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CC: [informationgovernance@essex-fire.gov.uk](mailto:informationgovernance@essex-fire.gov.uk) ; [REDACTED]

Your Ref: IC-90883-G5P5

Respondent's Ref: FOI4224

19 April 2021

Dear Mr [REDACTED],

**Submissions to the ICO regarding case ref. IC-90883-G5P5**

1. I write with respect to my complaint regarding the **Essex County Fire & Rescue Service** (ECFRS)'s refusal of my request under the Freedom of Information Act 2000 (FOIA). By this letter, I wish to make preliminary submissions to the ICO regarding the proper resolution of my complaint under section 50 FOIA, which I understand you have responsibility for investigating.

2. A recent communication from the ECFRS (see paragraph 22 below) throws some doubt on their grounds for refusing disclosure. I reserve the right for myself or my legal representatives to make further submissions upon the receipt of further clarification from the ECFRS, or further information or documentation relating to my request.

## **Key Background: Exercise Cygnus and the role of Local Resilience Forums and Category 1 responders in preparedness for civil emergencies**

3. **Exercise Cygnus** was a pandemic exercise carried out in two phases which aimed to evaluate our preparedness for a major pandemic influenza. The first phase was a Health Delivery Board meeting carried out on 14 May 2014, and the second phase was a 3-day national multi-agency exercise from 18 to 20 October 2016 which involved public bodies as diverse as the Cabinet Office, the Department for Communities & Local Government, the Department for Education, the Department for Work & Pensions, the Ministry of Justice, the Department for Health, NHS England, and eight Local Resilience Forums <sup>1</sup>.

4. Exercise Cygnus was not exclusively a “health” exercise but rather a multi-agency exercise which evaluated the multiple effects of a major pandemic on our national infrastructure. For instance, the UK Government’s account of this exercise says: *“This report identifies lessons relevant to all of the participating organisations and is not restricted to lessons reflecting only the experience of health organisations.”* <sup>2</sup>. Of note, the Health Secretary has stated in Parliament that the Government acted on all 22 recommendations of Exercise Cygnus <sup>3</sup>.

5. **Category 1 responders** are defined in Schedule 1 of the Civil Contingencies Act 2004 (CCA) to include local authorities, the emergency services (including specifically the fire and rescue authorities), health authorities, and the Environment Agency. Section 2 of the CCA provides a duty for Category 1 responders to assess, plan for and advise regarding civil emergencies.

6. **Local Resilience Forums (LRFs)** are defined in the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005, which say that Category 1 responders in a particular local resilience area must cooperate together in a single forum <sup>4</sup>. Part 3 of the Regulations provide

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<sup>1</sup> <https://www.gov.uk/government/publications/uk-pandemic-preparedness/exercise-cygnus-report-accessible-report>

<sup>2</sup> <https://www.gov.uk/government/publications/uk-pandemic-preparedness/exercise-cygnus-report-accessible-report#tier-one-command-post-exercise-pandemic-influenza--18-to-20-october-2016>

<sup>3</sup> <https://questions-statements.parliament.uk/written-statements/detail/2020-10-20/hcws526>

<sup>4</sup> <https://www.legislation.gov.uk/uksi/2005/2042/regulation/4/made>

for a duty to assess risk <sup>5</sup>, Part 4 provides for a duty to maintain plans <sup>6</sup>, Part 5 provides for publication of plans <sup>7</sup>, and Part 6 provides for warning and provision of information and advice to the public <sup>8</sup>.

7. The Cabinet Office has published its own document on the role of the LRFs which says:

*“A Local Resilience Forum is not a legal entity, nor does a Forum have powers to direct its members. Nevertheless, the CCA and the Regulations provide that responders, through the Forum, have a collective responsibility to plan, prepare and communicate in a multi-agency environment.”*<sup>9</sup>

8. **Public Health England** (PHE)’s published report <sup>1</sup> into Exercise Cygnus describes the findings and recommendations of LRFs rather than of the individual Category 1 responders which participated in those forums. Decisions were made collaboratively at the level of the LRF. The role of the **Essex Resilience Forum** (ERF) was that it was one of only three LRFs which provided hot debrief notes, cold debrief notes and an evaluator questionnaire to PHE, and also attended the PHE-led structured debrief <sup>10</sup>. Essex also happens to be my county of residence.

