



Department of Health & Social Care

Freedom of Information Team
Department of Health and Social Care
39 Victoria Street
London SW1H 0EU

www.gov.uk/dhsc

Dr Minh Alexander

By email to: [REDACTED]

28 June 2023

Dear Dr Alexander,

Freedom of Information Request Reference FOI-1455271

Thank you for your request dated 16 May to the Department of Health and Social Care (DHSC), a copy of which can be found in the accompanying annex.

Your request has been handled under the Freedom of Information Act 2000 (FOIA).

DHSC holds information relevant to your request.

Question 1

How many applicants did the department receive for the post of Chair/Chair designate to the Maternity and Newborn Safety Investigation Authority (MNSI), advertised late in 2022?
<https://apply-for-public-appointment.service.gov.uk/roles/5030>

DHSC received 14 applications for the post of Chair/Chair designate to the Maternity and Newborn Safety Investigation Special Health Authority (MNSI).

Question 2

Was an appointment made as a result of the advertisement of the role of MSNI Chair? If so, does the appointment continue or has it been terminated? If an appointment was terminated, when was it terminated?

An appointment was not made, as a final decision on the appointment had not been reached before the announcement on the future of the MNSI via a Written Ministerial Statement (WMS) on 30 March 2023.

Question 3

The department's advert for this post of Chair indicated that the MNSI was expected to be legally established by April 2023.

3a) *Was the MSNI legally established and if so, on what date was it established?*

The MNSI was not legally established through secondary legislation.

3b) *If the MSNI was legally established, was it disestablished? If so, when?*

The MNSI was not legally established through secondary legislation.

It was announced via the Written Ministerial Statement on 30 March 2023 that DHSC would no longer be working to establish the MNSI.

Please see a link to the WMS here: [Written statements - Written questions, answers and statements - UK Parliament](#)

3c) *If the MSNI was not established, are there still plans to establish it, and if so what are the planned timescales for establishment?*

There are no plans to establish the MNSI and therefore there are no planned timescales for establishment. The Maternity Investigations Programme which currently sits with the Healthcare Safety Investigations Branch (HSIB), will be hosted by the Care Quality Commission (CQC) from October 2023.

3d) *If there are now no plans to establish the MSNI or any other independent Special Health Authority to oversee the conduct of the national maternity investigation programme, please confirm this and give the reason(s) for the decision to abandon the plan for a Special Health Authority. Please provide the relevant document recording the ministerial decision.*

There are no plans to establish the MNSI or any other Special Health Authority. As set out in the Written Ministerial Statement of 30 March 2023, following careful consideration, DHSC has determined that the most appropriate and streamlined mechanism for delivering the valued and independent maternity investigations is for the function to sit within and be hosted by the CQC.

DHSC holds documentation relating to the ministerial decision; however, we consider that this information is exempt under section 35(1)(a) of the FOIA, which provides protection for information that relates to the formulation or development of government policy.

We are withholding this information under section 35 because the transition of the Maternity Investigations Programme into the Care Quality Commission is still ongoing and may be subject to further policy development. We consider that disclosing this information will have an impact on the formulation and development of policy relating to the Maternity Investigation Programme.

We are required to assess as objectively as possible whether the balance of the public interest favours disclosing or withholding information under section 35 of the FOIA.

DHSC recognises a general public interest in promoting openness and transparency in government, as this increases public trust and engagement. However, the purpose of the exemption at section 35 is to protect the internal deliberative process as it relates to policy making. In other words, the exemption is intended to ensure that the possibility of public exposure does not deter from full, candid and proper deliberation of policy formulation and development, including the exploration of all options, the keeping of detailed records and the taking of difficult decisions. Premature disclosure of information protected under section 35 could prejudice good working relationships, the perception of civil servants' neutrality, and ultimately, the quality of government. and we have therefore determined that the balance of public interest favours withholding this information.

3e) *Please disclose DHSC documents which set out the perceived advantages to the public of not proceeding with the creation of a Special Health Authority to oversee maternity investigations, as originally envisaged.*

DHSC holds relevant information; however, we consider that this information is exempt under section 35(1)(a) of the FOIA, which provides protection for information that relates to the formulation or development of government policy. We are applying this exemption for the same reasons as set out under subsection (d) above.

3f) Please disclose any legislation and legal instructions for MSNI that were initially drafted with a view to establishing the MSNI legally but was discontinued.

DHSC holds relevant information on the draft legislation and legal instructions; however, we consider that this information is exempt under both section 35(1)(a) (Policy and Development) and section 42 (Legal Professional Privilege) of the FOIA.

We consider that this information is exempt under section 35(1)(a) of the FOIA, which provides protection for information that relates to the formulation or development of government policy. We are applying this exemption for the same reasons as set out under subsection (d) above. We also consider that this information is subject to legal professional privilege ("LPP"), being information exchanged between us and our lawyers, and is therefore exempt under section 42 of the FOIA. Section 42 is a qualified exemption and, as such, we are required to assess the public interest in withholding this information against that of its release.

LPP covers confidential communications between lawyers and clients, along with certain other information that is created for the purposes of litigation, or for the purposes of obtaining legal advice or assistance in relation to rights and obligations. DHSC recognises that there is a general public interest that is served in making information available to promote greater transparency and accountability in the DHSC's decision-making process.

However, DHSC considers that there is also a compelling public interest in upholding the established principle of confidentiality in communications between lawyers and their clients, and therefore upholding the principle of LPP.

Furthermore, it is DHSC's view that waiving LPP would impede its decision-making process, which would be contrary to the public interest and also contrary to a very settled practice which is recognised by the Courts and the Information Tribunal.

Therefore, taking all these factors into account, we have concluded that the public interest in withholding this information outweighs any public interest that there might be in releasing the information you seek.

