

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 October 2021

Public Authority: Department of Health and Social Care

Address: 39 Victoria Street
London
SW1H 0EU

Decision (including any steps ordered)

1. The complainant has requested the Department for Health and Social Care (DHSC) to disclose the names of 47 companies which were awarded contracts via the 'high-priority lane' for procuring PPE. Initially the DHSC withheld the information under section 43 of the FOIA (commercial interests). At the internal review stage the DHSC revised its position, withdrew the application of section 43 of the FOIA and confirmed that the requested information would be published in due course.
2. To the date of this notice, the DHSC has not disclosed the requested information, nor advised the Commissioner that it considers it is otherwise exempt by virtue of another exemption. The DHSC has therefore failed to comply with its obligations under FOIA. It has also breached section 1 and 10 of the FOIA. It failed to respond to the request within 20 working days of receipt and failed to disclose information, to which the complainant was entitled under section 1 of the FOIA, in the same timeframe.
3. The Commissioner therefore requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the requested information to the complainant.
4. The public authority 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 January 2021, the complainant wrote to the DHSC and requested information in the following terms:

“Please can you answer the following FOI request regarding the High-priority Lane established to procure PPE during the covid-19 pandemic.

1 - according to the recently published NAO report (link to report is below) the government set up a so called ‘high-priority lane’ for procuring PPE. The NAO confirm that 47 contracts were awarded via this route. Please can you provide a list of the companies names who were awarded these 47 contracts?

https://www.nao.org.uk/wp-content/uploads/2020/11/Investigation-into-government-procurement_during-the-COVID-19-pandemic.pdf”

6. The public authority responded on 14 April 2021. It refused to disclose the names of the companies concerned, citing section 43 of the FOIA.
7. The complainant requested an internal review on 30 April 2021.
8. The DHSC carried out an internal review and notified the complainant of its findings on 7 September 2021. It withdrew its previous application of section 43 of the FOIA and advised the complainant that the requested information would be published in due course.

Scope of the case

9. The complainant first contacted the Commissioner on 13 April 2021 to complain about the way his request for information had been handled. At this time the DHSC had not been instructed to carry out an internal review. The Commissioner therefore advised the complainant to request an internal review in the first instance. Following the DHSC’s internal review of 7 September 2021, the complaint was accepted for full investigation on 29 September 2021.
10. It is noted that the DHSC no longer considers the requested information exempt from disclosure – at the internal review stage it withdrew its application of section 43 of the FOIA and advised the complainant that the requested information would be published. The complainant is

unhappy with the continued delays and that there seems to be no timeframe for the provision of the requested information.

Reasons for decision

11. The Commissioner has contacted the DHSC and it has advised that it still intends to publish the requested information. However, the requested information needs to be verified and checked prior to its release and it is continuing to do this. It confirmed that it hoped to have this completed by the end of this year.
12. The Commissioner is reminded that the requested information is for the names of the 47 companies only; nothing more or detailed than that. She fails to see how the disclosure of this information should take this long.
13. As the DHSC has confirmed that it is happy to disclose the information and has not informed the Commissioner that it wishes to rely on any other exemption, the Commissioner requires the DHSC to disclose the requested information to the complainant within the timeframe specified in this notice.

Section 10 – time of compliance

14. Section 10 of the FOIA requires a public authority to respond promptly to an information request it receives and in any event no later than 20 working days from receipt. It is noted in this case that the DHSC took longer than 20 working days to issue its initial refusal notice. This is a breach of section 10 of the FOIA.
15. The Commissioner also finds the DHSC in breach of section 1 and 10 of the FOIA for failing to provide information to which the complainant was entitled under section 1 of the FOIA within 20 working days of the receipt of the request.

Other matters

16. The Commissioner notes that the DHSC took just over four months to complete the internal review. The section 45 code of practice recommends all public authorities to offer an internal review. It recommends that these are completed within 20 working days of receipt, and certainly within a maximum of 40 working days. Only those particularly voluminous or complex requests should take up to 40

working days. The vast majority should be carried out and completed within 20 working days.

17. Despite the issues of the Covid -19 pandemic, four months is excessive and an unacceptable delay. The DHSC is reminded of the importance of the section 45 code of practice and advised to complete future internal reviews in a more timely manner.
18. Additionally, the Commissioner is surprised that a formal decision notice is required in this case. She considers this complaint could have been resolved informally had the DHSC disclosed the requested information within a reasonable timeframe of its internal review response. The Commissioner cannot see what verification or checks are required at this stage to disclose solely the names of the companies involved and the DHSC has not provided any information to explain this further. She considers these are the sorts of enquiries that should or are usually done before a public authority notifies an applicant that the information can now be released. The Commissioner considers a reasonable timeframe for the disclosure of the information in these circumstances (i.e. after a public authority withdraws the application of an exemption, does not cite another in the alternative and decides the information can be released) is 10 working days. Again the continued delay in the disclosure of the requested information and the recently suggested timeframe for its completion is unacceptable.

Right of appeal

19. 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

20. 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.
21. 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

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