

Open Society
Justice Initiative
4th Floor Herbal House
8 Back Hill
London EC1R 5EN
United Kingdom

p. +44 (0) 20 7031 0200

London, 22 May 2020

By email

FOI Requests
Government Office for Science
10 Victoria Street
London
SW1H 0NN
United Kingdom

contact@go-science.gov.uk

Dear Sir or Madam,

Request for Information under Freedom of Information Act 2000: For Immediate Attention

The Open Society Justice Initiative, part of the Open Society Foundation London, a company limited by guarantee incorporated in England and Wales, submits this request for information under section 1, Freedom of Information Act 2000 (“FOIA”).

In summary, and as set out below, the Open Society Justice Initiative seeks disclosure of certain documents relating to the work of the Scientific Advisory Group for Emergencies (“SAGE”) and its Secretariat, on COVID-19.

This request for information requires immediate attention. As set out below, there is a compelling public interest in disclosure of the requested information now, and we therefore seek an expedited response to this FOI Request. We expect to receive a response within five working days, failing which the Open Society Justice Initiative will have to consider alternative routes to secure disclosure of the information, including under the common law and pursuant to its right to disclosure under Article 10 of the European Convention on Human Rights.

The Open Society Justice Initiative

The Open Society Justice Initiative is part of the Open Society Foundation London, a not for profit organisation based in the UK.¹ It uses litigation and other forms of legal advocacy to empower people, defend the rule of law, and advance human rights. It pursues accountability for international crimes, national security abuses and corruption, and promotes equality, criminal justice reform, economic justice, access to information and a vibrant civic space. In order to pursue its aims, the Open Society Justice Initiative disseminates information in the public interest, including through its website² – where it publishes reports, articles, and multimedia files relating to its mission – and through distributing hard copies of publications.

Background

SAGE provides scientific and technical advice to support government decision makers during emergencies.³ The Committee is activated by COBR (Cabinet Office Briefing Rooms) in support of collective cross-government responses to and/or recoveries from level 2 or 3 emergencies,⁴ and has been activated in response to the spread of the novel coronavirus (COVID-19) in the UK. In this FOI Request, we refer to the SAGE Committee activated in response to COVID19 as “COVID-19 SAGE”.

The expert groups advising COVID-19 SAGE (the “COVID-19 SAGE Expert Groups”) include:⁵

- New and Emerging Respiratory Virus Threats Advisory Group (NERVTAG)
- Scientific Pandemic Influenza Group on Modelling (SPI-M)
- Independent Scientific Pandemic Influenza Group on Behaviours (SPI-B)
- Covid-19 Clinical Information Network (CO-CIN)
- PHE Serology Working Group
- Environmental Working Group

¹ The Open Society Justice Initiative is a global programme, which also operates in other international offices of the Open Society Foundations, including in New York, Berlin and Abuja.

² <https://www.justiceinitiative.org/>. An index of Justice Initiative publications on a broad range of human rights issues is available at <https://www.justiceinitiative.org/publications>. ³ Scientific Advisory Group for Emergencies (SAGE): Coronavirus (COVID-19) response, available at: <https://www.gov.uk/government/groups/scientific-advisory-group-foremergencies-sage-coronavirus-covid-19-response#role>.

⁴ *Enhanced SAGE Guidance: A strategic framework for the Scientific Advisory Group for Emergencies (SAGE)* (2012) (“Enhanced SAGE Guidance”), available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/80087/sage-guidance.pdf, para.34.

⁵ Government Chief Scientific Advisor, Sir Patrick Vallance, letter to Rt Hon Greg Clark MP, Chair Science and Technology Select Committee (Commons) (04.04.2020), available at: <https://publications.parliament.uk/pa/cm5801/cmselect/cmsctech/correspondence/PatrickVallance-to-Greg-Clark-re-SAGE-composition.pdf>; See also:

<https://www.gov.uk/government/publications/scientific-advisory-group-for-emergenciessage-coronavirus-covid-19-response-membership/list-of-participants-of-sage-and-relatedsub-groups>.

- Children’s Task and Finish Working Group
- Hospital Onset Covid-19 Working Group

Other ad-hoc subject specific groups have been and may be established as needed in response to the crisis.¹

Principles and Guidance on Transparency

The Code of Practice for Scientific Advisory Committees (“CoPSAC”), stresses that Scientific Advisory Committees (“SACs”) should operate from “a presumption of openness and transparency”.² According to the Principles of Scientific Advice to the Government, “scientific advice to government should be made publicly available unless there are over-riding reasons [...] for not doing so”.³ At a minimum, SACs are expected to publish “programmes of work, meeting agendas, minutes, final advice (where appropriate), and an annual report”.⁴ To ensure openness and transparency, SACs should: *“seek to keep the public and stakeholders informed as they develop advice. In addition to timely publication of minutes and agendas, committees should consider publishing interim working papers where this would not compromise committee process. All substantive and significant papers should be published as soon as possible once advice has been issued, subject to exemption from disclosure under Freedom of Information legislation”*.⁵

The Strategic Framework for the Scientific Advisory Group for Emergencies (Enhanced SAGE Guidance) confirms that:

“Transparency is an important element of democratic decision making and the evidence used to inform decision [sic] should be published. In accordance with this, SAGE papers and products should be published in accordance with the Freedom of Information Act”.⁶

The 2011 House of Commons Science and Technology Committee inquiry report (“2011 Science and Technology Committee Report”) on scientific advice and evidence in emergencies underlined that:

¹ *Ibid.*

² In its response to the 2011 House of Commons Science and Technology Committee, Scientific Advice in Emergency, Third Annual Report, the Government acknowledged that CoPSAC applies to SAGE. See para.89 at:

<https://publications.parliament.uk/pa/cm201012/cmselect/cmsctech/1042/104204.htm>;

Code of Practice for Scientific Advisory Committees (CoPSAC) (2011), available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/278498/11-1382-code-of-practice-scientific-advisory-committees.pdf, para.72.

³ *Principles of Scientific Advice to the Government* (2010), available at:

<https://www.gov.uk/government/publications/scientific-advice-to-governmentprinciples/principles-of-scientific-advice-to-government>.

⁴ CoPSAC, op. cit. paras.116-118.

⁵ *Ibid.* para.137.

⁶ *Enhanced SAGE Guidance*, op. cit. para.49. As highlighted in the SAGE Guidance, the need for such publication “...was emphasised in the Independent review by Dame Deirdre Hine Review of the Government’s response to the 2009 Swine Flu Pandemic and in the House of Commons Science and Technology Select Committee’s report on its inquiry into Scientific Advice and Evidence in Emergencies”.

*“[t]he need to ensure transparency of scientific advice to the greatest possible extent should not be put aside even in an emergency”.*¹² It is the role of the SAGE secretariat to ensure transparency, and to ensure that minutes are recorded for both SAGE committee and sub-group meetings.⁸ The secretariat of a SAC should ensure that the SAC proceedings are well documented, so that there is a clear audit trail showing how the committee reached its decisions.⁹ As a matter of good practice, SAC secretariats are expected to publish minutes of their meetings:

*“within two weeks of the meeting and after initial amendment/approval by the Chair to circulate them to meeting participants for comment. The committee should generally approve minutes at the meeting following the one to which the minutes relate and publish the final version as soon as possible thereafter”.*¹⁰

The Enhanced SAGE Guidance confirms that “Minutes should be prepared in accordance with standard practice for a scientific advisory committee” and that the secretariat is responsible for publishing them as and when appropriate.^{11,12}

The importance of transparency around the membership of SAGE, along with their declarations of interests, has also been recognised. The 2011 Science and Technology Committee Report concluded that:

*“In line with the Code of Practice for Scientific Advisory Committees, which states that SACs should operate from a presumption of openness, we recommend that SAGE members and their declarations of interest are published once initial membership has been established”.*¹⁷

Publication of SAGE documents to date

On 5 May 2020, the Government published a table listing 21 SAGE meetings that took place between 4 February and 16 April 2020. On 20 May, the table was updated with documents from eight additional SAGE meetings that took place between 21 April and 15 May, as well as 6 more documents that informed previous SAGE meeting discussions. Next to the dates of the meetings, the table sets out a total of 128 documents, referred to as “SAGE meeting papers”. The Government has, thus, so far, only published 44 of those 128 documents.¹³

The “SAGE meeting papers” table also omits any reference to certain SAGE meetings (meetings 1, 2, 3, 5, 20, 31, 32 in the table), and does not list any documents in relation to them. In a letter from the Government Chief Scientific Advisor, Sir Patrick Vallance, to the Rt Hon Greg Clark MP, dated 4 April 2020, Sir Patrick Vallance refers to SAGE meetings having taken place on 22 and 28

⁷ House of Commons Science and Technology Committee, Scientific Advice in Emergency, Third Annual Report, available at: <https://publications.parliament.uk/pa/cm201011/cmselect/cmsctech/498/49809.htm#n154>, para.168.