Question 4

Regarding the ministerial statement of 30 March 2023 on the arrangement for the Care Quality Commission to host HSIB's maternity investigation function:

4a) Please disclose whether the arrangement of the CQC hosting the national maternity investigation programme also has a delineated, finite timescale. If so, what is the timescale?

The Maternity Investigations Programme will be hosted by the CQC from October 2023. A timescale has not been finalised.

4b) *Please disclose what operational specifications/ quality frameworks/ performance targets the department has issued to the CQC with regard to its role in hosting the national maternity investigation programme.*

DHSC does not hold information to this part of your request, this is because no operational specifications/ quality frameworks/ performance targets have yet been issued to the CQC.

Outside of the scope of the FOIA, you may be interested to know that DHSC is working with the CQC and the HSIB to complete the transition of the Maternity Investigation Programme to the CQC by October 2023.

If you are not satisfied with the handling of your request, you have the right to appeal by asking for an internal review. This should be sent to freedomofinformation@dhsc.gov.uk or to the address at the top of this letter and be submitted within two months of the date of this letter.

Please remember to quote the reference number above in any future communication.

If you are not content with the outcome of your internal review, you may complain directly to the Information Commissioner's Office (ICO). Generally, the ICO cannot make a decision unless you have already appealed our original response and received our internal review decision. You should raise your concerns with the ICO within three months of your last meaningful contact with us.

Guidance on contacting the ICO can be found at <https://ico.org.uk/global/contact-us> and information about making a complaint can be found at <https://ico.org.uk/make-a-complaint>.

Yours sincerely,

Freedom of Information Team
freedomofinformation@dhsc.gov.uk

Annex

From: minhalexander@aol.com <minhalexander@aol.com>

Sent: 16 May 2023 11:11

To: FreedomofInformation <freedomofinformation@dhsc.gov.uk>

Subject: Plans for establishing the Maternity and Newborn Investigations Authority and CQC's hosting of maternity investigations

16 May 2023

Dear Sir,

Plans for establishing the Maternity and Newborn Investigations Authority and CQC's hosting of maternity investigations

Please disclose:

1) How many applicants did the department receive for the post of Chair/Chair designate to the Maternity and Newborn Safety Investigation Authority (MNSI), advertised late in 2022?

<https://apply-for-public-appointment.service.gov.uk/roles/5030>

(Closing date 31 October 2022, DHSC contacts Yusuf Gora and Rachael Onoghojobi, Advisory Assessment Panel Chair William Vineall, term of service three years)

2) Was an appointment made as a result of the advertisement of the role of MSNI Chair? If so, does the appointment continue or has it been terminated? If an appointment was terminated, when was it terminated?

3) The department's advert for this post of Chair indicated that the MNSI was expected to be legally established by April 2023.

Was the MSNI legally established and if so, on what date was it established?

If the MSNI was legally established, was it disestablished? If so, when?

If the MSNI was not established, are there still plans to establish it, and if so what are the planned timescales for establishment?

If there are now no plans to establish the MSNI or any other independent Special Health Authority to oversee the conduct of the national maternity investigation programme, please confirm this and give the reason(s) for the decision to abandon the plan for a Special Health Authority. Please provide the relevant document recording the ministerial decision.

Please disclose DHSC documents which set out the perceived advantages to the public of not proceeding with the creation of a Special Health Authority to oversee maternity investigations, as originally envisaged.

Please disclose any legislation and legal instructions for MSNI that were initially drafted with a view to establishing the MSNI legally, but was discontinued.

4) Regarding the ministerial statement of 30 March 2023 on the arrangement for the Care Quality Commission to host HSIB's maternity investigation function:

<https://questions-statements.parliament.uk/written-statements/detail/2023-03-30/hcws698>

"On 26 January 2022, by way of a Written Ministerial Statement, the Department of Health and Social Care announced that a separate Special Health Authority would be established to continue the independent Maternity Investigation Programme, which is currently overseen by the Healthcare Safety Investigation Branch.

The Department is committed to ensuring the continuation of independent, standardised maternity investigations that provide learning to the system and contribute to the Government's ambition to halve the 2010 rates of stillbirths, neonatal and maternal deaths and brain injuries in babies occurring during or soon after birth by 2025.

Following careful consideration, the Department has determined that the most appropriate and streamlined mechanism for delivering the valued and independent maternity investigations is for the function to be hosted within the Care Quality Commission. The purposes of the maternity investigation programme remain as set out last January: to provide independent, standardised and family focused investigations of maternity cases for families; to provide learning to the health system via reports at local, regional and national level; analyse data to identify key trends and provide system wide learning; be a system expert in standards for maternity investigations; and collaborate with system partners to escalate safety concerns.

We will now work with the CQC and the HSIB to complete the transition of the Maternity Investigation Programme to the CQC by October 2023.

As announced in the Written Ministerial Statement of 9 February 2023, the establishment of the new HSSIB will take place in October 2023, to enable all the necessary work to be completed to ensure a smooth transition of these investigation programmes."

This is the context that the government originally announced that the MSNI would be operational for no more than five years and that thereafter maternity investigations would pass back to NHS trusts:

"The Special Health Authority will be established for up to five years from 2022-23 to enable maximum learning to be achieved and to equip NHS Trusts with the expertise, resources, and capacity to take on maternity safety incident investigations in the future."

<https://questions-statements.parliament.uk/written-statements/detail/2022-01-26/hcws560>

Please disclose whether the arrangement of the CQC hosting the national maternity investigation programme also has a delineated, finite timescale. If so, what is the timescale?

Please disclose what operational specifications/ quality frameworks/ performance targets the department has issued to the CQC with regard to its role in hosting the national maternity investigation programme.

Yours sincerely,

Dr Minh Alexander