

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 September 2020

Public Authority: 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") regarding alleged attempts to introduce measures under the emergency powers of the Coronavirus Bill, concerning abortions at home. The DHSC responded and refused to comply with the request as it did not consider it as a valid FOI request.
2. The Commissioner's decision is that the request was valid for the purposes of section 8 of the FOIA. However, as the DHSC has subsequently issued a fresh response, the Commissioner does not require the DHSC to take any steps as a result of this decision.

Request and response

3. On 24 March 2020 the complainant wrote to the DHSC and requested information in the following terms:

"All information held by the department detailing attempts to introduce nefarious measures under the emergency powers of the Coronavirus Bill to permit persons to have abortions at home and without the certification of two doctors in Scotland."
4. On 14 April 2020 the DHSC responded. It stated that under section 8(1) of the FOIA, it is not required to give opinions to answer the request. The DHSC directed the complainant to the ICO webpages relating to advice for requesters on how to word requests to get the best result. It

also advised him that if he was not satisfied with the handling of his request, he could ask for an internal review within two months.

5. On 29 April 2020 the complainant asked the DHSC for an internal review and requested the following:

"As part of that review I would request a full un-redacted copy of all information already held by the department detailing attempts to introduce measures under the emergency powers of the Coronavirus Bill to permit persons to have abortions at home and without the certification of two doctors in Scotland."

6. On 30 April 2020 the DHSC explained to the complainant that as his query was not a valid FOI request it was not subject to an internal review. The DHSC said that it had logged the complainant's internal review request as a new FOI request.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. Specifically, the complainant expressed his dissatisfaction with the DHSC's initial response (not a valid FOIA request and is not subject to an internal review) and he asked for a decision notice to record the Commissioner's decision in respect of DHSC's application of section 8 of the FOIA.
8. The following analysis focuses on whether the request was valid in accordance with section 8 of the FOIA, and whether the DHSC should have handled it as such. The Commissioner will consider its validity of whether the request described the information requested – section 8(1)(c).

Reasons for decision

Section 8 – Request for information

9. Section 8 of the FOIA states:

"(1) In this Act any reference to a "request for information" is a reference to such a request which -

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) *describes the information requested.*"

10. The Commissioner considers that if a request meets the above requirements, it is a valid request for information under the FOIA.
11. In this case, the complainant made his request in writing, stated his name and provided an email address for correspondence. Therefore the requirements of section 8(1)(a) and (b) were satisfied.
12. The Commissioner considers that a request will meet the requirements of section 8(1)(c) as long as it contains a sufficient description of the information required. Each request has to be judged on its individual merits as to whether there were sufficient indicators provided to enable the information requested to be adequately described for the purposes of section 8. As long as a request attempts to describe the information it is likely to meet the requirements of section 8(1)(c), particularly as it is always open to the public authority to seek further clarification to identify the information.

The Commissioner's view

13. In her guidance¹ for organisations on what they should do when they receive a request, the Commissioner states:

"Any genuine attempt to describe the information will be enough to trigger the Act, even if the description is unclear, or you think it is too broad or unreasonable in some way..."

This is not a hard test to satisfy. Almost anything in writing which asks for information will count as a request under the Act. The Act contains other provisions to deal with requests which are too broad, unclear or unreasonable".

14. The Commissioner has considered the wording of the request in this case, and the complainant's reasons for requesting an internal review.
15. The Commissioner notes that the wording within the complainant's initial request included the word "*nefarious*" which he used to describe measures under the emergency powers of the Coronavirus Bill. She considers that although this is the complainant's opinion, and he had chosen to use this word to express his view on the subject, the request itself adequately described the information the complainant was seeking.

¹ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/>

16. The DHSC considered the request was not a valid FOI request, and it refused to conduct an internal review for this reason. The DHSC explained to the Commissioner that it refused the request under section 8(1) FOIA as it required the Department to make a judgement on what "*nefarious measures*" may be. It highlighted the fact that public authorities are not required to give opinions, and said that it could not make the judgement which the complainant had asked for. Therefore, the DHSC could not state whether or not the requested information was held.
17. The DHSC also informed the Commissioner that it had advised the complainant on how he could phrase any subsequent requests in order to receive a satisfactory outcome. However, the complainant instead asked for an internal review, which the DHSC said it could not carry out because his original request was invalid.
18. The complainant responded to the DHSC and said that he was not arguing over "*objective matters of truth*" and that he did not request its opinion on the matter. He also stated that he had not requested the DHSC to generate new information, and reiterated his original request, this time without the use of the word "*nefarious*".
19. The Commissioner's view is that the DHSC should have handled the request as a valid request irrespective of the word "*nefarious*" which the complainant had initially used. The DHSC responded to the request under the FOIA and said that the complainant was asking for an opinion, which is not the case in this instance.
20. In the Commissioner's guidance² it explains that authorities must also read requests impartially. This means that they should ignore any emotive language or criticism when interpreting the meaning of the request. The authority must not allow its own views about the validity of any criticisms or allegations to influence how it reads the request; its sole focus must be on the information that is being requested.
21. The Commissioner is satisfied that the request clearly describes the information sought by the complainant. Therefore, her decision is that the request is compliant with section 8 of the FOIA. However, by initially failing to recognise the request as valid under the FOIA, the Commissioner finds that the DHSC has breached section 8 of the FOIA.

² <https://ico.org.uk/media/for-organisations/documents/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf>

22. As the DHSC has now provided the complainant with a complete response, the Commissioner does not require it to take any steps to ensure compliance with the legislation.

Other matters

23. The Commissioner considers that the DHSC's initial handling of the complainant's request was incorrect. The DHSC should refer to her guidance³ on recognising a request made under the FOIA in order to avoid any future misunderstanding on what constitutes a valid request for information.
24. In this case, the Commissioner has made a record of the DHSC's failure to recognise a valid FOIA request.
25. The Commissioner acknowledges the additional pressure which DHSC was under due to the coronavirus pandemic, and its efforts to engage with the complainant. However, DHSC should be aware that by not offering an internal review within its response, the matter was effectively made worse.
26. In addition to this, the Commissioner notes that DHSC had referred the complainant to her published guidance⁴ on how individuals can word a request. This is a useful guide and it includes advice on maintaining focus on the information requested, rather than peripheral issues or opinions. The Commissioner recognises the DHSC's attempt to guide the complainant appropriately.

³ <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

⁴ <https://ico.org.uk/your-data-matters/official-information/>

Right of appeal

27. 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: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk.

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.
29. 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

Phillip Angell
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