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Your Ref: IC-94466-Q1V8
Our Ref: 00242584/2
Date: 25 June 2021

Sent by email only: icocasework@ico.org.uk

Dear Mr [REDACTED],

Submissions to the ICO regarding case ref. IC-94466-Q1V8

1. We write on behalf of Dr Moosa Qureshi with respect to his complaint regarding the recent decision of Public Health England (**PHE**) to refuse a request he submitted under the Freedom of Information Act 2000 (**FOIA**) on grounds of the national security exemption. By this letter, Dr Qureshi wishes to make submissions to the ICO regarding the proper resolution of his complaint under section 50 FOIA, which we understand you have responsibility for investigating. He reserves the right to make further submissions upon the receipt of further information or documentation relating to this request.

The FOIA Request

2. On 9 February 2021, Dr Qureshi submitted a FOIA request to PHE making three separate requests. By requests 1 and 2, he sought basic information about pandemic simulation exercises in which PHE participated between 1 January 2015 and 31 December 2019 which sought to model responses to infectious disease outbreaks. By request 3, he sought copies of the main reports summarising the findings of two such simulation exercises: Exercise Cygnet and Exercise Typhon.

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3. By way of background:

3.1. Exercise Cygnet was the first phase of a simulation exercise testing the UK's preparedness for an influenza pandemic. It was carried out in August 2016. It is mentioned in the Annexes to the main report of the broader Exercise Cygnus which was disclosed in 2020.

3.2. Exercise Typhon is referred to in a PHE document which is in the public domain and is entitled "*Protecting the population of the North East from communicable disease and other hazards – Annual Report 2016/17*". That document is available online¹. Page 35 states:

"PHE Centre staff are actively engaged in supporting the planning and management of multi-agency exercises across the region. In 2016/17, these exercises included a range of scenarios such as pandemic flu, chemical release, viral haemorrhagic fever (VHF) and cyber-attack. Exercises are at either tactical level or strategic level.

...

Internally the North East has played into a national E-Coli outbreak exercise and was one of the host centres for the Command Post Exercise for (CPX) 2017 Exercise Typhon in which the Centre's ability to respond to a locally identified case of VHF was exercised alongside our ability to stand up and run an Incident Coordination Centre (ICC) over two days." (emphasis added)

3.3. A further document entitled "*PHE Annual Reports and Accounts 2016/17*"² states at page 37 (after marking "*Further strengthen our emergency preparedness, resilience and response functions*" as "*Achieved*"):

"In 2016/17, our systems and policies were revised and tested through Exercises Cygnus and Typhon, with lessons identified reports for

¹<https://www.darlington.gov.uk/PublicMinutes/Health%20and%20Well%20Being%20Board%5COctober%2026%202017%5CItem%20No.%2012%20-%20Health%20Protection%20Annual%20report%20-%20Appendix.pdf>

²https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwih7mMhKHxAhVK2qQKH5-AIYQFjAAegQIBRAD&url=https%3A%2F%2Fassets.publishing.service.gov.uk%2Fgovernment%2Fuploads%2Fsystem%2Fuploads%2Fattachment_data%2Ffile%2F629806%2FPHE_annual_report_2016_2017_print_ready_pdf.pdf&usq=AOvVaw0wISY_TfPw2D09MKENwv9u

continuous improvement in our EPRR [emergency preparedness, resilience and response] functions.”

And at page 84:

“A national pandemic influenza planning exercise, deferred previously due to the Ebola response, NIERP includes contingency planning for multiple emergencies occurring concurrently and this was tested in exercise Typhon in February 2017, the lessons learnt from which are being implemented with oversight from the EPRR Oversight Group.”

4. As at the date of the request, it was therefore public knowledge that PHE had been involved in an exercise named Exercise Typhon which was designed to simulate the UK's response to a local outbreak of viral haemorrhagic fever in order to test emergency preparedness for the same. Further, lessons from that exercise were said to have been “implemented”.
5. The term ‘viral haemorrhagic fever’ (‘VHF’) is given to a group of illnesses caused by particular viruses which put all infected people at risk of serious illness or death and can cause haemorrhagic symptoms in later stages³. A well-known example of viral haemorrhagic fever is the Ebola virus disease which has a 60% mortality rate. Exercise Typhon modelled another VHF called Lassa Fever. The reservoir for this disease is a rodent. There is evidence of human to human transmission through bodily fluids, and evidence of transmissibility through aerosolised sputum.

PHE's Initial Refusal Decision

6. In a letter dated 9 March 2021 (but only received on 6 April 2021), PHE responded to Dr Qureshi's FOIA request. By this letter, the PHE refused all of Dr Qureshi's requests on a wholesale basis, invoking the national security exemption provided by section 24 FOIA (save for the request for the Exercise Cygnet report which it said was otherwise publicly available) (the **Refusal Decision**).

³ See <https://www.hps.scot.nhs.uk/a-to-z-of-topics/viral-haemorrhagic-fevers-vhf/>.

7. That letter did not explain why the section 24 exemption was prima facie engaged at all, beyond the rather odd statement that:

“The public interest inherent in maintaining Section 24 relates to safeguarding the UK’s national security. It follows that PHE is concerned with the public interest of the UK and its citizens”.

8. That reasoning does not purport to address why disclosure of the Exercise Typhon report would put national security at risk, still less why withholding disclosure is “reasonably necessary” to safeguard national security.
9. It appears as though PHE has reasoned from the incorrect premise that any information which relates in any way with the public interest therefore relates to national security, and that ‘relating to’ national security is sufficient to engage the exemption.
10. As to the public interest balancing test (which the PHE calls determining “*whether the above exemption is sufficiently engaged*”), PHE said that these interests weighed in favour of disclosure:

“the public interest in transparency and commitment and the wish for PHE to be open and transparent”

“disclosing information to present a full picture to enable wider public scrutiny of decision making”

11. And that these factors weighed against disclosure:

“Disclosure of this information could compromise PHE’s ability to carry out such exercises in the future, in turn affecting its scope for exposing weaknesses and identifying areas needing improvement in its epidemic and pandemic response plans. This could have a negative impact on PHE’s ability to carry out future emergency response work and protect the interests of the UK and its citizens against threats to national security.”

“Disclosure of the Exercise Typhon report could cause unnecessary heightened public concern about PHE’s capability to cope with emergency situations, based on misinformation and outdated information. Information provided out of context is a significant risk to promoting clear and accessible public messaging, and to ensuring that accurate and up-to-date information reaches the widest possible

audience. The resulting lack of clear, accurate and current guidance could compromise the safety and interests of the UK and its citizens.”

12. Dr Moosa immediately requested an internal review of the Refusal Decision (on 6 April).

Internal review

13. On 19 May 2021, PHE wrote again to Dr Qureshi with the outcome of its internal review of its Refusal Decision. It stated that it had overturned its decision to refuse requests 1 and 2 on grounds of national security. Instead, it provided the information thereby sought. However, it maintained the applicability of the national security exemption to the request for a copy of the Exercise Typhon report.

14. The only additional reasoning in support of that decision was as follows:

“In response to your point that *“PHE’s failure to disclose pandemic reports has catastrophically damaged our pandemic preparedness”*, exercises such as Exercise Typhon and Exercise Cygnus are intended to explore and improve upon internal PHE and Government command and control procedures in the event of a pandemic or epidemic. Exercises of this nature are not designed to prepare the general public for a pandemic, nor are the reports intended for general publication.”

Legal principles governing the application of the section 24 FOIA exemption

15. Section 24(1) FOIA provides that information is exempt from disclosure under section 1(1)(b) FOIA where such exemption is *“required for the purpose of safeguarding national security”*.
16. It is available where an authority cannot rely upon section 23(1) FOIA because the information in question has not been supplied directly or indirectly to any of the security or intelligence agencies listed in section 23(3) FOIA. It is therefore inferred that PHE has not supplied any information in the Exercise Typhon report to such agencies.
17. The first step is for the public authority to determine whether invocation of the exemption is “required” (i.e. reasonably necessary) to safeguard national security:

Philip Kalman v Information Commissioner and the Department of Transport (EA/2009/0111) at §33 noting further that “it is therefore not sufficient that the information sought simply relates to national security”.

18. “National security” means the security of the UK and its people (*Norman Baker v (1) The Information Commissioner and (2) Cabinet Office* (EA/2006/0045) at §26).
19. Assuming that the exemption is prima facie engaged, the second step in the analysis is to conduct the public interest balancing test under section 2(1)(b) FOIA. The question is whether in all the circumstances the public interest favours disclosure of the information or maintenance of the exemption.
20. For completeness, section 24(3) FOIA provides that a certificate signed by a Minister of the Crown certifying that exemption “*is, or at any time was, required for the purpose of safeguarding national security shall, subject to section 60, be conclusive evidence of that fact*”. No such ministerial certification has been provided in this case (so far as we are aware). If any such certificate is produced at a later stage, Dr Qureshi reserves the right to appeal the same.

No plausible evidence that withholding Exercise Typhon report is reasonably necessary to safeguard national security

21. The Refusal Decision letter contained no explanation for why the section 24 exemption is engaged. As noted above, the PHE simply referred to the fact that it “*is concerned with the public interest of the UK and its citizens*”. However, it is not sufficient that information merely ‘relates to’ national security (still less the general public interest). The question is whether there is an evidential basis for believing it is reasonably necessary to withhold the Exercise Typhon report in order to safeguard national security. PHE has failed to address this question.
22. It is also notable that PHE has proceeded upon the basis that all of the information contained within the Exercise Typhon report must be withheld in order to safeguard national security. The proposition that the public interest is best served by the

wholesale withholding of this report, as opposed to the proper and proportionate use of redactions (if properly necessary), requires justification. The report will presumably 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. The Commissioner considered that different types of information within the report fell to be considered differently.

23. Insofar as PHE seeks to rely upon those factors said to weigh in favour of withholding the report as the basis for believing the exemption is engaged, these are addressed below.

Public interest weighs strongly in favour of disclosure

(i) PHE has committed to transparency in its work regarding infectious disease response

24. The PHE rightly recognises that the general public interest in transparency of its decision-making and activities weighs in favour of disclosure. It is submitted that this inherent public interest in transparency is particularly strong in the context of information held by PHE as it is a body which has committed to carrying out its work in a transparent manner. It should therefore be a body which is particularly ready to be forthright in expressing its views:

24.1. PHE is an executive agency of the Department of Health and Social care, but it has operational autonomy. A joint framework agreement⁴ between the two bodies states that “*PHE is an open organisation that carries out its activities transparently*” (§7.1) and that “*PHE shall be free to publish and speak on those issues which relate to the nation’s health and wellbeing in order to set out the professional, scientific and objective judgment of the evidence base*” (§7.4).

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/677457/Framework_agreement_between_DHSC_and_PHE_2018.pdf

Indeed, its very function is to provide “*government, local government the NHS, Parliament, industry, public health professionals and the public with evidence-based professional, scientific and delivery expertise and support*” (§2.2, emphasis added).

24.2. The PHE has also committed to publishing information to the public about the responses it can expect to the most significant of infectious disease challenges and the effect of PHE’s activities in this regard. Transparency in the area of UK preparedness for pandemics is thus at the core of PHE’s work. See PHE’s “Infectious Diseases Strategy 2020-2025”⁵ which states as to Strategic Priority 5 (“Strengthen our response to major incidents and emergencies including pandemic influenza”):

“PHE will ... review and update our contingency plans, clarify the level of surge response required from within PHE ... conduct audit and exercise activity with our partners so that collectively we can provide assurance to government and the public on the response that they can expect to the most significant of infectious disease challenges”. (p.13) (Emphasis added)

And as to Strategic Priority 10 (“*Define the value generated by delivering our Infectious Diseases Strategy*”):

“...PHE will publish information that collates the evidence of the effect of our infectious disease related activities”. (p.19)

(ii) Strong public interest in scrutinising and understanding degree of UK preparedness for pandemics and the degree to which public authorities have properly addressed the deficiencies identified in simulation exercises

25. What PHE has wholly failed to take into account is the strong public interest in disclosing this specific report at this specific point in time.

