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Pandemic preparedness: Government must release 2016 report, says information commissioner

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The Information Commissioner's Office has ordered the government to release an unpublished report on Exercise Cygnus, a 2016 exercise to test the UK's preparedness for a flu pandemic.

Six months ago the NHS doctor Moosa Qureshi submitted a request under freedom of information legislation to the Department of Health and Social Care for England requesting the release of a report into Exercise Cygnus and threatening legal action if the health and social care secretary, Matt Hancock, failed to release the report.¹

The Information Commissioner's Office has now intervened, ordering the department to either release the information or explain its decision for withholding it within 20 days.

In mid-September Qureshi's lawyers, Leigh Day Solicitors, wrote to the commissioner to complain about the latest delay in responding to Qureshi's request.

The lawyers' letter said, "Perhaps conscious of the political ramifications that disclosure of the Cygnus Report might have whilst the pandemic rages on, the DHSC is clearly playing for time. As a result, it is preventing Dr Qureshi either receiving copies of the Cygnus Report or exercising his legal rights to challenge any refusal to disclose the same. Its actions are a clear and obvious breach of the statutory requirement under s. 10 FOIA [section 10 of the Freedom of Information Act] to respond within a reasonable period of time."

This prompted the Information Commissioner's Office to write to Hancock, saying, "Public authorities should aim to respond fully to all requests within 20 working days. In cases where the public interest considerations are exceptionally complex it may be reasonable to take longer but, in the commissioner's view, in no case should the total time exceed 40 working days.

"You should now provide a response to the complainant's request within 20 working days of receipt of this email. You should either provide the information or issue a refusal notice in accordance with the requirements of section 17 of the FOIA."

A judge has refused a request from Qureshi for a judicial review over the failure to release the information, partly on the basis that the judge believed that a response to Qureshi's request should have already been received. Qureshi is appealing that decision, and the High Court will hear his case next month.

The health department is defending the judicial review on the basis that a freedom of information request was the appropriate route. But it has repeatedly delayed giving a response, stating that it needs more time to consider whether releasing the information was in the public interest under section 35 of the FOIA.

Qureshi said, "I'm grateful that the ICO has taken a robust position regarding the government's legal obligations. The government now needs to adopt a grown-up position, act in the national interest, and recognise that transparency, open data, and a collaborative approach are imperative during a national healthcare crisis."

Leigh Day partner Tessa Gregory said, "The government has committed to acting with maximum possible transparency through the pandemic, yet the department has spent six months fighting and evading our client's requests for publication of the Cygnus Report.

"Following this intervention by the Information Commissioner our client is looking forward to a substantive response to his request."

The department said it was considering the commissioner's decision and would respond in due course.

¹ Dyer C. Pandemic preparedness: doctor leads campaign for UK government to release report. *BMJ* 2020;369:m1732. doi: 10.1136/bmj.m1732 pmid: 32349981