

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 November 2021

Public Authority: Department of Health and Social Care

Address: 39 Victoria Street

London

SW1H 0EU

Decision (including any steps ordered)

1. The complainant has requested information relating to a variant of covid-19.
2. The Commissioner's decision is that the DHSC has failed to respond to the request within 20 working days 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.
 - Issue a substantive response, in accordance with the FOIA, to the request.
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

5. On 10 January 2021, the complainant wrote to the DHSC and requested information in the following terms:

"On 6.1.21, Matt Hancock made an oral statement on new covid19 regulations:

<https://www.gov.uk/government/speeches/oral-statement-on-new-covid-19-regulations>

This says: "And while collectively, our efforts were working on the old variant, when faced with a new variant that is between 50 to 70% more transmissible, there has been no choice but to respond".

Please provide the evidence upon which this statement was based, i.e. the evidence which shows that a new variant of covid19 is 50 -70% more transmissible. Please do not direct me to another government department. The statement was made by Matt Hancock so the DHSC are responsible for providing me with the evidence I am requesting in connection with that statement."

6. The DHSC issued an automatic response on the same day.
7. The DHSC responded further on 10 March 2021 and explained that *"From the beginning of the outbreak, the Government's policies have been guided by the advice of the Scientific Advisory Group for Emergencies, which is led by the Chief Scientific Adviser and Chief Medical Officer for England, and the response is kept under constant review."* It then provided the complainant with a link¹ to further information relating to the government's approach to the pandemic.
8. On 13 March 2021 the complainant responded. The complainant stated that the DHSC's response to their request made under the FOIA was inadequate and requested an internal review.
9. The DHSC responded on 17 April 2021 and stated: *"I should explain that the Freedom of Information Act only applies to recorded information such as paper or electronic archive material. As your correspondence asked for general information, rather than requesting recorded*

¹ <https://www.gov.uk/government/collections/scientific-evidence-supporting-the-government-response-to-coronavirus-covid-19>

information or documentation, it did not fall under the provisions of the Act."

Scope of the case

10. The complainant contacted the Commissioner on 13 May 2021 to complain about the way their request for information had been handled.
11. In line with her processes, the Commissioner contacted the DHSC on 14 October 2021 to highlight that a complaint had been brought to her. The Commissioner requested that the DHSC issue a substantive response to the request, under the FOIA, within twenty working days. This correspondence was neither acknowledged nor responded to.
12. The Commissioner therefore considers the scope of her investigation to be to determine if the DHSC has breached section 10 of the FOIA.

Reasons for decision

13. 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."

14. Section 8 of the FOIA states that:

"In this Act any reference to a "request for information" is a reference to such a request which-

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested."

15. Section 10(1) of the FOIA 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 day following the date of receipt."

16. The Commissioner's guidance² acknowledges that the FOIA does not mean that public authorities *'have to treat every enquiry formally as a request under the Act. It will often be most sensible and provide better customer service to deal with it as a normal customer enquiry under your usual customer service procedures.'*
17. The statutory timeframe for providing a response under the FOIA is twenty working days and the Commissioner acknowledges that often an individual will receive the information they want quicker if a request is dealt with under business as usual. It will be up to the judgement of the public authority and its staff to decide whether a request should be dealt with as business as usual or under the FOIA.
18. In this case, the DHSC felt it was more appropriate to provide a response under business as usual. However, the Commissioner's guidance also states that the provisions of the FOIA need to come into force if the requestor makes it clear they expect a response under the Act.
19. Ultimately, the Commissioner considers that the request does constitute a valid request for recorded information under the FOIA. It clearly meets the criteria at section 8(a) and (b). With regard to section 8(c), the complainant has requested:

"Please provide the evidence upon which this statement was based, i.e. the evidence which shows that a new variant of covid19 is 50 -70% more transmissible"
20. It is the Commissioner's view that the request is for the evidence that was used to support the statement made by Mr Hancock. Whether DHSC holds this or not, is not relevant to this decision notice.
21. Furthermore, within the complainant's internal review request of 13 March 2021, they expressed dissatisfaction with the way in which their request had been dealt with. The complainant explained they had specifically requested not to be redirected to a website and emphasised that they were requesting specific information under the FOIA.
22. The Commissioner considers, at that point, the DHSC should have handled the request in accordance with the FOIA and a substantive response should have been issued within twenty working days.

² [What should we do when we receive a request for information? | ICO](#)

23. The Commissioner therefore considers the DHSC to have breached section 10 and requires it to take the steps outlined in paragraph 3.

Right of appeal

24. 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

25. 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.
26. 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

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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