to deduce the Ministry Headquarters' understanding of them.

Item 2a (damage claim process)

57. The Ministry Headquarters' analysis of item 2a of the request was not adequate. Although the Ministry Headquarters claimed that all the records responsive to item 2a

were disclosed in response to the Applicant's other PATI request (no. 684), it did not identify which of the disclosed records were responsive to this specific item.

58. The Applicant's other PATI request (no. 684) consisted of three separate items, two of which were clearly not related to the COVID-19 vaccine damage claim process. The only item in the other PATI request (no. 684) which might have been relevant to item 2a of the PATI request considered in this review (no. 683) was the one asking for records containing the Applicant's name and email address. In response to that specific part of PATI request no. 684, the Ministry Headquarters disclosed various records, none of which contained information on the vaccine damage claim process in Bermuda. The Ministry Headquarters did disclose an email from the CMO dated 16 June 2022, which informed the Applicant about the process for submitting AEFI reports online and the review of such forms by the Sub-Committee. But this process related to the reporting of AEFIs, and not to any vaccine damage claims scheme.

59. During the review, the Ministry Headquarters confirmed that there was no vaccine damage scheme in Bermuda equivalent to the UK's VDPS. This was a new piece of information which the Ministry Headquarters did not explain to the Applicant either in its initial or internal review decision.

60. The Ministry Headquarters' disclosure in the Applicant's other PATI request (no. 684) included records on the UK's VDPS, including an email from the Clinical Lead COVID-19 Vaccines Bermuda dated 31 August 2021, which informed the Applicant that the UK VDPS covers damages caused by COVID-19 vaccines provided to Bermuda by the UK. The disclosure also included the correspondence between the Applicant and the Ministry Headquarters about the Applicant's UK VDPS claim. But these were the extent of the disclosures made on the UK's VDPS. The Ministry Headquarters' disclosure in PATI request no. 684 did not include, for example, correspondence between the CMO and his contacts at the FCDO about whether the UK VDPS covers claims for COVID-19 vaccines provided by the UK to Bermuda.

61. Given the above, the Ministry Headquarters' initial analysis of item 2a of the PATI request was not adequate. The Ministry Headquarters' reliance on section 16(1)(a) for item 2a is not considered further.

Items 2b (claims made), 2c (claims paid) and 2d (claims denied)

62. Given the reference to both the UK VDPS and the Bermuda equivalent in item 2e and in light of the Applicant's confirmation, items 2b, 2c and 2d should be understood as asking for records on claims made, paid and denied under the UK VDPS and the Bermuda equivalent.

63. The Ministry Headquarters' understanding of the scope of items 2b, 2c and 2d is unclear, not only because it did not make any submissions on the point, but also because of its contradicting responses to these items. The disclosure made in response to the Applicant's other PATI request (no. 684) included records relating to the claims made by the Applicant under the UK VDPS. Based on this, it appeared that the Ministry Headquarters understood that item 2b asked for records on claims made under the UK VDPS and the Bermuda equivalent. But, as the Applicant pointed out, the Ministry Headquarters' initial decision also claimed that no records responsive to item 2d existed, even though the Ministry Headquarters was aware that the Applicant's UK VDPS claim was denied. Given this, the Information Commissioner is not persuaded that the Ministry Headquarters' analysis of items 2b, 2c and 2d was adequate.

Items 2e (records referencing the UK VDPS and Bermuda scheme), 3a (AEFI form records) and part of item 3b (biographies of the Sub-Committee members)

64. The Ministry Headquarters' analysis of items 2e and 3a of the PATI request was also not adequate. Both items were written in a manner that was meant to capture extensive records. Item 2e was written in a way which would have captured, for example, the CMO's correspondence with his contacts at the FCDO about the Applicant's UK VDPS claim or the UK VDPS coverage in general. Similarly, item 3a would have captured records which contained information on how the referred WHO guidelines had been adopted in Bermuda. As the Applicant pointed out, item 3a would have included, for example, records containing information on the creator of the online AEFI form, the parties (individuals, committees, etc.) who collected, recorded, entered and analysed the data.

65. Despite the broad language in items 2e and 3a, the Ministry Headquarters only provided the Applicant with limited records responsive to these items. In response to item 2e, the Ministry Headquarters referred the Applicant to the limited disclosure made in response to their other PATI request (no. 684). In response to item 3a, the Ministry Headquarters only provided the Applicant with a URL link to a WHO guideline on AEFI reporting, a pdf version of the AEFI form used in Bermuda and a number of emails relating to the Applicant which contained some information on how AEFI reports were collected, reported and recorded. The Ministry Headquarters has not explained why it was reasonable for it to read items 2e and 3a narrowly.

66. In contrast, the Ministry Headquarters' analysis of item 3b was adequate. The relevant part of item 3b asked for the biographies of the members of the Sub-Committee. Although the PATI request itself did not cite the official name of such panel and only referred to a "panel of experts" responsible for reviewing COVID-19 vaccine adverse events data, the Ministry Headquarters identified the Sub-Committee as the relevant

panel and disclosed a list containing the names and positions of the Sub-Committee members.

Items 1b (MOU discussion records) and 3c (records discussing COVID-19 adverse events or effects)

67. The Ministry Headquarters has not made any submission on its analysis of items 1b and 3c of the PATI request. But given that the scope of these items appeared to be clear (i.e. asking for all records discussing the MOU and COVID-19 adverse events and effects as well as reporting of the same), there is no reason to believe that the Ministry Headquarters' analysis of these items was not adequate.

[2] The scope of the search that it decided to make based on that analysis

68. This question is considered for items 1b, 3c and 3b only.

69. As discussed in related Decision 09/2025, paragraphs 64-65, the PATI Act requires public authorities to search and process the records it held at the time of the PATI request. They are not required to search and process records that were 'held by' (i.e. in the possession or custody of, or under the control of) other public authorities. The analysis of the scope of the Ministry Headquarters' search here is therefore limited to its records only.

Part of item 3b

70. The Ministry Headquarters reached out to the Chair of the AEFI Committee to locate the biographies of the Sub-Committee members responsive to part of item 3b. The Ministry Headquarters also conducted electronic searches to locate the biographies, using keywords which could reasonably be expected to generate the responsive records. The scope of the Ministry Headquarters' search for part of item 3b was adequate.

71. The Applicant highlighted that the Ministry Headquarters did not make any attempt to obtain the biographies from the members of the Sub-Committee. While the Applicant was correct in their observation, asking the members of the Sub-Committee to provide their biographies to satisfy part of item 3b of the PATI request would have been unreasonable. The PATI Act only requires public authorities to process responsive records which were held at the time of the PATI request. Any biographies that the individual members had, if any, would have been held by these members in their personal capacity and therefore would not amount to the records held by the Sub-Committee or the Ministry Headquarters.

Items 1b and 3c

72. Because the Information Commissioner does not have any information on the steps taken by the Ministry Headquarters to locate the records responsive to items 1b and 3c, she is not satisfied that the scope of the Ministry Headquarters' search to locate the records was adequate. While based on the disclosed records, it is clear that the Ministry Headquarters reached out to the CMO and the Chair of the AEFI Committee before issuing its initial decision on the PATI request, there is no evidence that the Ministry Headquarters asked them to locate the records responsive to items 1b and 3c. The reasonableness of the Ministry Headquarters' search to locate the records responsive to items 1b and 3c is not considered further.

[3] The rigour and efficiency with which the search was then conducted

73. This question is considered for item 3b only.

74. The Ministry Headquarters conducted its search for the biographies responsive to item 3b with adequate rigour and efficiency. To locate the responsive biographies, the Ministry Headquarters reached out to the Chair of the AEFI Committee who, due to her role and position, was familiar with the Committee's record keeping. The Ministry Headquarters attempted to locate the biographies before issuing the initial decision as well as during the Information Commissioner's review.

Conclusion

75. The Information Commissioner is not satisfied that the Ministry Headquarters was justified in relying on section 16(1)(a) to administratively deny items 2a, 2b, 2c, 2d, 2e and 3a because it did not conduct a reasonable search before concluding that responsive records did not exist or that no further responsive records existed. The Information Commissioner is also not satisfied that the Ministry Headquarters had conducted a reasonable search to locate records responsive to items 1b and 3c of the request.

76. The Information Commissioner is satisfied that the Ministry Headquarters was justified in relying on section 16(1)(a) to administratively deny part of item 3b, because it conducted a reasonable search before concluding that the responsive biographies did not exist.

Information in public domain – section 16(1)(f)

77. Section 16(1)(f) allows public authorities to refuse a PATI request under three specific circumstances when the information sought is:

a. in the public domain;

b. reasonably accessible to the public; or

c. reasonably available to the public on request under any other statutory provision, whether free of charge or on payment.

78. Here, under consideration is the assertion that the information in the responsive record was already in the public domain. This includes information that is publicly available on the internet. Section 16(1)(f) is not applicable, however, if it is not evident that all information in the responsive record was publicly available.

79. To administratively deny a PATI request under section 16(1)(f), a public authority must consider the following:

[1] what is the information that falls within the PATI request?

[2] is the information available in the public domain, including on the internet?

80. A public authority also has a duty to assist a requester in connection with a PATI request under section 12(2)(a). Under this duty, when a public authority relies on section 16(1)(f) to administratively deny a request, the public authority should provide the requester with details on how to access the public information.

81. Finally, the public authority bears the burden to establish, on the balance of probabilities, that it was justified to administratively deny the PATI request.

Public authority's submissions

82. The Ministry Headquarters did not make any submissions to justify its reliance on section 16(1)(f) but informed the ICO on 17 July 2024 that there were 68 AEFI reports on COVID-19 vaccines submitted in 2021, and 4 others were submitted in 2022.

Applicant's submissions

83. The Applicant submitted that the Ministry Headquarters did not provide information on where in the public domain the record or information responsive to item 4 of the PATI request could be found. The Applicant acknowledged that the Ministry Headquarters provided a press release dated 10 February 2021, but the release only provided information on COVID-19 hospitalisations and similar data, and not the adverse effects data collected through the online AEFI form. The Applicant noted that the Ministry Headquarters did not even provide a database record count.

Discussion

84. The Ministry Headquarters' reliance on section 16(1)(f) to administratively deny item 4 is considered.

[1] What was the information that fell within the PATI request?

85. Item 4 of the PATI request asked for anonymised data from the COVID-19 vaccine adverse effects database.

86. Based on the Ministry Headquarters' email of 17 July 2024, there were 68 AEFI reports on COVID-19 vaccines submitted in 2021. There were also 4 AEFI reports submitted on the vaccines in 2022.

[2] Was the information available in the public domain, including on the internet?

87. The Ministry Headquarters has not provided information on where in the public domain the Applicant could have accessed the anonymised data on COVID-19 vaccine adverse effects responsive to item 4 of the request. The Information Commissioner was not able to find the responsive information on the internet.

Conclusion

88. The Information Commissioner is not satisfied that the Ministry Headquarters was justified in relying on section 16(1)(f) to administratively deny item 4 of the PATI request.

Adverse effect on commercial interests – section 25(1)(c)

89. A public authority, or a third party asserting its rights, may rely on section 25(1)(c) to deny access to a public record whose disclosure would, or could reasonably be expected to, have an adverse effect on the commercial interests of any person to whom the information relates. This commercial interest exemption is subject to exceptions in section 25(2), which set out circumstances when the exemption cannot apply.

90. Section 7(1) of the Interpretation Act defines 'person' to include "any company or association or body of persons, whether corporate or unincorporated".

91. As explained in Decision 12/2018, Ministry of Finance Headquarters, 'commercial interest' relates to a person's ability to participate in a commercial activity, such as the sale or exchange of goods or services or the collection of a debt.[12]

[12] See Decision 12/2018, Ministry of Finance Headquarters, at paragraph 66.

92. By its ordinary definition, having an 'adverse effect' means leading to an unfavourable or harmful result.[13] A public authority, or a third party, must explain the circumstances anticipated to arise from disclosing the record at issue which could lead to such unfavourable or harmful result on the person's commercial interests. The exemption in section 25(1)(c) cannot be used simply to avoid embarrassment to the public authority or concerned person.[14]

93. The likelihood of the harm must be that a reasonable person, considering all circumstances of the case, may expect the adverse effect to the person's commercial interests to occur. The expectation must be likely, plausible or possible based on real and substantial factual grounds.

94. If section 25(1)(c) is properly engaged, the public interest test must be applied. Where the public interest would, on balance, be better served by disclosure than by non-disclosure, then the records must still be disclosed.

95. In sum, a public authority, or third party, must consider these questions when seeking to justify the exemption for information with commercial value:[15]

    [1] Does any exception in section 25(2) apply?

    [2] Who is the person to whom the information relates?

    [3] What are the commercial interests of this person that are of concern?

    [4] What adverse effect could disclosure cause?

    [5] How likely is this to occur?

    [6] If the exemption is engaged, does the balance of the public interest still require disclosure?

96. A public authority, or third party asserting its right under section 25(1)(c), bears the burden of showing to the Information Commissioner that, on the balance of probabilities, the exemption is justified.

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[13] See Decision 12/2018, Ministry of Finance Headquarters, at paragraph 68, citing Oxford Dictionary of English (3rd ed. 2010).

[14] See Decision 12/2018, Ministry of Finance Headquarters, at paragraphs 68-69.

[15] See Decision 09/2019, Department of Public Lands and Buildings, at paragraphs 170-174.

Public authority's submissions

97. The Ministry Headquarters explained that it consulted with the then-CMO on the potential disclosure of records 1 and 2. The then-CMO advised that a conservative approach had to be taken regarding the records, due to the nature of information which they contained.

98. In its initial decision, the Ministry Headquarters explained that disclosure was not in the public interest because it could significantly interfere with its ability to obtain necessary emergency medical supplies in the future. The Ministry Headquarters submitted that both records 1 and 2 contained sensitive commercial data relating to the product supplied.

Applicant's submissions

99. The Applicant submitted that disclosure of the records would not result in the UK denying Bermuda anything in the future, arguing that the claim itself was absurd on its face.

100. The Applicant stated that the then-CMO informed the Applicant by email that the financial liability for damages from the Pfizer COVID-19 vaccine was provided for in the MOU and covered by the UK VDPS. But, according to the Applicant, the Ministry Headquarters had not made any attempt to provide the Applicant with an official document stating that Bermuda is legally covered by the VDPS. The Applicant applied to the UK VDPS in any event. But the claim was denied because according to the UK VDPS administrators, vaccines administered outside the UK were not covered by the scheme. The Applicant submitted that disclosure of the MOU was required to determine a liability claim and to confirm any additional process to make a claim. The CMO declined to provide the MOU to the Applicant and to the UK VDPS administrators.

101. The Applicant submitted that the records could have been disclosed with the non-relevant portions redacted. The Applicant suggested that, because the former CMO has resigned and a new CMO has been appointed, the Ministry Headquarters may now be willing to disclose the records.

102. The Applicant argued that no privilege existed because the CMO had already provided the Applicant with information relating to the MOU (including the specific document name).

103. The Applicant further submitted that disclosure of the responsive records would be in the public interest and referred to the purpose of the PATI Act set out in section 2. The Applicant submitted that other members of the public in Bermuda needed to be aware of the liability for damages from the COVID-19 vaccine, but this information was never

made public by the Government. To support their argument on the public interest test, the Applicant submitted a number of documents and information on reported adverse events caused by the COVID-19 vaccine.[16] The Applicant highlighted that there have been people who were seriously injured by the vaccine pushed by governments worldwide, and the seriousness of the damages required full disclosure on information on compensation for those damages. Further, the Applicant urged that as time passes, more dangers from the COVID-19 vaccine have emerged and, at the time, the government was once again recommending COVID-19 shots regardless of the dangers.

104. The Applicant detailed their personal experience with the Pfizer COVID-19 vaccine and its significant and irreversible impact on the Applicant's physical health, stating unequivocally that the Applicant was damaged by the shots and seeking compensation. The Applicant explained that expensive prescriptions were required. The Applicant submitted that after an extensive series of test and examinations, a highly respected American cardiologist (with five Medical Board certifications) confirmed that the vaccine shots caused permanent damage to the Applicant's heart and provided the ICO with a copy of the letter. Since undergoing the lifesaving surgery, the Applicant now has a lifetime of ongoing medical expenses, prescriptions, and multiple Implantable Cardioverter-Defibrillator (ICD- pacemaker and defibrillator) replacement operations every time the battery runs down. The Applicant submitted that the public has a right to know who is legally responsible for damages caused by the COVID-19 vaccines and any future vaccines given in Bermuda; to know who, what, where and when government officials and proxies made decisions based on what information. The public also has the right to be informed of discussions by government officials on how to quash any dissent on the vaccines and the vilification of those who spoke out against it.

105. The same officials who mishandled the COVID-19 "crisis" are still in government positions, making decisions without full disclosure and public oversight. The Applicant highlighted that in U.S. Congressional testimony, Dr Anthony Fauci admitted under oath that the six-foot social distancing rule "just appeared". The Applicant argued that in other words, there was no scientific basis for the rule and the Government of Bermuda blindly adopted it. To support the argument on the need for transparency around the COVID-19 vaccines, the Applicant referred to various news articles on a European Union General

[16] The Applicant provided a link to the U.S.-based Vaccine Adverse Event Reporting System (**VAERS**). The Applicant also provided links to over 30 news articles related to the adverse effects caused by the COVID-19 vaccines, government measures taken in response to the COVID-19 pandemic, and court cases related to the COVID-19 vaccines.

Court decision that ruled that the European Commission did not afford sufficient public access to the purchase agreements for COVID-19 vaccines.[17]

106. The Applicant further noted that it was important to disclose all versions of the MOU to fully understand what was stated, when it was stated, who stated it, when the government knew something and so on. The Applicant explained that revisions may show that the UK added or even removed provisions, terms and conditions, or specified amounts of payments for damages. Reviewing the evolution of the MOU would provide the entire picture.

107. Finally, the Applicant noted, among other documents, a U.S. court ruling on the disclosure of COVID-19 decisions and policies;[18] and the final report from the U.S. Select Subcommittee on the Coronavirus Pandemic.[19]

AstraZeneca's submissions

108. AstraZeneca did not refer to any of the provisions in the PATI Act, but submitted that record 1 referenced the Supply Agreement for AZD1222 which was highly likely to contain information relating to AstraZeneca and its business that is commercially sensitive and confidential to AstraZeneca. It explained that the Supply Agreement was a bespoke arrangement between the company and BEIS on the supply of Vaxzervria AZD1222, which included unique legal and commercial terms (including the indemnities).

109. AstraZeneca submitted that the commercial terms (including pricing) and the liability and risk regimes were essential to AstraZeneca's ability to enter into the Supply Agreement and supply the vaccine product. In and of themselves, these provisions represent information of a commercial nature for this arrangement which would be diminished by their disclosure.

110. AstraZeneca further submitted that if the Supply Agreement fell within the remit of the PATI request, the publicly disclosed version should be identical to that which has already been made available in the UK by the UK Government. Certain information about

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[17] See Auken and Others v Commission, Case T-403/21, 17 July 2024 and Courtois and Others v Commission, Case T-761/21, 17 July 2024. The Information Commissioner notes that both of these cases have been appealed to the European Court of Justice.

[18] Public Health and Medical Professionals for Transparency v Food and Drug Administration, US District Court for the Northern District of Texas Fort Worth Division, No. 4:21-cv-01058-P, Memorandum Opinion and Order, 6 December 2024.

[19] Select Subcommittee on the Coronavirus Pandemic, 'After Action Review of the COVID-19 Pandemic: The Lessons Learned and a Path Forward', 4 December 2024.

AstraZeneca such as that on contract value, contract end date, contract term as well as sub-contractor details, were redacted in the published Supply Agreement. On the relevant UK Contracts Finder page it was explained that disclosure of the price of the vaccines may enable competitors to calculate cost per dose, which would in turn commercially prejudice AstraZeneca in its ongoing negotiations with other national governments. It was submitted that disclosure of the contract value and the price would also impact fair competition between vaccine vendors.

111. The relevant UK Contracts Finder page also explained that disclosure of the contract terms may provide valuable information to competitors that may impact negotiations or future competition in the market. Furthermore, disclosure of the contract end date and the sub-contractor details in the published Supply Agreement would be contrary to the public interest. The contract end date is variable based on production and delivery of the requirement and disclosure would set unrealistic expectation for the public and in the market. The information was also withheld due to commercial sensitivity, as there was significant competition to develop and bring to the market a successful vaccine. Given the potential for targeting and disruption of the activities at the facilities (which would be contrary to the public interest) and given these activities were critical to the success and delivery of the contract requirement, the sub-contractor details were withheld.

UK HSA's submission

112. The UK HSA agreed to the disclosure of the records, save for certain personal information in the MOU.

Discussion

113. The Ministry Headquarters reliance on section 25(1)(c) to withhold records 1 and 2 in full is considered, along with AstraZeneca's reliance on the exemption to object to disclosure of its information in Appendix 3 of record 1. Although neither Pfizer nor Moderna responded to the opportunity to make submissions, the Information Commissioner considers the application of the exemption to their information in the Appendices.

[1] Did any exception in section 25(2) apply?

114. None of the exceptions in section 25(2) applied to records 1 and 2, either in full or in part. The information in these records did not relate to the requester. There was no evidence that BEIS, the UK HSA or the FCDO was previously informed that the information belonged to a class of information that would or might be made available to the general public. Instead, the confidentiality provision in both records established that the parties

would liaise if an access to information request for the MOU was made under the Bermuda legislation.

115. While the UK HSA has provided written consent to the disclosure of the most part of records 1 and 2, these records contained information about other parties who have not consented to the disclosure.

[2] Who was the person to whom the information related?

116. The MOU contained information which related to the Government of Bermuda, BEIS, the UK HSA and FCDO as the parties to the MOU as well as the vaccine suppliers (AstraZeneca, Pfizer and Moderna).

[3] What were the commercial interests of this person that were of concern?

117. The Ministry Headquarters did not explain the relevant commercial interests of the Government of Bermuda that could have been affected by the disclosure of the MOU. Specifically, it did not identify an activity where it was engaged in the sale or exchange of goods for its profit. On this basis alone, the Ministry Headquarters' reliance on the exemption was not justified.

118. The vaccine suppliers' commercial interests related to their ability to participate in the sale of their products, specifically the COVID-19 vaccines, for profit. As articulated by AstraZeneca, these vaccine suppliers' ability to enter into agreements with various entities (including government entities such as the UK HSA, BEIS and FCDO) to supply their products, allocate risk and liability, and agree to other supply terms was also a relevant commercial interest.

[4] What adverse effect could disclosure have caused?

[5] How likely was this to occur?

Adverse effect on AstraZeneca's commercial interests

119. The Information Commissioner accepts that prejudice to the vaccine suppliers' negotiations with other governments and unfair competition between these suppliers would amount to adverse effects to their commercial interests. But AstraZeneca and the other suppliers identified as Third Parties in this review have not explained how disclosure of their information in the relevant appendices in the records could have prejudiced their negotiations with other governments or would have impacted fair competition between vaccine suppliers.

120. Appendix 3 to record 1 contained information on the date of the Supply Agreement between AstraZeneca and BEIS, the number of doses of vaccine agreed, the variant of the vaccine, the flow of the vaccine and the passing of title and risk. Because the date of the Supply Agreement and the variant of vaccine were already available in the public domain at the time of the PATI request,[20] disclosure of this information could not reasonably have led to the adverse effect claimed by AstraZeneca.

121. Similarly, information on the flow of the vaccine and the passing of the title and risk in Appendix 3 to record 1 that related to AstraZeneca could not reasonably have the identified adverse effect, because it was available in the public domain at the time of the PATI request. Specifically, the information that related to AstraZeneca was limited to the details on its delivery of the vaccine to BEIS as well as the passing of the title and risk, all of which were captured in clauses 6 and 7 of the Supply Agreement that had been made available to the public.

122. The Information Commissioner accepts that the number of doses referred to in Appendix 3 of the MOU was redacted in the Supply Agreement published on the UK Contracts Finder. But that alone was not a sufficient reason to find that AstraZeneca has justified its objection to disclose the information under section 25(1)(c). Disclosure of the number of doses of the vaccine ordered or purchased could not reasonably have revealed the cost per dose, given the value of the Supply Agreement itself was withheld.[21]

123. It is worth noting that information on the number of doses ordered by the UK Government was later made available to the public.[22] As AstraZeneca has recently decided to withdraw its COVID-19 vaccine,[23] disclosure of the number of doses at this point could not reasonably lead to the identified adverse effects.

Adverse effect on other vaccine suppliers' commercial interests

124. The following information relating to Pfizer in Appendices 1 and 4 to record 1 and Appendix 1 to record 2, as well as Moderna's information in Appendix 5 to record 1 was already available in the public domain at the time of the PATI request. As such, its

[20] Information on the Supply Agreement was published on the UK Contracts Finder on 30 September 2020. The PATI request was made in June 2022.

[21] The UK Contract Finders listed GBP1 as the value of the contract.

[22] 'A review of the Vaccine Taskforce', updated 31 August 2023. See the section on UK vaccine portfolio and footnote 7.

[23] BBC, 'AstraZeneca to withdraw Covid vaccine', 8 May 2024.

disclosure could not reasonably have had an adverse effect on Pfizer or Moderna's commercial interests:

a. dates of BEIS's Supply Agreements with Pfizer and with Moderna;[24]

b. relevant variant of the Pfizer and Moderna vaccines;

c. the existence of a Change Control Note which permitted BEIS to supply doses of the Pfizer vaccine to the Overseas Territories;[25]

d. BEIS's duty to authorise an agent, employee or representative with the requisite expertise and training to enable proper handling of the Pfizer vaccines in a safe and lawful manner;[26]

e. passing of title and risk of the Pfizer vaccine;[27]

f. assurances by the Government of Bermuda as a Donation Recipient relating to Moderna vaccines;[28] and

g. passing of the title of the Moderna vaccine.[29]

125. Although Pfizer and Moderna did not lodge objections to disclosure, the Information Commissioner notes that while the rest of the information in Appendices 1, 4 and 5 has not been made available to the public, she is not persuaded that on the face of the records, their disclosure could have had an adverse effect on Pfizer or Moderna's commercial interests. As noted above, for example, the information on the number of doses of Pfizer vaccine ordered as per the Supply Agreement was later released to the public.[30]

126. Given the above, the exemption is not considered further.

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[24] See the details available on the UK Contract Finders list here, here and here.

[25] See the Deed of Amendment relating to the contract between BEIS and Pfizer. Section (A) on page 2 referred to the Change Control Note and Clause 2.2.3 of the Deed of Amendment set out the parties' agreement that BEIS is permitted to supply doses of vaccines to the Crown Dependencies and the Overseas Territories.

[26] See Clause 5.5 of Schedule 2 to the Supply Agreement between BEIS and Pfizer.

[27] See Clause 6.1 of Schedule 2 to the Supply Agreement between BEIS and Pfizer.

[28] See Exhibit E to the Supply Agreement between BEIS and Moderna.

[29] See Clause 12 of the Supply Agreement between BEIS and Moderna.

[30] 'A review of the Vaccine Taskforce', updated 31 August 2023. See the section on UK vaccine portfolio, which noted the original number of the Pfizer vaccine deployed (40 million).

Conclusion

127. The Information Commissioner is not satisfied that the Ministry Headquarters was justified in relying on section 25(1)(c) to withhold records 1 and 2. Further, AstraZeneca was not justified in relying on the same exemption to object to disclosure of its information in Appendix 3 to record 1. On the face of the records, section 25(1)(c) was also not justified for withholding information related to Pfizer and Moderna in the withheld records.

Information with commercial value – section 25(1)(b)

128. Section 25(1)(b) allows a public authority to refuse access to a record if it consists of information with a commercial value and disclosure would, or could reasonably be expected to, destroy or diminish the value of such information. The commercial value exemption is subject to exceptions in section 25(2), which set out particular circumstances when the exemption cannot apply.

129. The PATI Act does not define 'commercial value'. As the Information Commissioner explained in Decision 09/2019, Department of Public Lands and Buildings, information may have commercial value because it is important to the performance of the owner's commercial activities or because it can be sold for value to an arms-length buyer, i.e. intrinsic commercial value.[31]

130. The PATI Act and Regulations do not define 'commercial' or 'commercial activities'. In Decision 12/2018, Ministry of Finance Headquarters, the Information Commissioner read 'commercial' in its ordinary meaning, namely, "concerned with or engaged in commerce". 'Commerce' is defined as "the activity of buying and selling" or "making or intended to make a profit".[32]

131. Importantly, the exemption in section 25(1)(b) protects the commercial information of private sector businesses as well as public authorities that are engaged in commercial activities. A public authority relying on section 25(1)(b) must explain the commercial activity that is involved.

[31] See Decision 09/2019, Department of Public Lands and Buildings, at paragraph 170.

[32] See Decision 12/2018, Ministry of Finance Headquarters, at paragraph 66.

132. Commercial activity usually requires a business undertaking carried on to generate income or profit.[33] Under some circumstances, the activity may be indirectly related to a public authority's commercial activity but is still necessary for the public authority to engage in the commercial activity.[34]

133. Unlike some other access to information laws[35], section 25(1)(b) involves only commercial information. It will not extend to cover information that relates solely to the finances of a public authority, e.g., its money resources and their management.

134. The plain meaning of 'destroy' or 'diminish' refers to the commercial value of the information being lost or lessened.

135. 'Could reasonably be expected to' requires distinguishing between what is merely speculative, irrational, or absurd and identifying expectations that are likely, plausible, or possible based on real and substantial facts. A speculation alone will not be sufficient.

136. If a record falls within the exemption in section 25(1)(b), it must be disclosed if the balance of the public interest favours disclosure.

137. In sum, a public authority, or third party, must consider these questions when seeking to justify the exemption for information with commercial value:[36]

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[33] For example, the Queensland Information Commissioner stated that the commercial value harm factor should be read narrowly, in that it is only applicable "to information concerning activities or affairs that are carried on in a business-like fashion for the purpose of generating income or profits"; see Glass Media Pty Ltd and Department of the Premier and Cabinet; Screen Queensland Pty Ltd (Third Party); The Walt Disney Company (Australia) Pty Ltd (Fourth Party) [2016] QICmr 30 (18 August 2016), at paragraphs 108-122.

[34] The UK Information Tribunal applies a broader definition of 'commercial' that is not limited to competitive participation in the buying and selling of goods or services. Rather, the UK Tribunal includes activities such as debt collection that, if compromised, could prejudice the public body's commercial interests, although this case was acknowledged as being 'near the borderline' of the definition; see Student Loan Company Ltd v Information Commissioner, EA/2008/0092 (17 July 2009). Similarly, the UK Tribunal has recognised the provision of university course materials as a commercial interest because the course materials are the 'assets' which the university depends upon for its commercial activity of recruiting students in a competitive environment; see University of Central Lancashire v Information Commissioner, EA/2009/0034 (8 December 2009).

[35] See, for example, section 45(c) of the Queensland Freedom of Information Act 1992 (applicable to information concerning business, professional, commercial or financial affairs whose disclosure could reasonably be expected to have an adverse effect on those affairs or prejudice the provision of such information in the future to government).

[36] See Decision 09/2019, Department of Public Lands and Buildings, at paragraph 174.

[1] Does any exception in section 25(2) apply?

[2] Does the information have commercial value, and can the specific nature of the commercial value be described?

[3] What is the destruction or diminishment of the commercial value of the information that could occur?

[4] How could disclosure cause this destruction or diminishment?

[5] Could it reasonably be expected to occur under the circumstances?

[6] If the exemption is engaged, does the balance of the public interest still require disclosure?

138. A public authority, or third party asserting its rights under section 25(1)(b), bears the burden of showing to the Information Commissioner that, on the balance of probabilities, the exemption is justified.

Public authority's submissions

139. The Ministry Headquarters did not rely on section 25(1)(b) to justify its decision to withhold the MOU.

Applicant's submissions

140. The Applicant provided the same submissions made above at paragraphs 99-107.

AstraZeneca's submissions

141. AstraZeneca provided the same submission made above at paragraphs 108-111.

Discussion

142. AstraZeneca's reliance on section 25(1)(b) is considered to object to the disclosure of its information in Appendix 3 to record 1. For the sake of completeness, the application of the exemption is considered on the face of the information about Pfizer and Moderna in the records, even though no submissions were received from these companies.

[1] Did any exception in section 25(2) apply?

143. None of the exceptions in section 25(2) applied to the information related to AstraZeneca, Pfizer or Moderna in Appendices 1, 3, 4 and 5 to record 1 and Appendix 1 to record 2.

[2] Did the information have commercial value, and could the specific nature of the commercial value be described?

144. On the face of it, none of AstraZeneca's information in Appendix 3 to record 1, Pfizer's information in Appendices 1 and 4 to record 1 and Appendix 1 to record 2, or Moderna's information in Appendix 5 to record 1 contained any commercial value. While the withheld information might have been important to these vaccine suppliers, it is doubtful that such information was important to the performance of these suppliers' commercial activities.

145. As discussed above, disclosure of the number of doses of Pfizer and AstraZeneca vaccines would unlikely reveal the cost of each dose as claimed. It is also worth noting that the number of vaccines purchased by BEIS from another vaccine supplier, Moderna, was never withheld.[37] In the absence of an adequate submission from AstraZeneca or any submissions from Pfizer and Moderna, the Information Commissioner is not satisfied that the information in Appendices 1, 3, 4 and 5 could be sold for value to an arms-length buyer. Information relating to AstraZeneca, Pfizer and Moderna in these records was either available in the public domain at the time of the PATI request or released later by the UK Government.

146. Because the relevant information in Appendix 3 to record 1 did not have commercial value, AstraZeneca's reliance on section 25(1)(b) is not considered further. Similarly, the applicability of the exemption to Pfizer and Moderna's information in the relevant appendices to records 1 and 2 is not considered further.

Conclusion

147. The Information Commissioner is not satisfied that the exemption in section 25(1)(b) is justified to withhold information about AstraZeneca in Appendix 3 to record 1, about Pfizer in Appendices 1 and 4 to record 1 and Appendix 1 to record 2, or information about Moderna in Appendix 5 to record 2.

Deliberations of public authorities – section 29

148. A public authority may rely on section 29(1) to deny access to a public record whose disclosure would, or could reasonably be expected to, undermine the deliberative process of a public authority, including free and frank discussion and provision of advice in the course of that process.

[37] See BEIS Supply Agreement with Moderna, available here, page 1 and clause 1.17.

149. As the Information Commissioner explained in Decision 14/2021, Office of the Governor, releasing the records at issue must undermine a public authority's 'deliberative process'. This refers to the consideration or evaluation of competing arguments, information and facts with a view to making a decision.[38] A deliberative process is, at its most basic, the thinking process of an agency.[39] This exemption is in place to safeguard the integrity of this process for public authorities' decision making.

150. A public authority must show that, at a minimum, disclosure 'could reasonably be expected to' undermine a public authority's deliberative process. The plain meaning of 'undermine' is to "lessen the effectiveness, power or ability of, especially gradually or insidiously".[40] Whether it is reasonable to think that the harm will occur will depend on the circumstances of each case, including the timing of the request, whether the issue is still live, and the actual content and sensitivity of the information in question.

151. The exemption in section 29(1) does not apply to certain categories of information, such as factual or statistical information (section 29(2)(a)) or information in the nature of the reasons of a public authority for making a particular decision (section 29(2)(d)).

152. 'Factual information' is not defined in the PATI Act or the Interpretation Act 1951. The Irish Freedom of Information Act 2014 has a provision similar to section 29(2)(a) of the PATI Act, and the Irish Information Commissioner's discussion of that provision offers a useful definition of 'factual information' in this context. The Irish Information Commissioner has adopted the following plain meaning of "factual" as: "[s]omething that has really occurred or is actually the case; something certainly known to be of this character; hence, a particular truth known by actual observation or authentic testimony, as opposed to what is merely inferred, or to a conjecture or fiction; a datum of experience, as distinguished from the conclusions that may be based upon it".[41] Factual

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[38] See Decision 02/2019, Office of the Governor, paragraph 168.

[39] See Queensland's Office of the Information Commissioner, Right to Information Act 2009, Deliberative Process. See also Western Australia's Office of the Information Commissioner (October 2001), FOI Guide No. 3, Deliberative Process, page 1.

[40] Oxford Dictionary of English (3rd ed. 2010).

[41] Ireland's Office of the Information Commissioner (August 2015), Guidance Note, Freedom of Information Act 2014 Section 29 – Deliberations of FOI Bodies, paragraphs 3.3.1. The decisions cited in the Guidance Note relied on the definition provided by the Oxford English Dictionary.

information is "distinguishable from information in the form of [a] proposal, opinion or recommendation".[42]

153. Generally, the release of factual information will not reveal deliberations or otherwise threaten a public authority's deliberative process. Two contexts arise when this distinction between factual and deliberative materials may not stand[43]. First, in some records, the factual information may be so inextricably connected with the deliberative material that disclosure would reveal and cause harm to the public authority's deliberation. The second context arises when a record contains selective facts collated from a larger group of facts, and the distilling of facts itself is a deliberative process. It indicates the facts the author found relevant or significant and those deemed irrelevant or insignificant to the matter at hand.

154. The exemption in section 29(1) is subject to the public interest test. If the exemption is engaged, the records or parts of records must still be disclosed if the public interest would, on balance, be better served by disclosure than by non-disclosure.

155. In sum, when applying the exemption in section 29(1), a public authority must ask:

[1] What is the relevant deliberative process involved?

[2] Does any of the information fall within the exceptions listed in section 29(2)?

[3] Could disclosure of the record reasonably be expected to undermine the identified deliberative process of a public authority?

[4] If the exemption is engaged, does the balance of the public interest require disclosure?

156. A public authority bears the burden of satisfying the Information Commissioner that, on the balance of probabilities, it has provided sufficient support to justify its reliance on section 29(1) to deny access to the records.

Public authority's submissions

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[42] See Decision 14/2021, Office of the Governor, which referred to Ireland's Office of the Information Commissioner (August 2015), Guidance Note, Freedom of Information Act 2014 Section 29 – Deliberations of FOI Bodies, paragraphs 3.3.1.

[43] See, for example, Office of the Australian Information Commissioner (December 2016), FOI Guidelines, Part 6 – Conditional exemptions, paragraph 6.73.

157. The Ministry Headquarters provided the same submissions made above at paragraphs 97-98.

Applicant's submissions

158. The Applicant provided the same submissions made above at paragraphs 99-107.

Discussion

159. The Ministry Headquarters' reliance on section 29(1) is considered for records 1 and 2.

[1] What was the relevant deliberative process involved?

160. Records 1 and 2 are MOUs concerning the provision of COVID-19 vaccines by the UK Government to the Government of Bermuda. They did not involve any deliberative process between the UK Government and the Government of Bermuda, or internal deliberations within the Government of Bermuda, or deliberation between the Government of Bermuda and other external parties.

161. Rather, these records were the outcome of the parties' thinking process or deliberation at different times. As there was no deliberative process involved, the Ministry Headquarters' reliance on section 29(1) to withhold records 1 and 2 is not considered further.

Conclusion

162. The Information Commissioner is not satisfied that the Ministry Headquarters was justified in relying on section 29(1) to withhold records 1 and 2.

Personal information – section 23

163. Section 23(1) allows a public authority to deny public access to a record or part of a record if it consists of personal information. Section 24(1) defines personal information as information about an identifiable individual, subject to exclusions to this definition in section 24(2) that are not relevant in this review.

164. If the information in the record includes reference to a specific person, it is personal information. A record will also contain personal information if the individual's identity is reasonably ascertainable from the information.

165. The personal information exemption does not apply in certain circumstances set out in section 23(2).

166. The personal information exemption is subject to the public interest test in section 23(6). In the context of personal information, the public interest test requires a balancing of the public interests in favour of publicly knowing an individual's personal information, on the one hand, against the privacy rights of the individual and any other public interest in favour of confidentiality, on the other.

167. When considering the public interest test for a personal information disclosure, public authorities should take into account the following factors:[44]

    a. whether disclosure will further the public interest, including but not limited to the factors listed in regulation 2 of the PATI Regulations;

    b. whether disclosure would be fair to the individual under all of the circumstances, which would include consideration of whether sensitive personal information[45] was involved, the potential consequences of disclosure on the individual, and the individual's reasonable expectations of privacy; and

    c. whether disclosure of the personal information is necessary to further the public interests that have been identified.

168. The Information Commissioner will consider whether the public interest concerns, if any, can be met by disclosure of other information in the records that interferes less with an individual's right to privacy. If so, the public interest concerns in favour of disclosure may be given less weight in the balance than the individual's privacy rights and freedoms.

169. In sum, to appropriately rely on the personal information exemption in section 23(1), the public authority must consider:[46]

    [1] Whether the record consists of information about an identifiable individual?

    [2] Whether the information falls within any of the exclusions to the definition of personal information (section 24(2))?

    [3] Whether any of the exceptions to the exemption in section 23(2) apply to the records?

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[44] See Decision 02/2019, Office of the Governor, at paragraph 51.

[45] Under section 7(1) of the Personal Information Protection Act 2016, 'sensitive personal information' means "any personal information relating to an individual's place of origin, race, colour, national or ethnic origin, sex, sexual orientation, sexual life, marital status, physical or mental disability, physical or mental health, family status, religious beliefs, political opinions, trade union membership, biometric information or genetic information".

[46] See Decision 02/2019, Office of the Governor, at paragraph 56.

[4] If the exemption on personal information in section 23(1) is engaged, whether the balance of the public interest requires disclosure?[47]

170. A public authority invoking section 23(1) has the burden to show that, on the balance of probabilities, the exemption is justified. This is also the only exemption the Information Commissioner will invoke on her own accord, as she did in this case, to safeguard the right to privacy.[48]

Public authority's submissions

171. The Ministry Headquarters did not rely on section 23(1).

Applicant's submissions

172. The Applicant confirmed that no personal information was ever requested and that the names and addresses of any patient could be redacted.

UK HSA's submissions

173. The UK HSA relied on the personal information exemption to justify its proposed redactions of certain parts in records 1 and 2.

Discussion

[1] Did the record consist of information about an identifiable individual?

174. Parts of records 1 and 2 contained information about identifiable individuals, namely, contact details of the representatives of the parties to the MOU, the individuals authorised to sign the MOU, the Governor for Bermuda and the individuals signing the letters included in Appendix 2 to record 2.

[2] Did the information fall within any exclusion in section 24(2) to the definition of personal information?

175. None of the exclusions in section 24(2) were applicable to the information about individuals specified above. Most of these individuals were public officers associated with the UK Government, and not officers of a 'public authority' as defined in the PATI Act. Although one of the individuals was an employee of the Ministry Headquarters,

[47] Disclosure of records consisting of personal information should also be made if disclosure would benefit the individual, in accordance with section 23(6) of the PATI Act, which is irrelevant in this case.

[48] See Decision 01/2018, Bermuda Tourism Authority, at paragraph 27.

section 24(2)(a) did not apply to their information in the records because the information related to the performance of their position or functions.

[3] Did any exceptions in section 23(2) apply to the record?

176. None of the exceptions in section 23(2) applied to the relevant information about individuals. The information did not relate to the Applicant and the individuals to whom the information relates have not consented to disclosure.

[4] If the exemption was engaged, did the balance of the public interest require its disclosure?

177. There is a public interest in greater understanding of the process or decisions around COVID-19 vaccinations in Bermuda. Disclosure of the names and details of the individuals representing the UK Government in records 1 and 2, however, would not further the public's understanding about COVID-19 vaccinations on the island. These individuals were not part of any 'public authorities' for the purposes of the PATI Act.

178. In any event, disclosure of the personal details of individuals representing the UK Government would also be unfair. The confidentiality provision in both versions of the MOU stated that the names and contact details of the individuals representing the parties must be treated as confidential information. Furthermore, the representatives of BEIS and the UK HSA did not appear to have public-facing or decision-making roles. These two factors created a reasonable expectation that information relating to their work would not be published without their consent. While the individual representing the FCDO appeared to have a public-facing and decision-making role, their involvement in the COVID-19 arrangements have not been made public by the UK Government.

179. In contrast, the Information Commissioner is satisfied that disclosure of the names and positions of the CMO (as the contact point for the Government of Bermuda), the Minister of Health, the Cabinet Secretary and the Governor which appeared in the records would further the identified public interests.

180. With respect to the fairness to the individual of disclosure, because it has been public knowledge that the CMO and the Minister of Health played essential roles in the Government's handling of the COVID-19 pandemic and the COVID-19 vaccination programme in Bermuda, they should reasonably have had less expectation of privacy around their public work. This lesser expectation of privacy was also reasonable, given the information in the records related to the Governor, the Minister of Health, the Cabinet Secretary and the CMO's public work, as opposed to their private lives. The

Minister of Health and the Governor also held public-facing roles, and the Cabinet Secretary held the most senior position within the public service.

181. Disclosure of the CMO, the Minister and the Governor's names and positions would also be necessary to further the identified public interest, because it would inform the public of two of the key individuals who were involved in the government's discussion around the deployment of COVID-19 vaccines from the UK to Bermuda.

Conclusion

182. The Information Commissioner is satisfied that the exemption in section 23(1) is appliable to parts of records 1 and 2, but that the public interest required disclosure of the names and positions of the Governor, the Minister of Health, the Cabinet Secretary and the CMO.

Conclusions

183. The Information Commissioner finds that the Ministry Headquarters:

a. was justified in relying on section 16(1)(a) to administratively deny part of item 3b of the PATI request;

b. was not justified in relying on sections 25(1)(c) or 29(1) to withhold records 1 or 2;

c. was not justified in relying on section 16(1)(a) or 16(1)(f) to administratively deny items 2a-2e, 3a and 4 of the PATI request; and

d. did not conduct a reasonable search for records responsive to items 1b and 3c of the PATI request.

184. The Information Commissioner further finds that AstraZeneca did not justify its reliance on sections 25(1)(c) or (b) to object to disclosure of its information in Appendix 3 to record 1.

185. Finally, the Information Commissioner finds that the UK HSA was justified in relying on section 23 to object to the disclosure of the personal information of UK personnel.

186. The Information Commissioner also notes the importance of public authorities providing accurate information to the public, both within the context of PATI—which is required under section 12(2)(b)—and outside PATI. Before making this and another related PATI request, the Applicant was advised that their claim would have been covered by the UK's VDPS. The Applicant made a claim based on information provided by the Ministry Headquarters, only to find out that the UK VDPS did not cover damages from COVID-19

vaccines administered in Bermuda. The Applicant was then informed that a report should be filed by their doctor via the AEFI online form, and it was never explained that there was no damage scheme in Bermuda equivalent to the UK's VDPS. The Information Commissioner agrees with the Applicant that both the AEFI reporting process and vaccine damages claim information in Bermuda seemed to be unnecessarily secretive.

187. While an accurate explanation on the process that is available in Bermuda might not alleviate the need for members of the public, such as the Applicant, to make PATI requests for records about the process, it might minimise the need and enable requesters to be more specific in their requests, thereby making the handling of such PATI requests more efficient.

Decision

The Information Commissioner finds that the Ministry of Health Headquarters (**Ministry Headquarters**) was not justified in relying on sections 25(1)(c) or 29(1) of the Public Access to Information (**PATI**) Act 2010 to refuse access to the requested records, and that a Third Party did not justify its reliance on section 25(1)(b) or (c) to object to disclosure of its information. The Information Commissioner finds, on her own accord, and based on submissions from another third party, that parts of the records were exempt from disclosure under section 23(1). The Information Commissioner also finds that the Ministry Headquarters was not justified in relying on section 16(1)(a) or (f) to administratively deny items 2a-2e, 3a and 4 of the PATI request, and that the Ministry Headquarters did not conduct a reasonable search for records responsive to items 1b and 3c. The Information Commissioner finds that the Ministry Headquarters was justified in relying on section 16(1)(a) to administratively deny part of item 3b of the request.

In accordance with section 48 of the PATI Act, the Information Commissioner:

- affirms the Ministry Headquarters' decision to administratively deny item 3b under section 16(1)(a);
- annuls the Ministry Headquarters' decision to administratively deny items 2c and 2d under section 16(1)(a);
- annuls the Ministry Headquarters' decision to administratively deny item 4 under section 16(1)(f);
- annuls the Ministry Headquarters' decision regarding items 1b, 2a, 2b, 2e, 3a and 3c;
- reverses the Ministry Headquarters' decision to refuse access to records 1 and 2 (responsive to item 1a of the PATI request) under sections 25(1)(c) and 29(1);
- varies the Ministry Headquarters' decision to refuse access to parts of records 1 and 2 under section 23(1);

The Information Commissioner orders the Ministry Headquarters to conduct a reasonable search to locate records responsive to items 1b, 2a-2e, 3a, 3c and 4 of the PATI request; to issue a new initial decision to the Applicant on records responsive to these items located after conducting a reasonable search; and to disclose parts of records 1 and 2, with exempt information removed, as directed by this Decision Notice and the accompanying Confidential Annex and Order, which form part of this Decision, on or before **Friday, 4 April 2025**, with a copy of the Ministry Headquarters' correspondence to the Applicant sent to the Information Commissioner's Office.

Judicial Review

The Applicant, the Ministry of Health Headquarters, the Third Parties, or any person aggrieved by this Decision has the right to seek and apply for judicial review to the Supreme Court in accordance with section 49 of the PATI Act. Any such application must be made within six months of this Decision.

Enforcement

This Decision has been filed with the Supreme Court, in accordance with section 48(3) of the PATI Act. If the Ministry of Health Headquarters fails to comply with this Decision, the Information Commissioner has the authority to pursue enforcement in the same manner as an Order of the Supreme Court.

Gitanjali S. Gutierrez
Information Commissioner
21 February 2025

Appendix: Relevant statutory provisions

Public Access to Information Act 2010

Refusal of request on administrative ground

16 (1) A public authority may refuse to grant a request if—

(a) the record requested does not exist or cannot be found after all reasonable steps have been taken to find it;

. . .

(f) the information is in the public domain, is reasonably accessible to the public or is reasonably available to the public on request under any other statutory provision, whether free of charge or on payment; or

. . .

(2) A public authority shall not refuse to grant a request under subsection (1)(b) or (c), unless the authority has assisted, or offered to assist, the requester to amend the request in a manner such that it no longer falls under those provisions.

Public interest test

21 For the purposes of this Part, the test of whether disclosure by a public authority of a record or the existence of a record is in the public interest is whether the public interest would, on balance, be better served by disclosure than by non-disclosure.

Personal information

23 (1) Subject to the provisions of this section, a record that consists of personal information is exempt from disclosure.

. . .

(6) A record that contains personal information relating to an individual shall be disclosed if disclosure of it is in the public interest or would benefit the individual.

Definition of personal information

24 (1) Subject to subsection (2), "personal information" means information recorded in any form about an identifiable individual, including—

. . .

(2) But "personal information" does not include—

(a) information about an individual . . . who is or was an officer or employee of a public authority that relates to the position or functions of the individual;

(b) information about an individual who is or was performing services under contract for a public authority that relates to the services performed, including the terms of the contract and the name of the individual; or

. . .

Commercial information

25 (1) Subject to subsections (2) and (3), a record that consists of the following information is exempt from disclosure—

. . .

(b) information, the commercial value of which would be, or could reasonably be expected to be, destroyed or diminished by disclosure;

(c) information, the disclosure of which would have, or could reasonably be expected to have, an adverse effect on the commercial interests of any person to whom the information relates; or

. . .

(2) Subsection (1) does not apply if—

. . .

(c) the information was given to the public authority concerned by the person to whom it relates and the person was informed on behalf of the authority, before the information was given, that the information belonged to a class of information that would or might be made available to the general public.

(3) A record shall be disclosed if disclosure of it is in the public interest.

Deliberations of public authorities

29 (1) Subject to subsections (2) and (3), a record is exempt from disclosure if it consists of information, the disclosure of which would undermine, or could reasonably be expected to undermine, the deliberative process of a public authority, including free and frank discussion and provision of advice in the course of that process.

(2) Subsection (1) does not apply to information contained in a record that is—

(a) factual or statistical information;

(b) information resulting from an investigation or analysis of the performance, efficiency or effectiveness of a public authority in relation to its functions;

(c) information in the nature of a report, study or analysis of a scientific or technical expert; or

(d) information in the nature of the reasons of a public authority for making a particular decision.

(3) A record shall be disclosed if disclosure of it is in the public interest.

Public Access to Information Regulations 2014

Reasonable search

5 (1) An information officer shall make reasonable efforts to locate a record that is the subject of an application for access.

(2) Where an information officer has been unable to locate the record referred to in paragraph (1), he shall make a record of the efforts he made.

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