

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 June 2021

Public Authority: Department of Health and Social Care
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") regarding the Health Secretary's contacts and communications with a named individual about health related contracts during the pandemic. The DHSC had failed to provide a substantive response by the date of this notice.
2. The Commissioner's decision is that the DHSC failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner requires the DHSC to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the FOIA, to the request.
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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 23 February 2021, the complainant wrote to the DHSC and requested information in the following terms:

"Dear FOI/EIR Team

I would like to request the following information under the Freedom of Information Act and the Environmental Information Regulations (EIRs). I understand my request will take 20 working days to process but I would be grateful if you could acknowledge receipt via christopher.hastings@mailonsunday.co.uk

Please note that I am only interested in that correspondence and communications generated between 1 March 2020 and 1 December 2020

Please note that the reference to written correspondence and communications in the questions below should include all traditional forms of correspondence such as letters memos and faxes, all emails irrespective of whether they were sent through private or official accounts and all messages sent through encrypted messaging services including but not limited to WhatsApp.

It is likely that some of this correspondence and communication will relate to [name redacted]'s company [name redacted] and services that [name redacted] and or his company provided in relation to the fight against Covid-19. I should stress, however, that I am interested in all correspondence and communication irrespective of the subject matter.

Please note that I am only interested in communications and correspondence which involves the two named individuals and not their private offices acting on their behalf [names & identifiable personal data redacted].

Please note that the Environmental Information Regulations cover information relating to the 'the state of human health and safety and conditions of human life.'

1....During the aforementioned period did [name redacted] write to and communicate with Matt Hancock?

2....If the answer to question one is yes can you please provide a copy of this written correspondence and communication.

3...During the aforementioned period did Matt Hancock write to or communicate with [name redacted]?

4...If the answer to question three is yes can you please provide a copy of this correspondence and communication.

5...During the aforementioned period did the two men speak to each other on the telephone or via any video communication system including but not limited to Zoom. If the answer is yes, can you, please state the date when these conversations/meetings took place. In the case of each conversation/meeting can you state whether it was a phone conversation or a Zoom meeting or similar. In the case of each conversation/meeting can you state the duration of the conversation. In the case of each conversation/meeting can you provide a recording of the actual conversation (s)/ meeting. If no recording exists, can you, please provide a transcript of the conversation (s) /meeting or any notes compiled in relation to the conversation or meeting. Please do provide recordings and transcripts even if other individuals joined Mr Hancock and [name redacted] in these meetings/conversations.

6...If information relevant to this request has been destroyed can you please provide the following details. In the case of each piece of destroyed correspondence and communication can you state when it was destroyed and why. In the case of each piece of destroyed documentation and communication can you please provide details of author, recipient and date generated. In the case of each destroyed piece of correspondence and communication can you provide a brief outline of its contents. if destroyed documentation of any kind continues to be held in another form, can you please provide a copy of that destroyed correspondence and communication.

Thank you for dealing with my request and I look forward to hearing from you within twenty working days.

6. The DHSC failed to provide a substantive response by the date of this notice.

Scope of the case

7. The complainant contacted the Commissioner on 29 April 2021 to complain about the failure, by the DHSC, to respond to the request.
8. The scope of this notice and the following analysis is to consider whether the DHSC has complied with section 10 of the FOIA.

Reasons for decision

9. 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.*
10. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
 11. On 26 May 2021, 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.
 12. Despite this intervention the DHSC has failed to respond to the complainant.
 13. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the DHSC has breached section 10 of the FOIA and it is now required to respond to the request in accordance with the FOIA.

Other matters

14. The Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under 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: 0203 936 8963

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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF