

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 2 October 2023

**Public Authority:** Department of Health and Social Care (DHSC)  
39 Victoria Street  
London  
SW1H 0EU

#### **Decision**

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1. The complainant requested information about DHSC's response to the COVID-19 pandemic. DHSC originally refused the request under section 35(1) of FOIA (formulation of government policy) but subsequently disclosed the information.
2. The Commissioner's decision is that DHSC breached sections 1(1)(b), 10(1) and 17(1) of FOIA. This is because it didn't communicate the requested information, or issue a refusal notice initially, within the statutory time frame of 20 working days. It's not necessary for DHSC to take any corrective steps.

#### **Request and response**

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3. The complainant made the following information request to DHSC on 20 May 2021:  

"Please kindly provide a copy of the internal review document prepared internally by your department into your Covid-19 response. We understand the document is 'informal' but that is not a reason not to release it under the Freedom of Information Act."
4. DHSC provided a refusal notice on 5 August 2021. It withheld the requested information under section 35(1) of FOIA. DHSC invited the complainant to request an internal review if they weren't satisfied and the complainant did so on 6 August 2021. DHSC didn't provide an internal review and the matter was passed to the Commissioner on 20 September 2023.

5. In response to initial correspondence from the Commissioner about the complaint, DHSC provided the complainant with an internal review on 26 September 2023.
6. In its internal review, DHSC maintained its view that section 35 applied at the time of the request but, on reconsideration, said that the public interest had favoured disclosure. DHSC disclosed the relevant information it held.

### **Reasons for decision**

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7. This reasoning covers the timeliness of DHSC's response. DHSC's handling of the internal review is discussed under 'Other Matters.'
8. Under section 1(1) of FOIA a public authority is obliged under subsection (a) to confirm whether it holds information an applicant has requested and, under subsection (b) to communicate that information to them if it's held and isn't exempt information.
9. Section 10(1) of FOIA obliges the authority to comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
10. Section 17(1) obliges the authority to issue a refusal notice in regard to any exempt information within the same timescale.
11. The complainant submitted their request on 20 May 2021. DHSC issued a section 35 refusal notice on 5 August 2021, in effect confirming that it held the requested information. DHSC finally communicated the information on 26 September 2023.
12. DHSC issued a refusal notice (and confirmed it held relevant information) and communicated the requested information outside the 20-working day requirement and so breached sections 17(1), 1(1)(b) and 10(1) of FOIA.

## Other matters

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13. The complainant has a number of concerns about internal reviews generally, and DHSC's late provision of one in this case.
14. Unlike the Environmental Information Regulations, provision of an internal review isn't a statutory requirement of FOIA but is a matter of good practice. As such, the Commissioner isn't able to make a formal decision on a public authority's handling of a review.
15. However, the Commissioner reminds DHSC that the FOIA Code of Practice<sup>1</sup> advises that internal reviews should be provided within 20 working days of the request for one. And only in exceptional cases should a further 20 working days be necessary. For monitoring purposes, he has recorded DHSC's late review in this case.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

## Right of appeal

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16. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

17. 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.
18. 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

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**