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831439/PHE_Infectious_Diseases_Strategy_2020-2025.pdf

26. The ICO will be aware from Dr Qureshi's submissions in other complaints (in particular Complaint Ref. IC-83706-P2P2 and Complaint Ref. IC-91642-W3P0) that there has been considerable public interest in understanding the lessons which arose from a pandemic simulation exercise named Exercise Cygnus and scrutinising the degree to which those lessons were addressed prior to the ongoing COVID-19 pandemic. After Dr Qureshi issued judicial review proceeding challenging the refusal on the Government's part to publish the Exercise Cygnus report, it subsequently did so. The publication of that report garnered significant press attention, of which the ICO is no doubt aware.

27. Those events now form part of a broader public debate and interest in other pandemic simulation exercises undertaken by Government and public authorities, what lessons those exercises gave rise to and the degree to which those lessons have been and/or are being addressed.

28. By way of example:

28.1. In August 2020, the Institute for Government has recently published a report entitled "*How fit were public services for coronavirus*"⁶, attributing the lack of preparedness for COVID-19 to a failure to transparently publish and implement the key recommendations from Exercise Cygnus. It also notes that the findings of other simulation exercises have not been published "*meaning that other important recommendations will likely also have gone unheeded due to a lack of transparency*" (p.8). One of its specific recommendations is that public authorities and agencies should publish the key findings from planning exercises and implement them and that whilst "*in some cases, it may be necessary to redact or withhold information if publication would compromise national security, ... overall better transparency would be beneficial*" (p.64).

⁶ www.instituteforgovernment.org.uk/sites/default/files/publications/how-fit-public-services-coronavirus.pdf

28.2. In March 2021, a group of academics and a representative of PHE published an article in the journal *“Public Health”* entitled *“Where England’s pandemic response to COVID-19 went wrong”*⁷. They identify a concerning pattern of stakeholders failing to address the issues identified in past simulation exercises and place this in the context of a broader phenomenon of the UK failing to learn from the past:

“Pandemic exercises had previously been carried out, such as Exercise Cygnus in 2016. Whilst health stakeholders may have rehearsed these scenarios, little was carried out to implement learning or actions on issues identified from the exercises. However, this phenomenon is not new, and the UK’s failure to learn from past emergencies has been previously reported. Consequently, this heightens the likelihood of the system repeating past failures.”

28.3. In March 2021, a Westminster based think-tank named “Reform” published a report entitled *“A State of preparedness – How government can build resilience to civil emergencies”*⁸. That report records how:

“Debate in the Lords and Commons makes clear that before a leak forced the Government to publish the findings of Exercise Cygnus – after the pandemic hit, and too late for Parliament to scrutinise whether lessons had been acted on – there was a lack of clarity in Parliament about what lessons had been identified and what action was being taken, even if findings had been shared with those directly involved in the exercise. Problems highlighted by exercising demand as much scrutiny as lessons learned from a real emergency, so there should be a presumption of transparency with Parliament and the public.” (p.33)

The report goes on to recommend:

“In order to allow for risk assessments to be fully engaged with and scrutinised, there should be a presumption towards transparency. Material related to non-malicious risks should be made publicly available.

...

A risk assessment only serves its purpose if the relevant people can engage with it. This was a key recommendation of the Pitt Review into flooding

⁷ www.ncbi.nlm.nih.gov/pmc/articles/PMC7680038/?report=classic

⁸ www.reform.uk/sites/default/files/2021-05/A%20State%20of%20Preparedness%20Final.pdf

fourteen years ago, seen at the time as “the largest peacetime emergency we’ve seen” in its “scale, duration, and complexity”;

“We must be willing to work together and share information. We recognise there are issues of commercial confidentiality and security, but we firmly believe that the public interest is best served by closer cooperation and a presumption that information will be shared. We must be open, honest and direct about risk, including with the public. We must move from a culture of ‘need to know’ to one of ‘need to share’”

To enable better preparedness, greater transparency is needed. Greater openness about the non-malicious hazards aspects of the Assessment could improve awareness of its conclusions and allow for further engagement from experts outside government and the formal process.” (p.24)