9. The importance of the LRFs and their constituent Category 1 responders during Exercise Cygnus was that they collected the primary raw data and provided operational services on the ground, and this information was then fed upwards to national-level organisations. Many of the Report’s recommendations are derived directly from the LRFs.

10. The terms “**Strategic Coordinating Group**” (SCG) and “Local Resilience Forum” are used almost interchangeably during Exercise Cygnus, and the CCA Regulations 2005 describe SCGs as Category 1 responders co-operating within a local resilience area <sup>11</sup>.

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<sup>5</sup> <https://www.legislation.gov.uk/uksi/2005/2042/part/3/made>

<sup>6</sup> <https://www.legislation.gov.uk/uksi/2005/2042/part/4/made>

<sup>7</sup> <https://www.legislation.gov.uk/uksi/2005/2042/part/5/made>

<sup>8</sup> <https://www.legislation.gov.uk/uksi/2005/2042/part/6/made>

<sup>9</sup> <https://www.gov.uk/government/publications/the-role-of-local-resilience-forums-a-reference-document>

<sup>10</sup> <https://www.gov.uk/government/publications/uk-pandemic-preparedness/exercise-cygnus-report-accessible-report#appendix-4-to-annex-c-evaluation-received>

<sup>11</sup> <https://www.legislation.gov.uk/uksi/2005/2042/regulation/5/made> at 5(3)

11. Data collection and operational responses during a pandemic are by necessity localised, as we have seen during the COVID-19 pandemic where individual regions have experienced different levels of “lockdown”, and it is important for this localised pandemic response to coordinate with national strategic objectives. The relationship between local and national levels was obviously important for a fluent pandemic response, and indeed PHE’s official Exercise Cygnus Report suggests that LRFs raised concerns during Exercise Cygnus about local capacity to deal with national plans:

*“However, the lack of joint tactical level plans was evidenced when the scenario demand for services outstripped the capacity of local responders, in the areas of health surge planning, excess deaths and provision of social care. The lack of centrally produced advice to local authorities on excess deaths and body management was considered a major issue by local responders who also raised concerns about the expectation that the social care system would be able to provide the level of support needed if the NHS implemented its proposed reverse triage plans.”<sup>12</sup>*

12. In summary, the LRFs played a central role during Exercise Cygnus by gathering raw primary data and identifying problems “on the ground” which informed strategic decisions at a national level during the Exercise, and which was subsequently interpreted by PHE and re-organised into a report. Most LRFs do not exist as legal entities, but access to their data from Exercise Cygnus can be requested under the FOIA from their constituent Category 1 responders which cooperated to make decisions collaboratively through the forums during Exercise Cygnus. The ECFRS stated in its Internal Review of my FOIA request that it participated in Exercise Cygnus, hosts the ERF secretariat function in its Kelvedon Park headquarters, and held the information I requested.

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<sup>12</sup> <https://www.gov.uk/government/publications/uk-pandemic-preparedness/exercise-cygnus-report-accessible-report#annex-a-lessons-identified-by-objective> at A.1.2

## **My FOIA request**

13. On 23 December 2020, I requested the following information from the ECFRS:

- (i) Copies of reports summarising information captured by Essex Local Resilience Forum (LRF) during and following the Command Post Exercise (CPX) for Exercise Cygnus in October 2016. Specifically, I request copies of hot debrief notes, cold debrief notes, and the evaluator questionnaire filled in by Essex LRF as part of Exercise Cygnus. The time period I am seeking information for is the 3 months following 18 October 2016.
- (ii) Copies of reports summarising findings of Exercise Cygnus provided to Essex LRF by the Civil Contingencies Secretariat. The time course I am seeking information for is from 1 November 2016 until 31 December 2017.
- (iii) Copies of reports summarising findings of Exercise Cygnus provided to Essex LRF by the Department for Communities & Local Government. The time course I am seeking information for is from 1 November 2016 until 31 December 2017.

14. For clarification of the evaluations requested and detailed in paragraph 13(i) above, I referred in my request to Appendix 4 of Annex C in PHE's published report:

<https://www.gov.uk/government/publications/uk-pandemic-preparedness/exercise-cygnus-report-accessible-report>

## **ECFRS Refusal Decision**

15. On 26 January 2020, the ECFRS replied to my FOIA request by sending me a document dated 21 January 2020 and titled "Final Response FOI4224.pdf". This document stated in two separate places that the ECFRS held "*the information*" I requested, but that some of the information was exempt from disclosure.

