

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 27 September 2022

Public Authority: Department of Health and Social Care
Address: 39 Victoria Street
London
SW1H 0EU

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

he may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

1. The Commissioner has received an application under section 50, reference IC-136941-D1Y2 for a decision whether a request for information made by the complainant to the Department of Health and Social Care ("the DHSC") on 5 August 2020, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of complaint

2. The Commissioner originally wrote to the DHSC on 21 June 2022, asking it to explain why it considered that complying with the request was likely to exceed the appropriate limit for the purposes of section 12 of FOIA.
3. The DHSC responded on 13 July 2022 to say that, having reconsidered its position, it no longer wished to rely on section 12 of FOIA and instead wished to rely on section 36 of FOIA to withhold the requested information. It asked for additional time to prepare an appropriate submission to that effect and to inform the complainant of the change of position.
4. Since 13 July 2022, the DHSC has sought, on multiple occasions, to extend the deadline informally – all of which were agreed by the Commissioner. On 22 September 2022, the DHSC again asked for more time in which to complete the necessary work: noting the complexity of the request subject and the delays caused by the change of government and the period of national mourning following the death of Queen Elizabeth II.
5. Given the DHSC's recent history of delayed responses – particularly in respect of this matter – the Commissioner considers that it is now more appropriate to serve an information notice to set a formal legal deadline for the DHSC to respond to his investigation.

Information required

6. In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of the Act he requires that the DHSC shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following:
 - A submission outlining the exemption(s) upon which the DHSC is now relying to withhold information. The submission should include the reasons why any exemption(s) are engaged and, if any qualified exemption is relied upon, details of the DHSC's public interest considerations.
 - Copies of any information the DHSC still wishes to withhold.
 - [If relying on section 36 of FOIA] A copy of the opinion of the Qualified Person.

Failure to comply

7. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

Right of appeal

8. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can 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

9. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Signed

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF