

Freedom of Information Team
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Your Ref: **1217882**
Our Ref: REK/CXO/00242584/1
Date: 21 May 2020

Dear Sir/Madam,

Freedom of Information Act (FOIA) Request – FOI -1217882

This letter is in response to your correspondence dated 19 May 2020 and further to our client's request for information dated 20 April 2020. Both letters have been enclosed for your reference.

This letter constitutes a further, refined request for information based on the contents of the 19 May 2020 response. Please note this letter is a request for information under the Freedom of Information Act 2000 ("**FOIA**").

This letter requires your immediate attention.

We note that some parts of the Cygnus report have now been published in the press. That information should on any view have been identified by yourselves in your response. Moreover, we do not accept that the cost exemption applies or that your response was appropriate in the circumstances when a sensible approach to the request would have enabled you to respond to it within the cost limit. The fact that you waited until the very last day, indeed almost the last hour, of the FOIA response period to raise a costs objection indicates a tactical approach which we consider to be unjustified. If the documents are not disclosed we will be raising a complaint with the Information Commissioner and if necessary the tribunal.

Request for Information

You have said that our request fails to comply with the costs limit and should be refined. We do not agree but for the avoidance of any doubt we request the following:

1. **The reports that were prepared as part of the Cygnus Exercise.** We understand that there was a report produced on each aspect of the exercise, such as NHS, social care and each Local Resilience Forum. Those reports would have had to have been collated for the overall summary to be produced. It should not be difficult or time consuming to identify those reports. Indeed, given that Ministers have been dealing with public requests for disclosure of the Cygnus findings it is inconceivable

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that these reports are not well known to yourselves. In the unlikely event that any report has been lost then it falls outside the scope of our request.

2. **The document(s) recording the decision not to disclose the Cygnus report or its findings and the reasons for non-disclosure.** If there are multiple documents that satisfy that description, e.g. subsequent documents referring to the decision, we do not request them all: the document(s) that is most authoritative, e.g. the minute of the Ministerial decision at the time is adequate. That decision would presumably have been made by the Health Secretary as the lead Responder under the Civil Contingencies Act. Since the decision to withhold the report has been widely reported and has been the subject of questions to Ministers, it is inconceivable that the decision and the reasons for the decision are not well known to yourselves and easily accessible. Indeed, Ministers have publicly resisted disclosure on the basis that there are (unspecified) rules relating to disclosures and decisions that have been made by previous Governments not to disclose documents. Such comments could only have been made if the decision not to disclose had been identified. Moreover, it is clear that the decision not to publish has been approved and continued at Ministerial level in the past few weeks.

It does not seem possible to us that this request – which is a reformulation of our original request - requires the cost limit to be exceeded. If however that is the case please provide an explanation of the aspect(s) of the request that is/are problematic.

For completeness, we note that:

- a) We consider that any public interest balancing exercise pursuant to section 35 of FoIA is already ongoing in light of previous requests for disclosure of the report based on Exercise Cygnus as well as pre-action correspondence sent by our client to the Secretary of State for Health and Social Care including on 11 May 2020 (enclosed for completeness).
- b) In line with your duty under s10(1) of FoIA to act **promptly** we therefore urge you to complete the public interest balancing exercise without any further delay and invite a substantive response to our client's refined request for information by **4pm on 26 May 2020**.

Response

If and to the extent that the Department for Health and Social Care ("DHSC") continues to refuse to provide the information requested, it is asked to provide in writing full reasons for not doing so including what countervailing interest the DHSC seeks to rely on bearing in mind the points noted above in this regard.

We look forward to your response to our client's refined information request under FoIA by **4pm on 26 May 2020**.

Yours faithfully,

Leigh Day

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