16. The ECFRS also provided me with a document titled "Exercise Cygnus EPB Summary.pdf" which summarised the ERF's Aims & Objectives and their Key Recommendations, including the following recommendation: *"Capture, for the plan, the options for discharge from hospital that health and social care devised for the exercise"*.

17. However, the ECFRS refused to disclose any other information in response to my FOIA request on grounds of the national security exemption provided by section 24 of the FOIA. In relation to this exemption, the ECFRS carried out a public interest exercise to weigh up factors in favour of disclosure versus non-disclosure, and concluded:

*"Having considered the above factors, I believe the public interest is in favour of upholding this exemption. Agencies and individuals would be less likely to engage with this service if they perceive that confidentiality will not be maintained where it is possible to do so. Because a disclosure of information under the Freedom of Information Act 2000 is a disclosure to the world at large, we are not only supplying data to the requestor, but also placing it in the public domain and making it available to those who would pose a risk to identified individuals and our national security. Additionally, by placing this data in the public domain we significantly increase the risk of identification of individuals by others who may hold other related data."*

18. The ECFRS also refused to disclose the information I requested under the absolute exemption provided by section 44 of the FOIA, ie where disclosure is prohibited by or under any enactment, incompatible with any Community obligation, or would constitute or be punishable as a contempt of court.

### **Internal Review**

19. On 18 February 2021, the ECFRS responded to my request for Internal Review dated 28 January 2021. The Internal Review again declared that the ECFRS held the information I requested but was exempt from disclosure. The wording of the Internal Review regarding the claimed exemptions under Sections 24 and 44 of the FOIA was very similar to the wording of the initial Refusal Decision, and indeed was written by the same person who wrote the initial Refusal Decision – although on this occasion he was overseen by a Data Protection Officer.

20. In response to my request for clarification regarding the national security exemption for a pandemic exercise, the ECFRS wrote the following:

*“ECFRS participated in Exercise Cygnus in its capacity as a Category 1 Responder. ECFRS also hosts the ERF secretariat function at its Kelvedon Park headquarters. The ERF is a collaborative organisation and ECFRS, as an individual member, cannot release the information requested without the permission of the ERF. This permission has not been given by the ERF Stakeholders. Furthermore, several of the documents you requested are classified as Official Sensitive and would not normally be released. This is why the details that you have requested have not been released to you.”*

21. In response to my request to consider ICO guidance on partial disclosure or redaction where there were concerns about protection or confidentiality of staff, the ECFRS wrote the following:

*“Without the permission to release the information requested, the issue of redacting does not arise here. The information requested is held jointly under a collaborative framework that includes the police and other public bodies. Hopefully, the summary that has been provided to you would be helpful.”*

### **Recent change of position from the ECFRS**

22. On 14 April 2021, and following my complaint to the ICO, the ECFRS wrote an email directly to me, as follows:

*“We have extensively reviewed your request for information relating to Exercise Cygnus (FOI4224). We have also consulted with the coordinator of the Essex Resilience Forum.*

*When we received your FOI initially, we were not clear as to the role of the ERF. That is why we responded in the way that we did to FOI4224 and the internal review. ECFRS participated*

*in Exercise Cygnus only in its capacity as a Category 1 Responder. ECFRS does not hold information on Exercise Cygnus or any health information.*

*The ERF is not the legal statutory holder of information relating to Exercise Cygnus. As Exercise Cygnus was a health exercise the information is stored by the NHS. To request information about Exercise Cygnus please contact any of the following [here the ECFRS provided five nhs.net email addresses]”.*

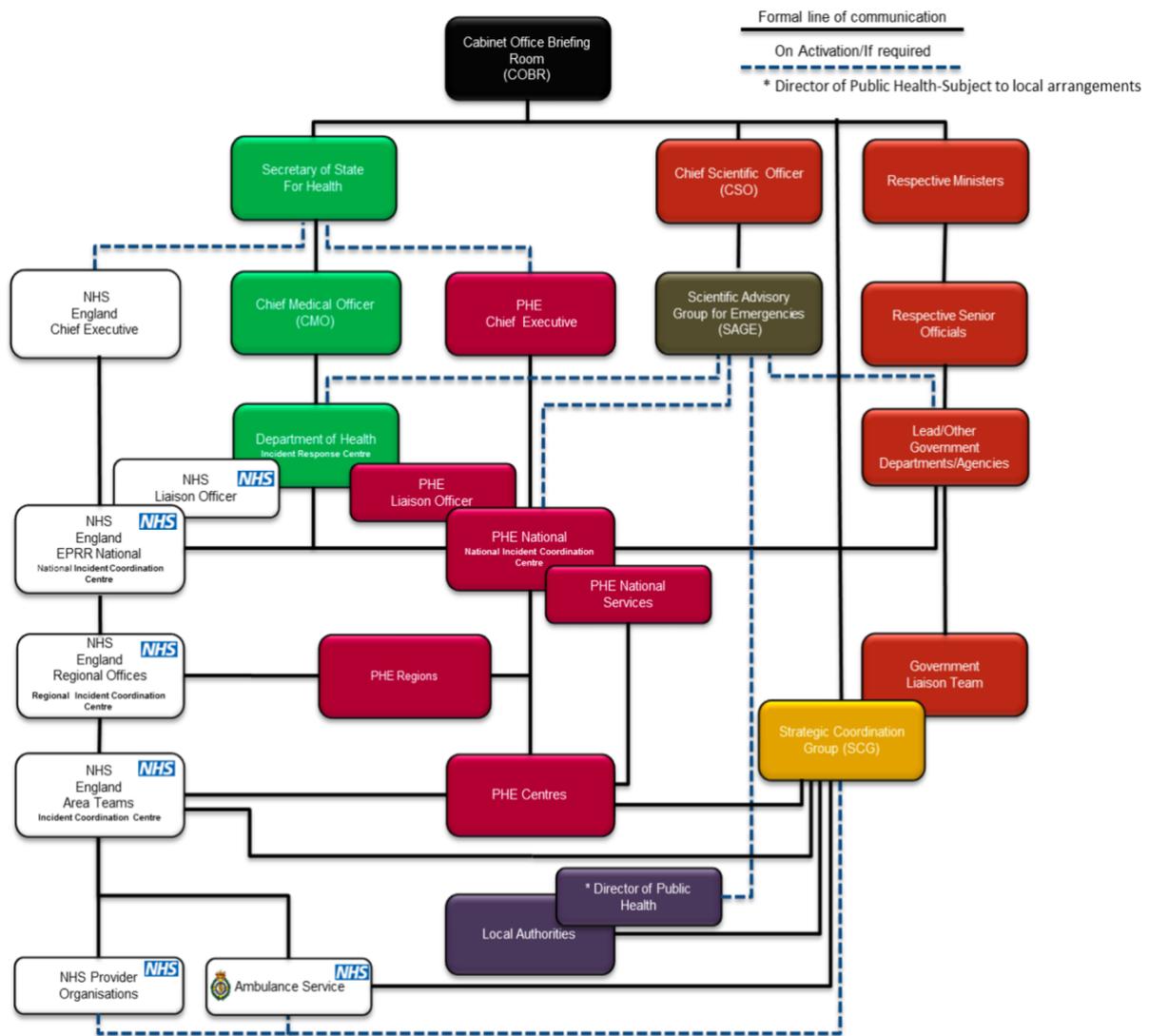
### **Submissions for my FOIA requests**

23. The inconsistency of the ECFRS’s position on disclosure is striking. Both in its initial Refusal Decision and its subsequent Internal Review, it confirmed that it held the information I requested. Following my ICO complaint, it has now stated that it does not hold any information on Exercise Cygnus, explaining that previously *“we were not clear as to the role of the ERF”*. This is not a satisfactory explanation. The ECFRS has failed to explain how the role of the ERF has any bearing on whether the ECFRS held or holds the information I requested.

24. The ECFRS also appears to be under a misapprehension when it declares in recent correspondence dated 14 April 2021 that Exercise Cygnus was a *“health exercise”* and that the reports I requested belong to *“the NHS”*. Exercise Cygnus was a national multi-agency pandemic exercise which examined many non-healthcare issues, for instance communications, social care and the role of faith leaders during a pandemic.

25. Each public body which participated in Exercise Cygnus is responsible separately for the data it holds under the FOIA. NHS organisations participate alongside the LRFs/SCGs in pandemic exercises, and PHE’s Pandemic Influenza Response Plan indicates that the LRF/SCG data does not belong to *“the NHS”*:

PHE's Pandemic Influenza Response Plan <sup>13</sup>



26. In addition, given that it remains unclear whether the ECFRS has officially relinquished its previous grounds of exemption as stated in its Refusal Decision and Internal Review, I will provide a preliminary response to the exemptions claimed by the ECFRS. My first observation is that the Refusal Decision and Internal Review were conducted by the same person, although his Internal Review of his own decision was overseen by a Data Protection Officer. This seems poor practice, and unsurprisingly his review of his own initial decision which he tellingly titled “Final Response FOI4224.pdf” leads to an almost identical outcome in his Internal Review.

<sup>13</sup> <https://www.gov.uk/government/publications/pandemic-influenza-response-plan> at page 19

27. Secondly, it is difficult for me to test the validity of the ECFRS's position that the exemption in Section 24 of the FOIA is engaged by all three of my FOIA requests, because the Refusal Decision and the Internal Review do not explain how national security is threatened by disclosure. For instance, the Refusal Decision warns about "*making it [data] available to those who would pose a risk to identified individuals and our national security*", but it fails to explain how the data would pose a risk to national security.

28. Thirdly, it is difficult for me to test the absolute exemption claimed under Section 44 of the FOIA because the ECFRS fails to explain (i) whether it is claiming exemption under an enactment, a Community obligation, contempt of court, or a combination of the three; and (ii) how the exemption is engaged by my FOIA request.

29. Fourthly, it is incumbent upon the ECFRS to justify why the Section 24 and/or 44 exemptions justify a wholesale refusal to disclose any part of the information contained in the reports sought. The proposition that the public interest and/or legal obligations necessitate the wholesale withholding of all reports falling within the scope of my requests, as opposed to the proper and proportionate use of redactions (if properly necessary), requires justification.

30. The reports sought will presumably differ in their nature and contain a wide range of information, each part of which falls to be considered against the exemptions. See, for example, the approach in *HMRC v Information Commissioner (EA/2008/0067)* concerning a request for a copy of a report prepared following an investigation into allegations about a proposed amnesty for United Kingdom tobacco producers.

31. The Commissioner considered that different types of information within the report fell to be considered differently (see §17). Information relating to the involvement of third parties need not be disclosed. However, information relating to an HMRC employee could be disclosed, as the same concern about non-cooperation with future investigations did not bear the same force for employees. Whilst the First-tier Tribunal ultimately disagreed with the Commissioner's conclusions as to the public interest test, it did not depart from the approach of differentiating distinct kinds of information.

32. In any event, I submit that the public interest very strongly weighs in favour of disclosing the documents sought.

33. There is significant concern both at the highest scientific level and in national public discourse around the failure to learn from Exercise Cygnus. For instance, Sir Paul Nurse is a Nobel Prize Winner, former President of the Royal Society, current CEO of the Francis Crick Institute, and one of the UK's most eminent scientists. He has publicly said on BBC Question Time:

*"We were totally unprepared for it, and we should have been prepared for it. I mean, the fact is there was a review of the functioning of the NHS, how it would work in a pandemic... it was never published... and we didn't do well, in fact we failed. Now was there any action there? I didn't see any action. It wasn't even published."*<sup>14</sup>

34. Sir Paul Nurse's statement makes the argument that pandemic preparation was not undertaken at least in part due to failed disclosure of Exercise Cygnus. A similar statement was put forward by Phillip Lee, a former Conservative Minister at the time of Exercise Cygnus who later stated that it was *"a mistake not to publish at the time"*<sup>15</sup>. There is a public interest in ensuring that failed transparency does not cause detriment to preparedness for future pandemics.

35. Furthermore, there is a public interest in resolving the discrepancy between the findings of Exercise Cygnus presented in PHE's published report<sup>1</sup>, and other reliable sources of information about what happened during Exercise Cygnus. For instance, a spokesperson for the Rt Hon Jeremy Hunt MP has confirmed that Mr Hunt was requested to turn off ventilators

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<sup>14</sup> <https://www.theneweuropean.co.uk/brexit-news/sir-paul-nurse-on-boris-johnson-government-failings-over-nhs-76222>

<sup>15</sup> <https://www.theguardian.com/world/2020/apr/19/government-under-fire-failing-pandemic-recommendations>

for thousands of patients during Exercise Cygnus <sup>16</sup>. This event is of enormous significance and public interest, but it is not remotely mentioned in the PHE report.

