

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 September 2011

Public Authority: Department of Health
Address: Richmond House
79 Whitehall
London
SW1A 2NS

Decision (including any steps ordered)

1. On 25 October 2010, the complainant wrote to the Department of Health (the Department) and requested information in the following terms:

'May I have information relating to what mechanisms the NHS/DOH has to try to ensure staff comply with FoI legislation.

In particular, who is responsible and what action is taken against them when they fail to meet their responsibility?'

2. The Information Commissioner's decision is that the Department failed to comply with section 10(1) in relation to the request.
3. The Information Commissioner (the Commissioner) does not require the Department to take any steps to ensure compliance with the legislation.

Request and response

4. The Department responded to the request on 27 October 2010. It stated that it did not hold information that was relevant to information policy in the NHS.

5. It explained the way FOIA requests are dealt with in the Department, who had ultimate responsibility for the Department's compliance with the FOIA and that there was no Departmental policy in existence that related to compliance with the FOIA.
6. Following an internal review the Department wrote to the complainant on 1 November 2010, upholding its original decision.

Scope of the case

7. On 1 November 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He was particularly concerned that he had not been supplied with any information relating to the NHS, as he had been informed that the Department was the contact point for NHS requests.
8. He also raised issues about the accuracy of the information the Department had provided. These are not addressed in this notice because they are not requirements of the FOIA.
9. The scope of the investigation was therefore to determine whether the Department holds the information the complainant requested in recorded form.

Reasons for decision

10. Section 1(1) states that a person who makes a request for information to a public authority is entitled to be informed in writing whether it holds the requested information, and if it is, to have that information communicated to him.
11. Following initial correspondence with the Commissioner, the Department stated that it did not hold any information relevant to NHS organisations, as each would have its own guidance for staff as separate public authorities under the FOIA.
12. The Commissioner agrees that each NHS organisation is a separate public authority and would expect each one to have its own policy for ensuring compliance with the FOIA. The Commissioner is therefore satisfied that the Department does not hold any recorded information

relating to mechanisms the NHS has to ensure staff comply with the FOIA.

13. The Department also stated that it held desk guidance for its own staff, but that it considered this to be distinct and outside the scope of the request. This is because it merely maps out the process (for dealing with FOIA requests) rather than acting as a guide to compliance.
14. The Commissioner has seen this guidance and considers that it does fall within the scope of the request, as it is clearly intended to assist the Department's employees to comply with the FOIA by correctly responding to requests. It is the Commissioner's view that a document that maps out a process for responding to FOI requests will inevitably be a mechanism for ensuring that staff respond to those requests appropriately.
15. Following discussions with the Commissioner, the Department agreed to provide the complainant with the requested information and did so on 1 August 2011, 193 working days after the initial request.
16. Section 10(1) states that, subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly, and in any event not later than the twentieth working day following receipt of the request.
17. As neither subsection (2) or (3) applies to this request, it is clear that the Department was in breach of section 10(1).

Right of appeal

18. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

19. If you wish to appeal against a Decision Notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
20. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Signed

Faye Spencer
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