⁸ *Enhanced SAGE Guidance*, op. cit. paras.28 and 50.

⁹ CoPSAC, op. cit. para.57.

¹⁰ *Ibid*, para.121.

¹¹ *Enhanced SAGE Guidance*, op. cit. para.50.

¹² House of Commons Science and Technology Committee, Scientific Advice in Emergency, Third Annual Report, op. cit. para.152.

¹³ SAGE meeting papers (accessed on 20.05.2020):

<https://www.gov.uk/government/groups/scientific-advisory-group-for-emergencies-sagecoronavirus-covid-19-response>

January, 3 and 6 February, and 29 March 2020, which are not listed in the table.¹⁴ No COVID-19 SAGE meeting minutes have yet been published.

On 4 May 2020, the Government published a “list of participants of SAGE”. It explained that, “the meetings are also regularly attended by officials from Her Majesty’s Government. These attendees have not been named”.¹⁵ No declarations of interest for any participants in COVID-19 SAGE or its expert groups have yet been published.

Public interest in disclosure

There is a compelling public interest in disclosure of COVID-19 SAGE materials now:

- (1) Disclosure would allow SAGE deliberations and advice to be properly scrutinised and, where appropriate, tested and challenged by other experts.¹⁶

As acknowledged by the Government Chief Scientific Adviser and Chair of SAGE, Sir Patrick Vallance, during his oral evidence on 5 May 2020 before the Health and Social Care Committee inquiry into the management of the coronavirus outbreak:²² “with an ongoing situation like this, it is very important that the science advice is known and open to scrutiny”.²³

Similarly, when a copy of the SPI-B paper discussed at a SAGE meeting on 2 April,¹⁷ was published in full (having originally been published with significant redactions), it was explained that publication was made because “Sir Patrick Vallance and No10 agree that such SAGE documents relating to

¹⁴ Government Chief Scientific Advisor, Sir Patrick Vallance, letter to Rt Hon Greg Clark MP, Chair Science and Technology Select Committee, op.cit.

¹⁵ List of participants of SAGE and related sub-groups (accessed on 21.05.2020), available at: <https://www.gov.uk/government/publications/scientific-advisory-group-foremergencies-sage-coronavirus-covid-19-response-membership/list-of-participants-of-sageand-related-sub-groups>

¹⁶ Numerous distinguished scientists, including former SAGE members, have requested more transparency around SAGE in order for the wider scientific community and the public to scrutinise the scientific assumptions underlying pandemic modelling and ensure that groupthink is avoided (The Guardian (27.04.2020) ‘Coronavirus can only be beaten if groups such as Sage are transparent and accountable’, available at:

<https://www.theguardian.com/commentisfree/2020/apr/27/coronavirus-sage-scientificgroupthink>; Sky News (27.04.2020) ‘Coronavirus: top scientist calls for greater transparency over SAGE meetings, available at:

<https://news.sky.com/story/coronavirustop-scientist-11979656>). For example, in an open letter to the Lancet, 36 leading scientists requested that the Government, as a matter of urgency, share the scientific evidence, data and models to inform current decision making related to COVID-19 strategy, and continue to do so at regular intervals throughout the crisis (The Lancet (17.03.2020) ‘Evidence informing the UK’s COVID-19 public health response must be transparent’, available at:

[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30667-X/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30667-X/fulltext)).²²

Health and Social Care Committee, Oral evidence: Management of the Coronavirus Outbreak, HC 36 (05.05.2020), available at:

<https://committees.parliament.uk/oralevidence/341/pdf/>, Q392-396²³

Ibid, Q395.

¹⁷ *Easing restrictions on activity and social distancing: comments & suggestions from SPIB* (01.04.2020), available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/884013/28-easing-restrictions-on-activity-and-social-distancing-commentssuggestions-spi-b-01042020.pdf

Covid should be published in full, in the interests of maximum transparency, with exceptions only for matters relating to national security”.¹⁸¹⁹

As highlighted by the 2011 House of Commons Science and Technology Committee inquiry report on scientific advice and evidence in emergencies:

*“It is important that the existence of SAGE and how it can be accessed is made known during an emergency so that those with alternative, credible scientific views can contribute. Such input would need to be screened and evaluated, but that would be part of SAGE’s challenge function”.*²⁶