36. PHE's published Exercise Cygnus Report says very little about some of the most serious problems which could reasonably be expected to be encountered by Category 1 responders on the ground during a respiratory viral pandemic, such as the availability of personal protective equipment (PPE), intensive care capacity, and ventilator provision. It is notable that our lived experience as NHS staff on the ground during the COVID-19 pandemic does not match the experience documented in PHE's report, even though Exercise Cygnus modelled a pandemic which was "close to the UK's worst case planning scenarios" <sup>1</sup>.

37. In addition, the primary data collected from the LRFs (or analogous SCGs) during Exercise Cygnus was large in volume and requires further objective analysis. It is clear that Central Government struggled to interpret the raw data from Exercise Cygnus, and this raises the concern that PHE's report has over-simplified and/or misinterpreted important information of public interest:

*"DCLG reported that they were overwhelmed with information from the eight SCGs and that the information provided was so inconsistent that they struggled to create from it a coherent picture" <sup>17</sup>.*

38. The importance of the information I have requested from the ECFRS is that this raw primary data represents the unprocessed experience of emergency responders on the ground, before that data could be reworked by the Department of Health into an official report. Bearing in mind the discrepancy between PHE's published report and other sources of information, as well as the reality of what has played out during the COVID-19 pandemic, it is important for the raw primary data to be open to scrutiny and objective analysis by the general public, NHS staff on the ground, and the scientific community.

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<sup>16</sup> <https://www.telegraph.co.uk/global-health/science-and-disease/jeremy-hunt-downed-tools-refused-play-asked-turn-ventilators/>

<sup>17</sup> <https://www.gov.uk/government/publications/uk-pandemic-preparedness/exercise-cygnus-report-accessible-report> at A.3

39. Exercise Cygnus also identified problems in the relationship between the local LRFs/SCGs and Central Government, and it is in the public interest to gain a greater understanding of how these problems could impact on pandemic management:

*"SCGs reported that the lack of information coming back from 'the Centre' would have impeded their ability to act" <sup>17</sup>.*

40. The LRFs/SCGs identified deficits in social care capacity during Exercise Cygnus, and the ERF specifically raised concerns about the interface between NHS and social care services (see paragraph 16 above). The dramatic increase in mortality in care home residents during COVID-19 has been documented by the Care Quality Commission <sup>18</sup>, and one of the most tragic consequences of the COVID-19 pandemic has been the enormous numbers of people who have died in residential and nursing homes, causing great loss to families throughout the UK. In this regard, it is in the public interest for relevant primary data from Exercise Cygnus to be in the public domain so that families and communities can better understand the pandemic vulnerabilities associated with the provision of social care:

*"In an attempt to assess adult social care capacity, the Department of Health devised a SitRep template that could be used by the SCGs to report on capacity within the social care system... LRFs reported that it was not possible to collate an accurate picture of social care capacity because much of that capacity lies with private providers. It is likely that there will be vulnerable people who are reliant on private support which might not be available at the time of a pandemic..." <sup>19</sup>*

*"...there needs to a working group to look at how you can access this information (about social care capacity and requirements) there might be 100s of vulnerable people who won't get the help that they want or need and won't be identified." <sup>19</sup>*

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<sup>18</sup> [https://www.cqc.org.uk/sites/default/files/20201016\\_stateofcare1920\\_fullreport.pdf](https://www.cqc.org.uk/sites/default/files/20201016_stateofcare1920_fullreport.pdf) at page 35

<sup>19</sup> <https://www.gov.uk/government/publications/uk-pandemic-preparedness/exercise-cygnus-report-accessible-report> at A.5

41. Regarding the public interest case for disclosure of data held by the ECFRS in relation to Exercise Cygnus, it is worth emphasising that information on pandemic preparedness remains relevant even though we are currently experiencing a sharp decline in UK mortality rates. Both the Prime Minister<sup>20</sup> and Chief Medical Officer<sup>21</sup> have recently warned that a third wave will happen in the UK as restrictions are relaxed. Recent modelling data published in the Lancet (one of the world's premier scientific journals) predicts 20,000 to 90,000 UK deaths as lockdown is relaxed, even with a successful vaccination programme<sup>22</sup>.

