

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 January 2023

Public Authority: Department of Health & Social Care

Address: 1st Floor North
39 Victoria Street
London
SW1H 0EU

Decision (including any steps ordered)

1. The complainant requested information from the Department of Health & Social Care ("DHSC") about WhatsApp messages between Matt Hancock and [name redacted]. By the date of this notice DHSC had not issued a substantive response to this request.
2. The Commissioner's decision is that DHSC 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 DHSC to take the following step to ensure compliance with the legislation.
 - DHSC must provide a substantive response to the request in accordance with its obligations under FOIA.
4. 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 11 March 2022, the complainant wrote to DHSC and requested information in the following terms:

"Dear Department of Health and Social Care,

Please can you answer the following freedom of information request:

1 - Please can you confirm if you hold a copy of WhatsApp messages between former minister Matt Hancock and [name redacted] (Full name [name redacted])?

2 - Please can you provide a copy of all WhatsApp messages between former minister Matt Hancock and [name redacted] (Full name [name redacted]).

Note - Please use the following date range for your searches: 15 March 2020 to 30 September 2020.

Note - Please limit the search to WhatsApp discussions regarding Covid-19 Tests, Testing equipment and/or Personal Protective Equipment (PPE).

I look forward to receiving a response within 20 working days."

6. DHSC acknowledged the request on 14 April 2022 and again on 5 September 2022. To date, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 18 November 2022 to complain about DHSC'S failure to respond to their request.
8. The Commissioner has considered whether DHSC 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 30 November 2022 the Commissioner wrote to DHSC, 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 DHSC has failed to respond to the complainant.
13. From the evidence provided to the Commissioner in this case, it is clear that DHSC did not deal with the request for information in accordance with FOIA. The Commissioner finds that DHSC 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
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