

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 March 2019

**Public Authority:** Department of Health and Social Care  
**Address:** 39 Victoria Street  
London  
SW1H 0EU

### Decision (including any steps ordered)

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1. The complainant has made a request for information relating to the closure of beds at Rothbury Community Hospital. Despite the intervention of the Commissioner, the Department of Health and Social Care (the DHSC) has not provided a response to the request in accordance with the FOIA.
2. The Commissioner's decision is that the DHSC has failed to respond to the complainant's request within 20 working days of receipt and has therefore breached section 10 of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - The DHSC must provide the complainant with a full response to the request in accordance with its obligations under the FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

### Request and response

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5. On 28 September 2018, the complainant wrote to the DHSC and requested information in the following terms:

*"I would like to request, under the Freedom of Information Act 2000, a copy of the assessment and report that was carried out by the Independent Reconfiguration Panel in relation to the closure of the beds at Rothbury Community Hospital.*

*I would also request copies of any additional documents or correspondence (electronic or written) between the Department for Health and Social Care and the Independent Reconfiguration Panel in relation to Rothbury Community Hospital. In particular, I would request copies of any guidelines/parameters that were set out by your department as to how the Independent Reconfiguration Panel would/should carry out its investigations.*

*Finally, I would request copies of all correspondence between The Department for Health and Social Care, the Independent Reconfiguration Panel, Northumbria Clinical Commissioning Group, Northumbria County Council and Northumbria Healthcare NHS Foundation Trust in relation to Rothbury Community Hospital and the closure of beds, since June 1<sup>st</sup> 2016."*

6. The complainant received an automated acknowledgement from the DHSC on 28 September 2018.
7. On 29 October 2018, the DHSC wrote to the complainant informing him that its *"consideration of the balance of the public interest with regards to [his] request is not yet complete, and requires further time to complete in line with Section 10(3) of the FOI Act. The Department is currently assessing the public interest in release under Section 36 (policy in development)."* The DHSC advised the complainant that it anticipated that this process would not take longer than 20 working days to complete.
8. The complainant responded to the DHSC on the 29 October 2018 about its failure to respond to his FOIA request within the legal timeframe, and that he was reporting the DHSC to the Commissioner.
9. DHSC wrote to the complainant on a further three occasions; on 24 December 2018, 24 January 2019 and 21 February 2019. On each occasion, the DHSC explained to the complainant that it required further time to complete its consideration of the balance of the public interest with regards to his request. The DHSC also advised on each occasion that it anticipated that its consideration of the balance of the public interest would not take longer than 20 working days to complete.

## Scope of the case

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10. The complainant contacted the Commissioner on 29 October 2018 to complain about the way his request for information had been handled. The complainant is unhappy that DHSC has still not responded to his request for information.
11. The Commissioner has considered whether the DHSC dealt with the request in accordance with its obligations under section 10 of the FOIA.

## Reasons for decision

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### Section 10 – time for compliance

12. Section 1(1) of the FOIA states that any person making a request is entitled to be told whether the information they have asked for is held and, if so, to have that information communicated to them, subject to the application of any exemptions that are appropriate.
13. Section 10(1) of the FOIA states that a public authority shall respond to information requests promptly and, in any event, no later than 20 working days from receipt.
14. Section 10(3) of the FOIA enables a public authority to extend the 20 working day limit for a 'reasonable' time in any case where;
  - it requires more time to determine whether or not the balance of the public interest lies in maintaining an exemption; **or**
  - it needs further time to consider whether it would be in the public interest to confirm or deny whether the information is held.
15. This extension will therefore only apply to requests where a public authority considers a 'qualified exemption' (an exemption that is subject to a public interest test) to be engaged.
16. The FOIA does not define what might constitute a 'reasonable' extension of time. However, the Commissioner's view is that a public authority should normally take no more than an additional 20 working days to consider the public interest, meaning that the total time spent dealing with the request should not exceed 40 working days.
17. However, any public authority claiming an extension is still obliged to issue a refusal notice explaining which exemption applies, and why the public authority believes it applies, within the initial 20 working day time limit.

18. Section 17(1) of the FOIA requires that where a public authority is relying on a non-disclosure exemption to withhold information, it must issue a refusal notice informing the requester of that fact, specify the exemption relied on and explain why it applies (if not apparent), no later than 20 working days after the date on which the request was received.
19. In this case, the request was made on 28 September 2018 and a response should have been provided no later than 26 October 2019.
20. On 8 February 2019, the Commissioner wrote to the DHSC advising it to respond to the request within 10 working days.
21. On 21 February 2019, the complainant wrote to the Commissioner and advised that the DHSC had requested another extension. On 22 February 2019, the complainant asked for a decision notice to be issued to the DHSC.
22. Although the Commissioner understands that the FOIA allows the DHSC additional time to consider the public interest in applying an exemption, the Commissioner is concerned about the length of time that the process is taking in this case.
23. The DHSC's initial response to the complainant, advising the complainant that it requires more time to determine whether or not the balance of the public interest lies in maintaining the exemption under section 36 of the FOIA, was sent on the 29 October 2018, 21 working days after receiving the request. In itself, this is a breach of section 10(1) of the FOIA. The DHSC has then extended the 20 working day time limit on four occasions and it is now over five months since the DHSC received the complainant's FOIA request.
24. The Commissioner no longer considers it reasonable in the circumstances for the DHSC to require more time to determine whether or not the balance of the public interest lies in maintaining the exemption under section 36 of the FOIA. It is clear to the Commissioner that, in this case, the DHSC has failed to respond to the request in accordance with the legislation. The Commissioner therefore finds that the DHSC breached section 10 of the FOIA, both for failing to provide its initial response to the request within 20 working days, and for then taking an unreasonable amount of time to perform the public interest test required when applying section 36 of the FOIA.
25. The Commissioner now requires the DHSC to respond to the complainant's request in accordance with the FOIA and trusts that the DHSC will make improvements with regard to claiming extensions in the future.

## Right of appeal

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26. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

27. 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.
28. 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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**