

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 January 2021

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) about a Coronavirus testing laboratory which suffered IT system failures. 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 13 September 2020, the complainant wrote to the DHSC and requested information in the following terms:

"My request concerns an 'IT systems failure' which occurred at a Lighthouse coronavirus testing laboratory and whose existence was disclosed in official weekly NHS Test and Trace statistics on August 20.

Please could you:

a) State the name / location of the laboratory which suffered the IT systems failure, and the name of the contractor(s) running testing services at the laboratory in question.

b) Provide all correspondence to and from DHSC ministers, and/or their private offices, regarding or describing this IT failure between August 1-31. I am content for elements of this correspondence which are exempt from FOI, such as personal details, to be redacted.

I realise the DHSC is busy with the coronavirus response but given the vital importance of public scrutiny of this issue I expect your reply within 20 working days, as stipulated by the Act."

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 8 December 2020 to complain about the failure, by the DHSC, to respond to the request.
8. In line with her usual practice, the Commissioner contacted the DHSC on 8 January 2021 to highlight the outstanding response. She requested that the DHSC respond to the request within 10 working days. The correspondence was neither acknowledged nor responded to.
9. 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

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 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.*

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

13. 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.*"

14. 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.

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
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF