

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 January 2023

Public Authority: Department for Business, Energy and Industrial Strategy

Address: 1 Victoria Street
3 Whitehall Place
London
SW1H 0ET

Decision (including any steps ordered)

1. The complainant requested information from the Department for Business, Energy and Industrial Strategy ("BEIS") about a request for information in regards to the decision announced by Alok Sharma, the Business Secretary, in November 2021 to enter into a non binding in principle agreement to procure 1 million doses of Evusheld from AstraZeneca pending trial results. By the date of this notice BEIS had not issued a substantive response to this request.
2. The Commissioner's decision is that BEIS has breached section 10(1) of FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires BEIS to take the following step to ensure compliance with the legislation.
 - BEIS must provide a substantive response to the request in accordance with its obligations under FOIA.
4. BEIS 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 29 September 2022, the complainant wrote to BEIS and requested information in the following terms:

"Dear Department for Business, Energy and Industrial Strategy,

Below is a request for information relating to the decision announced by Alok Sharma, the Business Secretary, in November 2021 to enter into a non binding in principle agreement to procure 1 million doses of Evusheld from AstraZeneca pending trial results. For the avoidance of doubt, when I refer to Evusheld in this request, I am referring to AZD 7442 (AZD 8895 and AZD 1061) i.e. Tixagevimab and Cilgavimab. I originally submitted this request to the DHSC but they have informed me that it should be addressed by the Vaccines Taskforce (VTF) which can be contacted through you.

1. Please can you/the VTF provide a copy of the official announcement, statement or communication of this agreement
2. On what date was this agreement entered into?
3. Within the VTF and the responsible departments (DHSC/BEIS) what Body(ies)/Committee(s)/Forum(a)/key individual(s) provided input into the decision to enter into the agreement?
4. Within the VTF and the responsible departments (DHSC/BEIS) what Body(ies)/Committee(s)/Forum(a)/key individual(s) made the final recommendation to the Business Secretary to enter into this agreement?
5. What Body(ies)/Committee(s)/Forum(a)/key individual(s) within the VTF and the responsible departments (DHSC/BEIS) decided not to proceed with the order?
6. On what dates was the decision not to proceed reached by each of the above?
7. On what specific evidence was the decision reached not to proceed with the order?
8. How, and on what date, was this decision not to proceed with the order communicated to the Business Secretary?

9. Was the decision not to proceed communicated to the Health Secretary? If so when?
 10. For any Body(ies)/Committee(s)/Forum(a) named, please provide details of their membership at the time of each decision to take positive or negative action."
6. BEIS acknowledged the request on 30 September 2022. To date, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 3 November 2022 to complain about BEIS' failure to respond to their request.
8. The Commissioner has considered whether BEIS has complied with its obligations in relation to the time for compliance at section 10(1) of FOIA.

Reasons for decision

9. Section 1(1) of 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."
10. Section 10(1) of 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".
11. On 17 November 2022 the Commissioner wrote to BEIS, reminding it of its responsibilities and asking it to provide a substantive response to the complainant's request within 10 working days.
12. Despite this intervention BEIS has failed to respond to the complainant.
13. From the evidence provided to the Commissioner in this case, it is clear that BEIS did not deal with the request for information in accordance

with FOIA. The Commissioner finds that BEIS has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with FOIA.

Right of appeal

14. 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

15. 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.
16. 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
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