42. The UK has had significant success in rolling out an ambitious vaccination programme, but we are not out of the woods yet. Leading scientists have raised concerns that new strains of COVID-19 may elude vaccine-mediated protection<sup>23</sup>, and research published in March 2021 provides *prima facie* scientific evidence that the E484K mutation in the COVID-19 spike protein can evade recognition by vaccines<sup>24</sup>. One of the UK's leading immunologists has stated that the UK should be "*terribly concerned*" about a new double mutation variant of COVID-19<sup>25</sup>.

43. In addition, we are still learning about rare but serious risks associated with the Astra Zeneca vaccine such as life-threatening blood clots reported by the British Society of Haematology<sup>26</sup>, which may affect vaccine uptake by members of the public.

44. Lastly, the ICO's attention is drawn to the fact that COVID-19 has followed a series of novel viral pandemics such as H1N1, MERS, Ebola and Zika, and that an influenza pandemic remains the most serious and most likely future civil emergency in the UK's National Risk Register<sup>27</sup>.

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<sup>20</sup> <https://www.thetimes.co.uk/article/inevitable-third-covid-19-wave-will-not-change-the-plan-vows-boris-johnson-pc8255xlm>

<sup>21</sup> <https://www.thetimes.co.uk/article/easing-lockdown-rules-likely-to-cause-covid-third-wave-2xsk3vhjv>

<sup>22</sup> [https://www.thelancet.com/action/showPdf?pii=S1473-3099\(21\)00143-2&fbclid=IwAR0VOvfVZ9yswGMKGXXH49INgSQ-XzcUqOqecFHx2nViSfY95Ffh\\_JWMAP8](https://www.thelancet.com/action/showPdf?pii=S1473-3099(21)00143-2&fbclid=IwAR0VOvfVZ9yswGMKGXXH49INgSQ-XzcUqOqecFHx2nViSfY95Ffh_JWMAP8)

<sup>23</sup> <https://www.theguardian.com/world/2021/mar/30/new-covid-vaccines-needed-within-year-say-scientists>

<sup>24</sup> <https://www.biorxiv.org/content/10.1101/2021.03.13.435222v1.full.pdf>

<sup>25</sup> <https://metro.co.uk/2021/04/17/fears-indian-double-mutant-strain-could-scupper-path-to-freedom-14424775/>

<sup>26</sup> <https://b-s-h.org.uk/about-us/news/covid-19-updates/>

<sup>27</sup> <https://www.gov.uk/government/publications/national-risk-register-2020>

45. These clearly identifiable risks (listed in paragraphs 41 to 44 above) raise reasonable concerns about future waves of COVID-19 and future pandemics caused by novel viral pathogens. Current ventilator capacity will struggle to deal with another pandemic wave, and NHS staff shortages and "burnout" will exacerbate this capacity problem. Importantly, ventilator capacity and NHS staff shortages vary regionally across the UK, the Government has followed a localised strategy of pandemic control, and there is therefore a clear public interest in understanding problems identified locally on the ground by Local Resilience Forums during Exercise Cygnus.

### **Need for close scrutiny by the ICO**

46. I have been one of the leading forces behind the calls on Government to publish the reports containing the findings and recommendations Exercise Cygnus. My legal campaign has been widely publicised in the media<sup>28 29 30 31 32 33 34 35 36</sup> and has attracted almost three thousand financial pledges from members of the public<sup>37</sup>, suggesting that there is significant public support for disclosure of data from Cygnus.