- (2) Disclosure would also allow *the public* to more fully understand the scientific basis for the Government’s decisions.²⁰ The Code of Practice for Scientific Advisory Committees highlights that in order to “help provide a full appreciation of its advice and decisions, the SAC should, where appropriate, facilitate public access to documents or information used in the formulation of its advice” (emphasis added).²¹ Chris Whitty, Chief Medical Officer for England, has also stated: “We need to get out as much information as we can. The more information we’ve got that we can get out the better, so people can understand where we are”.²²
- (3) Proper disclosure would enhance public trust in the Committee, and in the Government, which is imperative during a pandemic – a time during which the government is reliant on public cooperation.
- (4) Disclosure is particularly important in circumstances where the UK’s approach has differed from the approach followed in other countries,²³ and where there is significant public debate about whether the Government has responded appropriately to the pandemic to date.
- (5) Disclosure is necessary in order that there can be proper scrutiny of the independence of the Committee. The independence and, importantly, the appearance of independence, of the Committee is essential both in terms of the quality of the advice given by SAGE (“Scientific advisers should be free from political interference with their work”)²⁴²⁵ and for trust in that scientific advice.³² The Code of Practice for Scientific Advisory Committees notes that:

¹⁸ Scientific Advisory Group for Emergencies (SAGE): Coronavirus (COVID-19) response (accessed on 21.05.2020), available at:

<https://www.gov.uk/government/groups/scientificadvisory-group-for-emergencies-sage-coronavirus-covid-19-response>

¹⁹ House of Commons Science and Technology Committee, Scientific Advice in Emergency, Third Annual Report, op.cit. para.165.

²⁰ See, for example, Stephen Reicher, (member of SPI-B), ‘Transparency is key in a crisis - so why isn’t the British government being straight with us?’, *The Guardian*, (13.05.2020), available at: https://www.theguardian.com/commentisfree/2020/may/13/british-peoplelockdown-coronavirus-crisis?CMP=Share_iOSApp_Other&fbclid=IwAR2il0YgbnYKZy2z0fg5MDqMvbdjfvStPs0_23H5eSjC5hCGBO7swHMFRg

²¹ CoPSAC, op. cit. paras.133-136.

²² The Prime Minister’s coronavirus press briefing (11.05.2020), available at: https://www.youtube.com/watch?time_continue=3648&v=aI1cHvKxYA4&feature=emb_title, timestamp: 1:00:37- 1:00:43.

²³ See, for example, ‘Evidence informing the UK’s COVID-19 public health response must be transparent’, available at:

[https://www.thelancet.com/journals/lancet/article/PIIS01406736\(20\)30667-X/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS01406736(20)30667-X/fulltext).

²⁴ *Principles of Scientific Advice to the Government*, op. cit.

²⁵ House of Commons Science and Technology Committee, Scientific Advice in Emergency, Third Annual Report, op. cit. paras.173-176.

*“Whether acting proactively or reactively, SACs should expect to operate free of influence from the sponsor department officials or Ministers, and remain clear that their function is wider than simply providing evidence just to support departmental policy”.*²⁶

- (6) The public interest is strongly in favour of disclosure now. While in some emergencies, there might be reason to withhold some documents until the end of the emergency, as Sir Patrick Vallance has highlighted, this is an “ongoing situation”²⁷ in which decisions will continue to have to be made for the coming months if not years. Waiting until the end of the emergency will be too late.

The Request

The Open Society Justice Initiative therefore requests the following:

- (1) A copy of all documents produced by COVID-19 SAGE and provided by it and/or its Secretariat to the Government containing information relating to COVID-19 (including any annexes or exhibits to those documents), including but not limited to:
- Advice provided by COVID-19 SAGE (whether in writing, or given orally and confirmed/documented in writing)³⁵
 - Option papers²⁸
 - Response scenario papers or planning assumption papers²⁹
 - Interim working papers
 - Any documents recording COVID-19 SAGE analysis, assessment and evaluation of evidence
 - Programmes of work
 - Risk assessment discussion papers³⁸
 - Situation reports³⁰
- (2) A complete list of COVID-19 SAGE meetings to date.
- (3) A copy of the minutes of all COVID-19 SAGE meetings to date (including the list of all attendees, including observers, attending in person or by telephone/virtually).
- (4) A copy of any transcript or recording (however made) of any COVID-19 SAGE meeting, or any meeting between COVID-19 SAGE participants and the Government relating to COVID-19.

²⁶ CoPSAC, op. cit. para.31.

