

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 26 January 2022

Public Authority: The 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) relating to the construction of new hospitals. By the date of this notice, the DHSC had not issued a substantive response to this request.
2. The Commissioner considers some parts of the request to fall under the EIR and some parts under the FOIA.
3. The Commissioner's decision is that the DHSC has breached regulation 5(2) of the EIR and section 10(1) of the FOIA as it failed to provide a valid response to the request within the statutory time frame of 20 working days.
4. The Commissioner requires the DHSC to take the following step to ensure compliance with the legislation.
 - The DHSC must provide a substantive response to the request in accordance with its obligations under the EIR and the FOIA.
5. The DHSC must take this step 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

6. On 20 August 2021, the complainant wrote to the DHSC and requested information in the following terms:

“Please can you tell me the following:

- how many new hospitals are you currently building
- how many new hospitals are planned
- where are the new hospitals going to be (full list please)
- how many of these are to replace existing hospitals
- how many new acute units are you building (I.e. not new hospitals - new units within existing hospitals)
- How many new mental health units are you building (I.e. not new hospitals - new units within existing hospitals)
- what is the timeframe for all of the above

Thank you”

7. The DHSC wrote to the complainant on 20 August 2021 to acknowledge the request. By the date of this notice, the DHSC has not provided the complainant with a substantive response to their request.

Scope of the case

8. The complainant contacted the Commissioner on 18 December 2021 to complain about the DHSC’s failure to respond to their request.
9. The Commissioner has considered whether the DHSC has complied with its obligations in relation to the time for compliance under regulation 5(2) of the EIR and section 10(1) of the FOIA.

Reasons for decision

10. Regulation 5(1) of the EIR states that:

“a public authority that holds environmental information shall make it available on request.”

11. Regulation 5(2) of the EIR states that:

“Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.”

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 10(1) of the FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt”.

14. The Commissioner considers that some parts of the request (specifically questions 1-3) fall under the EIR. This is because the requested information was information on “measures and activities affecting, or likely to affect, the elements and factors of the environment”. Therefore, the information would fall within the definition of environmental information at regulation 2(1)(c) of the EIR.

15. The Commissioner considers the remainder of the request to fall under the FOIA.

16. On 7 January 2022 the Commissioner wrote to the DHSC, reminding it of its responsibilities and asking it to provide a substantive response to the complainant’s request within 10 working days.

17. Despite this intervention, the DHSC has failed to respond to the complainant.

18. From the evidence provided to the Commissioner in this case, it is clear that the DHSC did not deal with the request for information in accordance with the EIR and the FOIA. The Commissioner finds that the DHSC has breached regulation 5(2) of the EIR and section 10(1) of the FOIA by failing to respond to the request within 20 working days. It is now required to respond to the request in accordance with the EIR and the FOIA.

Right of appeal

19. 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

20. 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.
21. 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

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