47. In April 2020, I requested publication of the Cygnus Report under the FOIA. I was not alone in doing so. In response to my request, the Department for Health and Social Care engaged in a strategy of evasion and delay. Rather than refuse my FOIA request, as it had done so with those requests which came before me, it repeatedly requested extensions of time so as to complete the public interest balancing exercise. My legal team have provided a copy of my

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<sup>28</sup> <https://www.theguardian.com/uk-news/2020/apr/26/doctor-sue-results-operation-cygnus>

<sup>29</sup> <https://www.ft.com/content/55d2f00e-58b5-4b7d-8df8-a0b9b51e99fc>

<sup>30</sup> <https://www.euronews.com/2020/04/27/coronavirus-uk-government-disrespecting-health-workers-by-not-revealing-pandemic-study-fin>

<sup>31</sup> <https://www.telegraph.co.uk/news/2020/06/01/exercise-cygnus-nhs-doctors-legal-bid-force-government-release/>

<sup>32</sup> <https://www.theguardian.com/world/2020/oct/11/whitehall-told-to-release-secret-2016-files-on-uk-pandemic-risks>

<sup>33</sup> <https://www.telegraph.co.uk/global-health/science-and-disease/six-crucial-pandemic-lessons-government-ignored/>

<sup>34</sup> <https://www.bmj.com/content/371/bmj.m4499>

<sup>35</sup> <https://www.telegraph.co.uk/news/2020/12/18/exclusive-officials-preparing-brexit-excuse-putting-pandemic/>

<sup>36</sup> <https://www.telegraph.co.uk/global-health/science-and-disease/crisis-triage-protocol-brave-attempt-ensure-happened-italy-not/>

<sup>37</sup> <https://www.crowdjustice.com/case/jrcovid19/>

earlier complaint regarding this conduct for the purposes of a parallel complaint which you are investigating.

48. I also commenced a judicial review, seeking publication of all of the reports prepared as part of and following Exercise Cygnus, including those reports provided to or filed by participants. Faced with the growing pressure for transparency, the Government finally published the Cygnus Report <sup>1</sup> containing a summary of the key lessons learned. However, significant concerns remain regarding data of public interest which has not been disclosed in PHE's published report <sup>35 36</sup>.

49. The Refusal Decision here challenged is the latest in what has been a persistent pattern on the part of public bodies of closing ranks and refusing to disclose documentation relevant to the public's understanding of the nation's pandemic preparedness. The ECFRS's recent dramatic change of position regarding disclosure, trying to evade its FOIA statutory obligations as a local public body, and diverting my FOIA request to a national public body "*the NHS*", should raise concerns about a continuation of that pattern.

50. In these circumstances, it is incumbent upon the Information Commissioner to submit the ECFRS's purported justifications for non-disclosure in this case to the strictest scrutiny. At the very least, I invite the Commissioner to request sight of:

- (i) Documents describing the respective roles of the ECFRS, the ERF and "*the NHS*" during Exercise Cygnus;
- (ii) Documents describing how the ERF is constituted, what legal powers it has, and whether the ERF or other Category 1 responders within the ERF can prevent the ECFRS from disclosing information, bearing in mind the Cabinet Office's statement that "*A Local Resilience Forum is not a legal entity, nor does a Forum have powers to direct its members...*" <sup>9</sup>
- (iii) Copies of documents detailing the specific concerns related to exemptions claimed under Sections 24 and 44 of the FOIA, and how those concerns were arrived at;

- (iv) Copies of any submissions made internally or by third parties (for instance, other public bodies or other ERF constituent members) to the person who decided that Sections 24 and 44 FOIA exemptions should apply to my FOIA request;
- (v) Copies of any other documents detailing the reasons for that person's opinion, the factors taken into account when weighing the public interest, and the weight attached to them;
- (vi) Copies of documents detailing how the person who issued the Refusal Decision reviewed his own decision during the Internal Review, the factors taken into account and the weight attached to them;
- (vii) Any other documents which were considered or produced as part of the ECFRS's Internal Review;
- (viii) Copies of documents detailing the role of the "ERF Stakeholders" who refused to allow the ECFRS to disclose information in response to my FOIA request (see paragraph 20 above);
- (ix) Copies of any submissions made internally or by third parties (including the coordinator of the ERF – see paragraph 22 above) to the person in the ECFRS who then changed his position and decided that the ECFRS did not hold the information I requested;
- (x) Reasons why the continued withholding of the LRF reports sought can be justified, in circumstances in which the Cygnus Report <sup>1</sup> and the document detailing the steps undertaken to implement the key lessons <sup>35</sup> outlined in the Cygnus Report have been disclosed and are in the public domain, and after the Health Secretary has informed Parliament that all 22 recommendations of the Report have been actioned <sup>3</sup>.

I await your decision. Please do not hesitate to contact me if you require any further information.

Yours sincerely,

M. 

Dr Moosa Qureshi