²⁷ Health and Social Care Committee, Oral evidence, op. cit. Q395

³⁵ *Ibid*, para.124.

²⁸ These papers “outline potential scientific and technical solutions and their pros and cons; and/or the scientific and technical pros on cons of options suggested by others”. See *Enhanced SAGE Guidance*, op. cit. para.58.

²⁹ During the 2010 volcanic ash disruptions and the 2009 Swine Flu pandemic, SAGE produced response scenario or planning assumption papers. Response scenario papers may be developed when “emergencies are long lasting and/or events develop in an unexpected way or are unforeseen..., assessing their likelihood and potential impacts, to help shape and direct preparations”. See the *Enhanced SAGE Guidance*, op. cit. para.58. ³⁸ As mentioned in SAGE meeting minutes during the Swine Flu pandemic, available at: https://webarchive.nationalarchives.gov.uk/20120907150455tf/http://www.dh.gov.uk/ab/SPI/DH_120535.

³⁰ *Ibid*.

- (5) A copy of all COVID-19 SAGE “meeting papers” referred to in the excel table published on 5 May 2020 and updated on 20 May at <https://www.gov.uk/government/groups/scientific-advisory-group-foremergencies-sage-coronavirus-covid-19-response>, which have not yet been published.
- (6) A copy of any guidance or policy document in which the term “participant” rather than “member” of SAGE is used to refer to those providing scientific advice as part of SAGE, or confirmation that the Government’s use of the term “participants” (in its publication of SAGE “participants”³¹) is intended to be synonymous with the term “members”, used in the Enhanced SAGE Guidance.³²
- (7) A copy of all correspondence between COVID-19 SAGE or its Secretariat and any individual that has attended a COVID-19 SAGE meeting (including observers) but is not a member of COVID-19 SAGE, including, but not limited to, invitations to attend COVID-19 SAGE meetings.
- (8) A copy of any document that sets out guidance or information on the role, rules of participation or eligibility for attendance of individuals at SAGE meetings who are not members of SAGE.
- (9) A copy of the declarations of interest of all COVID-19 SAGE “participants” and COVID-19 SAGE Expert Group “participants”.³³

We recognise that the above information may contain third party personal data, which, after application of the appropriate data protection principles, might require redaction. We do not consider that any other exemptions are likely to apply to the information, or would, after application of the public interest test, justify withholding it. We therefore look forward to receiving an explanation of what information and documents, set out above, are held by the Government Office for Science and disclosure of the same.

Due to the COVID-19 crisis, our preference is to receive the documents electronically. Please send an electronic copy of the documents by e-mail to the following address: [REDACTED]

Should you require any clarification or further information regarding this request, or if there is any problem with providing the documents electronically, please do not hesitate to contact us.

Urgency

This request for information requires immediate attention. As set out above, there is a compelling public interest in disclosure of this information now. Any further delay in publication will negatively impact decision making on COVID-19 as well as further corrode public trust. In these circumstances, the 20 day working time

³¹ List of participants of SAGE and related sub-groups (accessed on 21.05.2020), available at: <https://www.gov.uk/government/publications/scientific-advisory-group-foremergencies-sage-coronavirus-covid-19-response-membership/list-of-participants-of-sageand-related-sub-groups>.

³² See, for example, p.18 ff. of the *Enhanced SAGE Guidance*, op.cit.

³³ As set out in the list of participants of SAGE and related sub-groups, available at: <https://www.gov.uk/government/publications/scientific-advisory-group-for-emergenciessage-coronavirus-covid-19-response-membership/list-of-participants-of-sage-and-relatedsub-groups>.

limit for a response to FOI requests set out in FOIA is plainly inappropriate. We request a response within 5 working days, by 29 May 2020.

Should we not receive a response within five working days, then, given the urgency of the request, the Open Society Justice Initiative will have to consider other options for obtaining this information, including relying on its right to disclosure of the information under the common law (given the genuine public interest in the disclosure: *Kennedy v. Charity Commission* [2014] UKSC 20), and under Article 10 of the European Convention on Human Rights (given the Open Society Justice Initiative's role as a public watchdog: *Magyar Helsinki Bizottság v. Hungary*, Application no. 18030/11).

We look forward to hearing from you by 29 May 2020.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jana Sadler-Forster'.

Jana Sadler-Forster

Legal Officer

Open Society Justice Initiative
4th Floor Herbal House, 8 Back Hill
London EC1R 5EN

Email: [REDACTED]