

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 October 2020

Public Authority: Department of Health and Social Care

Address: 39 Victoria Street
London
SW1H 0EU

Decision (including any steps ordered)

1. The complainant requested information from the Department of Health and Social Care ("DHSC") relating to a report published by the Advisory Council on the Misuse of Drugs. By the date of this notice the DHSC had failed to issue a substantive response to this request.
2. The Commissioner's decision is that the DHSC has breached section 10(1) of the FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires the DHSC to take the following steps to ensure compliance with the legislation.
 - Respond to the complainant's request in accordance with the FOIA.
4. The DHSC 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.

Background

5. The DHSC advise the Commissioner that its post is handled by an admin team which currently has a backlog of post due to social distancing rules during the Covid-19 pandemic reducing the number of staff being able to handle post. However, the DHSC received the request and was also provided with an email address for the complainant.

Request and response

6. On 1 June 2020, the complainant wrote to the DHSC and requested information in the following terms:

"RE:ACMD Drug Facilitated Sexual Assault (DFSA) Report 2007

I would be extremely grateful for your help with the following query pertaining to the above report. In the event this matter would be more approximately dealt with by another body I would be most grateful if this letter could be forwarded to that other body.

In 2007 the Advisory Council on the Misuse of Drugs Secretariat ('ACMD'), a Home Office related body, published a report on DFSAs in 2007. Among its recommendations were the Department of Health (DoH) should ensure hospitals have 'early evidence kits' to allow for testing for drugs used for DFSAs. I would be grateful if you could inform me of:

- *what steps the DoH took to ensure all hospital A&E departments have early evidence kits;*
- *any DoH guidance or related documentation provided to hospitals on the use of such kits as recommended by the ACMD or otherwise; and*
- *whether the DoH requested the National Institute for Health & Clinical Excellence, or indeed other bodies, help the DoH to develop such guidance and if so how I may obtain a copy of the same.*

I would be grateful if you could also consider the above query with respect to Drug Facilitated Crime ('DFC') as well as DFSA."

7. To date, a substantive response has not been issued to this request by the DHSC.

Scope of the case

8. The complainant contacted the Commissioner on 12 August 2020 to complain about the failure by the DHSC to respond to their request.
9. The Commissioner has considered whether the DHSC has complied with its obligations in relation to the time for compliance at section 10(1) of the FOIA.

Reasons for decision

10. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

11. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt.”
12. On 9 September 2020 the Commissioner wrote to the DHSC, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
13. Despite this intervention the DHSC has failed to respond to the complainant.
14. From the evidence provided to the Commissioner in this case, it is clear that the DHSC did not deal with the request for information in accordance with the FOIA. The Commissioner finds that DHSC has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the FOIA.

Right of appeal

15. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

16. 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.
17. 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

Ben Tomes
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