

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 July 2021

Public Authority: The Information Commissioner
Address: Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Note: This decision notice concerns a complaint made against the Information Commissioner (“the Commissioner”). The Commissioner is both the regulator of the Freedom of Information Act 2000 (FOIA) and a public authority subject to the FOIA. She is therefore under a duty as regulator to make a formal determination of a complaint made against her as a public authority. It should be noted, however, that the complainant has a right of appeal against the Commissioner’s decision, details of which are given at the end of this notice. In this notice the term “ICO” is used to denote the ICO dealing with the request and the term “Commissioner” denotes the ICO dealing with the complaint.

Decision (including any steps ordered)

1. The complainant requested information from the ICO she received from NHS Digital. By the date of this notice the ICO had failed to provide a substantive response to this request.
2. The Commissioner’s decision is that the ICO has breached section 10(1) of the 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 the ICO to take the following steps to ensure compliance with the legislation.
 - Respond to the complainant’s request in accordance with the FOIA.

4. The ICO must take these steps 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 18 May 2021, the complainant wrote to the ICO via the WhatDoTheyKnow website and requested information in the following terms:

"I would like to make a request under the FOI Act.

For the purposes of the Act, please take the date of your receipt of this request as Tuesday 18th May 2021.

I am interested in NHS Digital's forthcoming huge data extraction from GP records, care.data2 or the GPDfPR.

<https://digital.nhs.uk/about-nhs-digital/corporate-information-and-documents/directions-and-data-provision-notice/data-provision-notice-dpns/general-practice-data-for-planning-and-research>

Please could you provide me with the following information:

- *Has NHS Digital provided the ICO with a copy of its DPIA for this processing, for the ICO's comments, advice, or consultation?*

If the ICO →has not← received a DPIA about this, to date, then thank you and please consider my request as ended.

If the ICO →has← received a DPIA:

- *Was this submitted to the ICO informally, or*
- *Was this submitted to the ICO under Article 36 of UK GDPR ("prior consultation")?*
- *In either case, please could you provide me with the ICO's full response/guidance/advice to NHS Digital, and any subsequent/follow-up advice provided to date.*

As per Section 1(4) of the FOI Act (<http://www.legislation.gov.uk/ukpga/2000/36/section/1>) I would like the information in question held at the time when my request is received

(draft or otherwise), except that account may be taken of any amendment or deletion made between now and the latest time by which the information is to be communicated to me, being an amendment or deletion that would have been made regardless of the receipt of my request.

I would be grateful if you would be kind enough to send me the requested information promptly and in any event not later than the twentieth working day following the date of receipt of my request.

I wish to receive the information by email; I believe such a request would be reasonable in these circumstances. As per the Act, I have provided you with a valid return address, namely the unique email address that this request originates from.

If my request is denied in whole or in part, or specific items within the responses are withheld from disclosure, then you must justify all deletions by reference to specific exemptions of the act, as per Section 17 of the Act (<http://www.legislation.gov.uk/ukpga/2000/36/section/17>). Where you rely on a qualified exemption to withhold disclosure, you are obliged to consider the public interest in your decision and the refusal notice must explain not only which exemption applies and why, but also the public interest arguments addressed in reaching the decision.

I would point out that NHS Digital has neither made public its DPIA, nor provided the DPIA to any of the contributing data controllers (i.e. the GP surgeries in England). I would also point out that individuals have just a matter of weeks, before the extraction and uploading of their most personal confidential information commences, in which to opt-out of this - assuming they even find out about it.

I would be grateful if you would kindly acknowledge receipt of this request as recommended by the ICO ("It would be good practice to acknowledge receipt of requests and to refer to the 20 working day time limit, so that applicants know their request is being dealt with")."

6. The ICO acknowledged the request for information on 19 May 2021.
7. To date, a substantive response has not been issued.

Scope of the case

8. The complainant contacted the Commissioner on 19 June 2021 to complain about the failure by the ICO to respond to his request.
9. The Commissioner has considered whether the ICO has complied with its obligations in relation to the time for compliance at section 10 (1) of the FOIA.

Reasons for decision

10. Section 1(1) of the 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.

11. Section 10(1) of the 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.”
12. On 5 July 2021, the Commissioner wrote to the ICO, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
13. Despite this intervention the ICO has failed to respond to the complainant.
14. From the evidence provided to the Commissioner in this case, it is clear that the ICO did not deal with the request for information in accordance with the FOIA. The Commissioner finds that ICO 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 the FOIA.

Right of appeal

15. 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

16. 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.
17. 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

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