

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 January 2021

Public Authority: Public Health England
Address: Wellington House
133-155 Waterloo Road
London
SE1 8UG

Decision (including any steps ordered)

1. The complainant made two information requests to Public Health England (PHE) for information about research regarding the susceptibility of certain groups to Covid-19 and for information regarding Covid-19 testing figures. By the date of this notice PHE had failed to provide a substantive response to either request.
2. The Commissioner's decision is that PHE failed to respond to the requests within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner requires PHE to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the FOIA, to both requests.
4. PHE 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 17 September 2020, the complainant wrote to PHE and requested information in the following terms:

"There is now increasing evidence that a significant number of the population is either unaffected, or only mildly affected by Covid 19, possibly up to 80% according to Professor Karl Friston of University College London.

In view of this, there is a strong case to be made to urgently focus medical research on identifying the reasons particular groups of people are susceptible (not just vulnerable**) to this virus, rather than just apply a "one size fits all" solution to the entire population (eg mass lockdowns or mass vaccinations) This approach would go a long way to minimising the negative impact of isolating or quarantine measures, as they would only need be applied to the susceptible, until suitable therapeutics have been identified and approved. I believe we should be not only looking for any genetic or environmental causes of susceptibility, but also any relationship between particular medications that may have been taken.*

To that end I would like to seek answers to the following under the Freedom of Information Act.

- 1. What specific research is being carried out into what makes certain groups of people susceptible* (not just vulnerable**) to Covid 19 ?*
- 2. What percentage of the total Covid research and development budget is directed into this area ?*
- 3. Are we co-ordinating and working with other experts around the world to focus in on this area ?*
- 4. Has any research been carried out to look for any linkage between Covid 19 and particular common drug treatments, such as statins, blood pressure medication, diabetes medication etc and if not why not.*
- 5. Has any research been carried out to look for any linkage between Covid 19 and particular common vaccines, such as the flu, pneumococcal and shingles vaccines and if not why not.*

(There is now some research indicating a potential increase in susceptibility to Covid19 for those that have had the flu vaccination.

This should be a relatively easy piece of research to carry out by looking at the incidence of Covid amongst vaccinated against unvaccinated people)

** Susceptible refers to those people within the population that have a high risk of contracting Covid and exhibiting significant symptoms if they come into contact with Sars Cov 2*

*** Vulnerable refers to those within a category identified by health authorities as having a high risk of experiencing serious symptoms, or death if they do contract Covid*

Under the current method of risk categorisation it could be possible to be in the vulnerable category, although not susceptible and likewise if susceptible, possibly be also vulnerable, although not categorised as such by health authorities.

Finally I have been monitoring the NHS track and Trace statistics and looking in particular at the +ve test results / total number of tests ratio and have noticed a significant difference between the Pillar 1 and Pillar 2 results (See attached spread sheet) Pillar 2 test results are showing an up to fourfold increase in the positive test ratio. (1.93% against 0.45% w/e 26/8)

To that end I would also like to request the following additional information under the Freedom of Information Act.

1. What is the "gold standard" for all PCR tests across the country and what quality assurance checks are in place to ensure compliance and conformity to this standard.

2. Are all PCR test kits and measuring machines sourced from the same manufacturer or different manufacturers around the world.

3. Is there a uniform Ct cycle threshold across all testing laboratories at which a test is deemed positive ?

4. Who determines this +ve Ct cycle threshold and does it remain constant or does it vary from time to time and if so for what reason.

5. Is there an Internationally agreed standard for the +ve Ct cycle threshold.

6. As the PCR test only looks for a certain section of the Sars Cov 2 virus RNA sequence, what is the level of certainty that this same sequence will not be found within other virus genomes or indeed

the human genome, or any other genomic material within the body itself ?

This subject is a matter of serious concern to many people across the nation so I thank you in advance for your cooperation and I look forward to your response in due course."

6. On 18 October 2020, the complainant wrote to PHE regarding the outstanding response to his request and made a further information request:

"Does PHE have any research or other data regarding the percentage of PCR tests that would be positive if the Ct threshold was reduced from it's current level to 25, or indeed any similar lower level."

7. PHE had failed to provide a substantive response to either request by the date of this notice.

Scope of the case

8. The complainant contacted the Commissioner on 17 November 2020 to complain about the failure, by PHE, to respond to the two requests.
9. In line with her usual practice, the Commissioner contacted PHE on 3 December 2020 to highlight the outstanding responses. She requested that PHE respond to the requests within 10 working days.
10. PHE acknowledged the correspondence on 9 December 2020 but had failed to provide a substantive response by the date of this notice.
11. The scope of this notice and the following analysis is to consider whether PHE has complied with section 10 of the FOIA.

Reasons for decision

12. 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.*

13. Section 8(1) of the FOIA states:

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.*

14. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.

15. 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."*

16. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the requests within 20 working days, PHE has breached section 10 of the FOIA.

Right of appeal

17. 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

18. 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.
19. 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
Team Manager
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