

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 October 2022

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 the Department of Health and Social Care (DHSC) to disclose the evidence behind a statement it made in guidance it issued relating to the Covid-19 vaccines. The DHSC relied on section 21 of FOIA, as the information was already in the publicly domain.
2. The Commissioner's decision is that on the balance of probabilities the DHSC has identified all the recorded information it holds and, as this information is accessible to the complainant by other means, it is correct to rely on section 21 of FOIA. He has however recorded a breach of section 10 of FOIA because the DHSC failed to respond to the complainant's request within 20 working days of receipt.
3. The Commissioner does not require any further action to be taken.

Request and response

4. On 13 August 2021, the complainant wrote to the DHSC and requested information in the following terms:

"I request a copy of the scientific evidence behind the statement "...all Covid-19 vaccines should offer some degree of protection." that can be found in the Department of Health and Social Care's "Guidance on

protecting people who are clinically extremely vulnerable from Covid-19” released on 6th August 2021 and updated 11th August 2021.”

5. The DHSC responded on 3 December 2021. It advised the complainant that it holds recorded information falling within the scope of the request but as this is already publicly available, section 21 of FOIA applies. It provided links to all the recorded information it holds.
6. The complainant requested an internal review on 5 December 2021.
7. The DHSC carried out an internal review on 18 February 2022 and notified the complainant of its findings. It upheld its previous position.

Scope of the case

8. The complainant contacted the Commissioner on 20 February 2022 to complain about the way their request for information had been handled. The complainant disagrees with the DHSC’s response because in their opinion the information provided does not support the statement referred to in their request. They would like the DHSC to review its handling of the request and, if it decides that its response is correct, to provide reasonable justification for the information identified being the ‘evidence behind’ the statement.
9. The Commissioner has informed the complainant of the limitations of FOIA and how he can only make enquiries to ensure that all reasonable and appropriate searches for all recorded information have been made and, then, whether the DHSC is correct to rely on section 21 of FOIA.
10. It was agreed that the complainant disputes that the information they were directed to is the ‘evidence behind’ the statement specified in their request. They disagree it supports the statement. It was also agreed that this is not something that can be pursued via FOIA nor can the Commissioner compel the DHSC to provide the justification they desire. The relevant consideration is – what recorded information is held falling within the scope of the request, has everything been identified and is the DHSC correct to rely on section 21 of FOIA? It was agreed that the Commissioner’s investigation would proceed on that basis.
11. The Commissioner will also consider if there has been any procedural breaches of FOIA.

Reasons for decision

Section 1 – is any further recorded information held?

12. The Commissioner asked the DHSC to explain exactly what searches it had carried out and check again to ensure that all recorded information falling within the scope of the complainant's request has been identified.
13. The DHSC confirmed that the guidance referred to in the complainant's request was a generic guidance document and the relevant policy team considered what information and documents it was using at that time to substantiate that statement and similar. It identified everything that was in use at that time and directed the complainant to its location on the internet.
14. At the request of the Commissioner, the DHSC contacted the relevant policy team (and any members who had since left that team and moved to another) and asked it to carry out a fresh search to ensure that all recorded information has been identified. It did and reported that no further recorded information is held.
15. The Commissioner is satisfied that on the balance of probabilities the DHSC does not hold any further recorded information to that already identified.

Section 21 – information accessible by other means

16. Information is exempt from disclosure if it is accessible to the applicant by other means.
17. The DHSC said that all the recorded information it holds is already in the public domain and therefore accessible to the complainant. It directed the complainant to where the recorded information could be found by providing the relevant links.
18. The Commissioner has received no objection to this. He is therefore satisfied that the recorded information held is accessible to the complainant by other means and therefore the DHSC is entitled to rely on section 21 of FOIA in this case.

Procedural matters

19. The Commissioner notes that the DHSC failed to respond to the complainant's request within 20 working days of receipt. He has therefore recorded a breach of section 10 of FOIA.

Other matters

20. The DHSC failed to carry out its internal review within 20 workings of receipt. The section 45 Code of Practice recommends all public

authorities to carry out internal reviews within 20 working days. A total of 40 working days is permitted but the additional time should only be required in particularly complex or voluminous cases. The Commissioner would like to remind the DHSC of the requirements of the Code and how important it is to complete internal reviews in a timely manner.

Right of appeal

21. 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

22. 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.
23. 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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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SK9 5AF