

31 July 2013



Department of Health

Room 352C
Skipton House
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London
SE1 6LW
Email: lynwen.paddy@dh.gsi.gov.uk

Our Ref: 782677R

Dear Mr O'Leary

Thank you for your email of **20 June 2013** (our ref: 782677R) in which you requested a review of our response to your FOI request of 20 May 2013.

In your FOI request of **20 May 2013** (our ref: 782677), you asked the following:

"I would like to make an FOI request with regards to a claim made by the Health Secretary in Parliament on 25 March 2013, regarding the enforcement of 'health tourism' in the UK:

"the Government are determined to ensure that anyone not entitled to receive free NHS services should be properly identified and charged for the use of those services. Currently, we identify less than half of those who should be paying and collect payment from less than half those we identify."

Source: <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130325/debtext/130325-0001.htm>

I would like to request for all relevant data the Department holds regarding what proportion of "those who should be paying" the DH identifies and what proportion of payment to those "we identify" is collected. In essence, full details for the source of the Health Secretary's claims"

On the **18 June 2013** we replied to you as follows:

I can confirm that the Department of Health holds information relevant to your request.

The source of the Secretary of State's statements on identification of, and recovery of charges from, overseas visitors in his speech of 25 March 2013 was the Department of Health's Internal Review of the Overseas Visitor Charging System.

However, we consider that this information is exempt under Section 35(1)(a) of the Freedom of Information Act, which provides protection for the information that relates to the formulation or development of government policy. Section 35 is a qualified exemption and we are required to assess, as objectively as possible, the balance of public interest in the information's release against that in withholding it.

The Department recognises the general public interest in making this information available for the sake of greater transparency and openness. However, the Department believes that the public interest lies in protecting the policy-making process and preserving the ability of officials in the Department to engage in free and candid discussion of policy options without apprehension that suggested courses of action may be held up to scrutiny before they have been fully developed or evaluated.

The Department is currently preparing for a public consultation setting out proposals for change to the rules of entitlement to free NHS care for visitors and migrants, and other issues. This will take place in the summer. The Internal Review continues to inform that process. Premature disclosure of this information could prejudice the quality of policy development, and could lead to the Department having to defend all issues raised by the Review, even if discounted, at a time when the Department is preparing to consult on some of those very issues.

Therefore, we have concluded that, at this current time, the public interest in maintaining the exemption outweighs the public interest in disclosing the requested information. The Department is currently considering at what point to publish the Review in the consultation process.

On **20 June 2013**, you submitted an internal review request as follows:

"I would like to request an Internal Review into my request referenced DE00000782677.

I disagree with the DH's determination that the public interest in maintaining the exemption outweighs the public interest in disclosing the requested information. There are two grounds for my complaint:

1) In its response the Department cited only "the general public interest in making this information available for the sake of greater transparency and openness" as grounds for disclosing the information. I would like to cite and detail further public interest grounds that were not apparently given regard.

Firstly, Section 35 of the Freedom of Information Act requires the Department to have regard to "the particular public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to decision-taking." The Information Commissioner's [guidance on the public interest test](#) chimes with this point, stating clearly the public interest in presenting a 'full picture':

"there is a public interest in fully understanding the reasons for public authorities' decisions, to remove any suspicion of manipulating the facts, or 'spin'"

When the Health Secretary made his [statement to Parliament](#) mentioning the detection rate for those liable to pay for NHS treatment, he released information into the public domain which served to illustrate his main message that "The current system of policing and enforcing the entitlement of foreign nationals to free NHS care is chaotic and often out of control". For the public to have an informed background as to why this policy area is on the Government's agenda in the first place it is important that they understand fully the extent of the existing problem, and this requires understanding fully the Health Secretary's claim and having the requisite information to judge its veracity.

Secondly, there is a public interest specific to the topic in question, namely the provision of public money to pay for NHS treatment to those who should be paying themselves. There have been various estimates pertaining to the extent of public money being used on overseas patients not entitled to receive free NHS treatment, including [£20 million and £200 million](#) - both of which have been cited by the Government. The Health Secretary's comments relate directly to the extent of liabilities that are not being collected and so have a bearing on the accuracy of those estimates already in the public domain. It is in the public's interest to have the ability to assess the financial extent of the problem that the Government are highlighting and disclosing these details realises that interest.

Finally, there is a more general public interest in giving people the capacity to trust what the Health Secretary is claiming. Surveys by [Ipsos Mori](#) have consistently shown that trust in politicians is low both in itself and relative to other professions. Baroness O'Neill has previously identified in her [Reith Lectures](#) that well-placed trust in information derives from what people are able to check for themselves:

"We place and refuse trust not because we have torrents of information (more is not always better), but because we can trace specific bits of information and specific undertakings to particular sources on whose veracity and reliability we can run some checks."

Conversely:

"where we can do nothing to check or investigate sources of information and their credentials we often, and reasonably, withhold trust and suspend both belief and disbelief in favour of cynicism and half-belief."

By not disclosing the information, the Department leaves the public with no reasonable grounds to believe what the Secretary is saying and as a result the decision encourages cynicism and damages an already frail public trust in politicians. These are additional and weighty public interest grounds for disclosing the information.

2) *In addition, the Department cited as grounds for refusal the concern that the quality of policy development would be prejudiced by disclosing the information. The weighting of these grounds should be reviewed in line with ICO guidance.*

Part of this guidance concerns the likelihood of prejudice taking place and the severity of the prejudice. The Department provided no details on either consideration, so as yet no evidence has been put forward to suggest the disclosure would be likely to prejudice policy making nor that its impact would be severe. Unless the Department provides adequate justification on these grounds the public interest case against disclosure is weakened.

I would be grateful if you could keep me informed of when the review will take place and how long I can expect the process to take.

Internal review

We have undertaken an internal review, as requested.

In our initial response we stated that the source of the Secretary of State's statement that "currently we identify less than half of those who should be paying and collect payment from less than half of those we identify" was the Department of Health's Internal Review of the Overseas Visitor Charging System. We withheld this document from release under s35(1)(a) of the FOI Act but mentioned that we were considering publishing it as part of a related consultation process.

At the time of your initial request we had made no firm decision as to what, how or when we might release the Review findings.

Since then it has been decided that a summary version of the Review would be published with the consultation exercise.

I can now advise that the Department has, on 3 July, launched a consultation entitled *Sustaining service, ensuring fairness: A consultation on migrant access and their financial contribution to NHS provision in England*. Along with that consultation document, the Department has released a summary version of its 2012 Review of the Overseas Visitor Charging System.

The consultation, evidence to support it, and the summary version of the Review can be found at the following address:

<https://www.gov.uk/government/consultations/migrants-and-overseas-visitors-use-of-the-nhs>

Section 21 of the FOI Act applies to this information as it is accessible to you by other means.

Now that the consultation has been launched, we have considered the release of further relevant information from the 2012 Review, which is in addition to that found in the summary version.

Please find attached to this letter the full content of Chapter 2 of the 2012 Review. Chapters 1, 3, 4 and 5 of the Review are not included as they do not fall within scope of your request.

Please note that we have redacted a very small amount of information (para 203 and Box 15) under s41 of the FOI Act, which relates to information provided in confidence. This is to protect the identity of the Trust that provided information which has been used and attributed to that Trust in the chapter we are releasing. Our evidence for invoking the exemption at s41 is below.

As we are now supplying information from the Review, that falls within scope, we wish to withdraw our previous use of s35(1)(a) to exempt this information from release.

In addition, I can confirm that the Department holds relevant statistical data provided by the NHS. This data was used as the basis for the analysis in Chapter 2 of the Review and therefore also informed the Secretary of State's statement.

This statistical data was provided by NHS trusts and Foundation Trusts in response to a questionnaire supplied to them by our Department. This was an informal and voluntary exercise, in which the Department utilised contacts in the NHS established through good working relationships in order to inform policy work with direct and relevant data.

Accompanying the questionnaire was the following statement, that

“any information you provide as part of this exercise will be on the understanding that it is being provided in confidence. We would not attribute any of the data or information you provide to your Trust in the review report.”

Those completing the questionnaire therefore had a clear understanding and expectation that the data they provided would be held in confidence and would not be attributed to the originating NHS Trust.

We have considered the release of this statistical data and are content to supply you with redacted versions of the completed questionnaires and subsequent analysis, which are attached to this letter.

Please note that we have redacted a small amount of information under s40(2) of the FOI Act which relates to personal data. In this case the names of staff completing the questionnaires who were below senior civil servant grade have been removed as disclosure would contravene the first Data Protection Act principle, that processing must be fair.

We have also, as I mentioned above, redacted a small amount of information under s41 of the FOI Act (information provided in confidence). This is to protect the identity of the originating Trusts who would have had a strong expectation that this information would be protected when they voluntarily completed the questionnaires. We have provided the necessary evidence for this expectation

above. As s41 is an absolute exemption there is no requirement for us to consider or balance the public interest in the release of this information.

The internal review is now complete. We trust you are content with the reply and the additional information we have provided.

If you are not content with the outcome of this internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

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

Yours sincerely,

Lynwen Paddy,
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Freedom of Information Team