28.4. The effect of the PHE’s Internal Review was that the PHE disclosed information about a number of hitherto secret pandemic simulation exercises. This disclosure attracted significant press and academic attention, serving to illustrate the heightened public interest in the results and lessons learned from historical pandemic exercises and not simply those with more obvious connections to coronavirus. See, for example:

- i. The British Medical Journal, “*Pandemic preparedness: UK government kept coronavirus modelling secret*”, 11 June 2021, available here: <https://www.bmj.com/content/373/bmj.n1501> (recording that Peter Openshaw, an immunologist and professor of experimental medicine at Imperial College London and a member of the government’s Nervtag committee stated that it seemed “*surprising that those exercises weren’t presented to scientific advisory committees. It would be interesting to raise it on Nervtag*”).
- ii. The Guardian, “*Secret planning exercise in 2016 modelled impact of Mers outbreak in UK*”, 10 June 2021, available here: <https://www.theguardian.com/society/2021/jun/10/secret-planning-exercise-in-2016-modelled-impact-of-mers-outbreak-in-uk> (that article stating that a “*leading virologist*” said Exercise Alice, which modelled a

MERS outbreak, could have been “*completely relevant*” to the Covid response and a “*senior government adviser on respiratory disease described it as “odd” that details of the exercises had not been provided to key advisory committees*”).

- iii. The Daily Mail, “*Britain DID simulate a coronavirus pandemic before Covid struck and didn’t just mock up a flu outbreak... but health chiefs WON’T say how secret war-game went because it would damage national security*”, 10 June 2021, available here:

<https://www.dailymail.co.uk/news/article-9671813/Covid-19-UK-Britain-DID-simulate-coronavirus-pandemic-health-chiefs-WONT-say-went.html>

(noting that “*giving evidence today, the Health Secretary reiterated that ‘famously all the preparation and the plans that were in place were for a flu pandemic’. But Public Health England has now admitted it carried out ten other epidemic-fighting scenarios between 2015 and 2018... Three operations looked at Ebola, an incurable haemorrhagic fever that kills around a third of everyone it infects. Five were based around flu and two delved into the potential effects of an outbreak of Lassa fever, another haemorrhagic illness that has a case-fatality rate of around 1 per cent*”). At the date of writing, that article has attracted 637 comments from the general public.

- iv. The Independent, “*Eleven pandemic exercises were carried out before Covid, government admits*”, 11 June 2021, available here <https://www.independent.co.uk/news/uk/home-news/pandemic-exercise-covid-coronavirus-phe-nhs-b1863753.html> .

29. As a result of the PHE belatedly disclosing the names and details of the other pandemic preparedness exercises in which it was involved, Dr Qureshi has made subsequent FOIA requests for the reports relating to each.

30. Following COVID-19 and the failures to prepare for a pandemic of this kind, the default position should be that information relating to pandemic preparedness exercises should be available to the public unless there is a convincing case for non-disclosure.
31. The opportune time for understanding and scrutinising preparedness is before a pandemic hits, not after. This request for the Exercise Typhon report sits in a context in which a number of bodies are criticising the Government and other public agencies for failing to address issues raised in past simulation exercises (including a representative of the PHE itself – see paragraph 28.2 above).
32. Given that viruses are constantly mutating, both naturally and as the result of scientific experimentation, it is not possible to predict with certainty whether the next major pandemic will be caused by a respiratory virus such as influenza or coronavirus, a viral haemorrhagic fever, or a flavivirus such as Zika. In recent times, the UK has had to grapple with the threat of a number of different viral pandemics (including H1N1, MERS, SARS, Zika and Ebola).
33. It would be contrary to principle if the ICO were to find that the public interest only weighs in favour of these pandemic preparedness reports *ex post facto* – that is, a pandemic of a kind or type similar or identical to the subject of any particular exercise hits. The benefit of transparency in terms of accountability and prevention of public health disasters will be severely curbed if that were the case. It is important that public agencies pre-emptively and transparently share data, and ensure preparedness by public scrutiny of that data, before the next pandemic strikes.

(iii) Exercise Typhon lessons important

34. There are nevertheless specific reasons why it is particularly important for there to be public transparency and scrutiny of the UK's preparedness for viral haemorrhagic fevers such as Lassa and Ebola.
35. Lassa Fever is a Viral Haemorrhagic Fever (VHF) which is endemic in several countries of West Africa, including Sierra Leone, Guinea, Liberia and Nigeria. In these

countries, sporadic pandemics can cause thousands of deaths. It is not beyond the realms of possibility that such a pandemic could reach the UK's shores. The Democratic Republic of the Congo has recently experienced its fourth outbreak in less than three years, the latest occurring in May 2021⁹. The very fact that Public Health England – a body which is designed to protect the health of the UK population rather than the health of individual patients – has devoted resources to performing an exercise on Lassa Fever, strongly supports the argument that there is a Lassa Fever pandemic risk to the UK.

36. These fevers typically have high mortality rates and could put incredible strain upon public health services. Both Lassa and Ebola are classified as 'Category A' diseases by the Centre for Disease Control¹⁰. Category A diseases are described as those which (a) can be easily disseminated or transmitted, (b) result in high mortality rates and have the potential for major public health impact, (c) might cause public panic and social disruption and (d) require special action for public health preparedness. Lassa is classified by the UK's Health and Safety Executive as a category 4 (maximum risk) pathogen¹¹. One in five infections cause severe disease, and 15-20% of those hospitalised die¹².
37. The main reservoir for transmission is the African rodent *Mastomys natalensis* (known commonly as the multimammate rat). This rodent is not found in the UK or Europe, and therefore primary local infection does not occur. However, models have shown that the UK is one of the highest risk countries to receive exported cases of Lassa Fever from West Africa¹³.
38. The public health importance of Lassa Fever is explained by Public Health England's own Scientific Leader for Viral Haemorrhagic Diseases, Professor Roger Hewson, who works in Porton Down. In an article entitled "*Lessons learnt from imported cases and*

⁹ <https://news.un.org/en/story/2021/05/1091162>

¹⁰ See <https://emergency.cdc.gov/agent/agentlist-category.asp> .

¹¹ See <https://www.hse.gov.uk/pubns/misc208.pdf> p.26

¹² <https://www.ecdc.europa.eu/en/publications-data/rapid-risk-assessment-lassa-fever-nigeria-benin-togo-germany-and-usa-24-march>

¹³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6402922/>

onward transmission of Lassa fever in Europe support broader management of viral haemorrhagic fevers” from 2017¹⁴, Professor Hewson explains that “VHFs [Viral Haemorrhagic Fevers] are of particular public health importance because they can spread within hospital and community settings; they have a high case fatality rate if left untreated; they are difficult to recognise and detect rapidly; and there is no specific treatment” (p.1).

39. Professor Hewson goes on to explain the importance of ensuring preparedness for Lassa Fever in the UK: *“Given the long-standing deep-seated links with Europe and the role of European workers in humanitarian support in West Africa, LF [Lassa Fever] cases will continue to be imported into Europe. Each incident places a substantial demand on clinical, laboratory and public health resources. It is fitting therefore that scientific knowledge is continually developed, including a better understanding of similar emerging viruses” (p.2, emphasis added).*
40. He also explains that preparedness for Lassa Fever is particularly important because similar viruses are emerging which require management through a similar public health infrastructure (p.2). In other words, Lassa preparedness provides a model of preparedness for similar emerging diseases.
41. Professor Hewson concludes: *“Lessons learnt should be continually distilled into appropriate guidance so that future VHF incidents can be effectively managed and rapidly controlled” (p.2, emphasis added).* Given this statement by PHE’s foremost scientific expert on VHF regarding guidance and learning, it is striking that PHE has decided to entirely suppress the findings of the only exercise on Lassa Fever performed by PHE in the last 5 years.
42. The importance of Lassa Fever is not only recognised by UK experts, but also by European experts. Professor Stephan Günther is the Head of Department of Virology and WHO Collaborating Centre for Arboviruses and Hemorrhagic Fever Reference and Research at the Bernhard-Nocht-Institute for Tropical Medicine in Hamburg, Germany.

¹⁴ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5709951>

His research is devoted to viral haemorrhagic fevers including Lassa fever. He explains in an article published in the journal *Clinical Infectious Diseases*¹⁵ that Lassa Fever is important from a European public health perspective for the following reasons:

- 42.1. Early infection is often asymptomatic, and therefore late diagnosis is a recurrent feature of this disease;
 - 42.2. Partly as a result of late diagnosis, Lassa Fever requires a large contact tracing effort (for instance, he describes how one index case in Germany required tracing of 157 contact persons);
 - 42.3. Lassa virus can be transmitted via air between laboratory animals, and aerosol stability of Lassa virus has been proven experimentally;
 - 42.4. Contacts who have been exposed to aerosolised sputum after a sneeze or cough should be classified as high risk;
 - 42.5. Cases result in high burden to healthcare systems because patients must be kept in strict isolation and staff must use PPE, as well as respirators if the patient has a cough, vomiting, diarrhoea or bleeding; and
 - 42.6. Rigorous data must be kept on the spread of Lassa Fever because of the debate on the use of viral haemorrhagic fevers in biological warfare.
43. There have been multiple natural cases of Lassa Fever imported into the UK, Europe and the USA. There has not been a single documented case of intentional infection as an act of bioterrorism. Furthermore, even if Lassa Fever were intentionally released into the UK, this would be managed by the same methods as we employ to control natural outbreaks of VHF: contact tracing, strict isolation with PPE, supportive care, and early treatment with anti-viral therapy.

(iv) No evidence that disclosure of the Exercise Typhon report could “compromise PHE’s ability to carry out such exercises in the future”

¹⁵ <https://doi.org/10.1086/374853>

44. The PHE's Refusal Decision made a generic assertion that publication of the Exercise Typhon report could "compromise PHE's ability to carry out such exercises in the future". This assertion is otherwise wholly unexplained.
45. If PHE thereby intended to make some kind of "chilling effect" argument (despite not relying upon the section 36 exemption), Dr Qureshi can do no better than repeat the ICO's Decision in Complaint Ref. IC-83706-P2P2 dated 17 June 2021 at §47:

"Turning to the DHSC's arguments about the free and frank provision of advice and the free and frank exchange of views, the Commissioner has always been sceptical of so-called "chilling effect" arguments. She expects civil servants and members of the medical profession to be robust and forthright in putting forward their views – regardless of the possibility of future disclosure."

Quite so. That is only *a fortiori* as regards civil servants working for the PHE, an agency specifically designed to be operationally independent of Government and committed to the free publication of information. It is precisely at those highest levels of civil service and government that the public should expect to find the highest standards of official behaviour, including robustness in their assessments and deliberations (cf. *Christopher Lamb v (1) Information Commissioner (2) Cabinet Office* EA/2015/0136 at §§27-28).

46. Dr Qureshi would make the following three additional points:

46.1. It is difficult to understand the mechanism by which publication of the Exercise Typhon report would have any kind of "*chilling effect*" on participants in future pandemic simulation exercises. As Dr Qureshi has submitted in respect of other complaints, the entire purpose of these exercises is to identify what needs improvement. Frank identification of what is working and what is not working is to be expected.

46.2. The Government has published the Exercise Cygnet and Exercise Cygnus reports. Evidently, it did not consider this kind of transparency to pose any risk to the nation's ability to carry out emergency simulation exercises in the future.

The PHE has not explained why Exercise Typhon is any different nor why any particular prejudice would flow from its publication.

46.3. This is not a request which is seeking disclosure of a report immediately following an exercise's completion, before any risks or lessons can be addressed and implemented. Exercise Typhon took place in 2017, some 5 years ago. PHE and other stakeholders have had more than ample time to address any concerns raised. Public documents refer to its lessons having been "implemented". They should expect to be held accountable for whether or not they have done so.

(v) No evidence that disclosure of the Exercise Typhon report "could cause unnecessary heightened public concern about PHE's capability to cope with emergency situations, based on misinformation and outdated information"

47. PHE's second argument against disclosure is that publication of the Exercise Typhon report might lead to "*misinformation*" which in turn might cause "*unnecessary heightened public concern about PHE's capability to cope with emergency situations*".

48. Dr Qureshi expects that PHE is thereby intending to parrot the same argument which was unsuccessfully advanced by the Department of Health in Complaint Ref. IC-83706-P2P2. That argument should be rejected, as it was in the context of that earlier complaint. Dr Qureshi would note the following:

48.1. Fundamentally, the ICO should treat this kind of paternalistic argument with extreme caution. It would set a very dangerous precedent indeed if public authorities could withhold information from the public - not because of any risks intrinsic to the information itself – but on the basis of a fear that the information will be 'spun' or 'misunderstood' by certain sections of the public. It is notable that PHE has not suggested that there is any information in the Exercise Typhon report which, if correctly understood and published, would endanger national security. How is the ICO to test the likelihood of such information being misunderstood? How is the ICO to test the validity of inferences or arguments

made by particular journalists on the basis of the information? Why is it not incumbent upon public authorities to manage their own communications, in order to ensure information is properly understood?

48.2. In any event, Exercise Typhon took place 5 years ago. It simulated a viral haemorrhagic fever outbreak. It is fanciful to suggest that the public will not be able to distinguish between the results of a 5-year old hypothetical exercise concerning a virus distinct from COVID-19 in transmission and symptoms from the real world data as to how the Government is dealing with the ongoing pandemic. This request was also made in February 2021, long after those first days of the COVID-19 pandemic in which clarity of communication might have taken on heightened importance.

(vi) Need for close scrutiny by ICO

49. Dr Qureshi has addressed the ICO on a number of previous occasions about the consistent pattern on the part of Government departments and public agencies of closing ranks and refusing to disclose documentations relating to the nation's pandemic preparedness. See paragraphs 29-30 of his submissions dated 23 March 2021 in Complaint Ref. IC-83706-P2P2.

50. Against that background, it is striking that PHE initially sought to invoke the national security exemption as a basis for refusing to disclose any information at all about its previous emergency preparedness exercises, including even the number of exercises performed, despite the Government having been entirely happy to discuss the existence of Exercise Cygnus in the wake of COVID-19 and despite there being information in the public domain including information authored and published by PHE about the same.

51. Dr Qureshi is also concerned by PHE's invocation of the national security exemption, in circumstances in which neither the Department of Health and Social Care nor the Cabinet Office saw fit to do so when faced by FOIA requests for other documents relating to previous pandemic simulation exercises. This appears to be an attempt to

add a veneer of respectability to what are, in truth, generic arguments about the possibility of publication and transparency having a kind of 'chilling effect'. The ICO is accordingly requested to subject PHE's position to the utmost scrutiny.

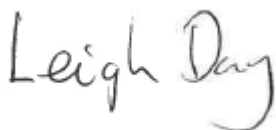
52. In this regard, Dr Qureshi notes that a journalist (Mr [REDACTED]) submitted a FOIA request to PHE on 28 May 2020 seeking information about Exercise Typhon including a copy of any reports containing the exercise's findings. The PHE's response by letter dated 20 August 2020 made the same arguments now being deployed (albeit under the banner of the section 36 exemption not the national security exemption). Concerningly the PHE additionally said this:

"PHE is an executive agency of the Department of Health and Social Care (DHSC) and provides certain functions on behalf of the Secretary of State for Health. Disclosure of the full report by PHE is incompatible with the disclosure position of DHSC for requests regarding such reports."

53. It appears from this that the PHE was, at least for a time, deferring to a view taken by the DHSC that it would refuse to disclose the reports of pandemic preparedness exercises as a general rule. That is most concerning, given the joint framework agreement (see §24.1 above) secures PHE's ability to operate autonomously. In any event, it is clear that the DHSC's blanket position against disclosing these reports is not and cannot be maintained given the disclosure of the Exercise Cygnus report.

We await your decision. Please do not hesitate to contact Tessa Gregory or Carolin Ott using the details provided above, if we can be of further assistance.

Yours faithfully,



Leigh Day