

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 July 2023

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 DHSC to provide any information which confirms whether or not West Essex Primary Care Trust (the PCT) sought or obtained any guidance from the Department of Health (DoH) prior to terminating the child only dental contracts in April 2008. Initially DHSC said that it held the information and proceeded to document that information in its response to the complainant.
2. During the Commissioner's investigation DHSC altered its position and said that it does not hold the requested information.
3. The Commissioner's decision is that on the balance of probabilities DHSC does not hold the requested information. He has however recorded a breach of section 10 of FOIA for failing to issue a refusal notice stating that fact within 20 working days of receipt.
4. The Commissioner does not require any further action to be taken.

Request and response

5. On, 8 September 2022, the complainant requested DHSC to provide the following information:

"Did the West Essex PCT seek or obtain guidance from the DOH prior to terminating the child only dental contracts in april 2008? Guidance was

available May 2008(Coventry PCT minutes). I would assume this would have been sought just prior to terminating contracts but could relate to comments made by the CEO at a meeting of dentists. This information was requested 2010 but was not replied to purposely.”

6. DHSC responded on 6 October 2022. It confirmed that it held recorded information and proceeded to provide a summary or explanation of that information.

Scope of the case

7. The complainant contacted the Commissioner on 9 January 2023 to complain about the way their request for information had been handled. They stated that despite the response they had received, their request remained unanswered. They believe DHSC must hold the requested information and would just prefer to not provide it.
8. During the Commissioner’s investigation DHSC issued a revised response to the complainant on 15 March 2023. It reconsidered the request afresh (following correspondence from the Commissioner) and informed the complainant that it does not hold the requested information.
9. The complainant provided evidence to support their assertion that DHSC must hold the requested information. This was put to DHSC, however, it stood by its revised position that, on the balance of probabilities, it does not hold the requested information.
10. The Commissioner therefore considers the scope of his investigation to establish whether or not, on the balance of probabilities, DHSC holds any recorded information which falls within the scope of the request.

Reasons for decision

11. DHSC revisited the request as a result of the Commissioner’s involvement. It stated that it has carried out searches of digital records, such as emails and shared drives, which have returned no relevant information. It argued that given the information is from 2008, on the balance of probabilities, it would be likely that if the information was held it would be in paper records.
12. DHSC conducted a search of its paper records and located a file which may hold relevant information. However, this file is being held by DHSC on behalf of NHS Resolution. While DHSC does have access to this file, it

said that it was only in its capacity of providing storage facilities to NHS Resolution. NHS Resolution would need to grant permission to DHSC staff to access the file to confirm whether it holds relevant information or not.

13. DHSC therefore concluded that it does not hold the requested information.
14. The Commissioner made further enquiries to DHSC in relation to this file and the evidence the complainant supplied. In particular, the Commissioner asked DHSC to consider the evidence the complainant provided, which suggested that advice was sought on the subject.
15. DHSC responded. It confirmed again that it does not hold the file for its own purposes. It only holds it because it is providing a storage function for NHS Resolution; nothing more. The Commissioner is satisfied with this explanation and has no reason to doubt DHSC's stance. He is therefore satisfied that DHSC does not hold this file for the purposes of FOIA. It is therefore unable to search this file to see if it holds any relevant information. The complainant would need to make an information request direct to NHS Resolution to establish this.
16. With regards to the evidence the complainant provided, while it is supportive of their position that the PCT sought some form of advice (but it is unclear from where the advice was sought or whether such advice, had it been provided, would have fallen within the scope of the request), it remains the position of DHSC that on the balance of probabilities, it does not hold the requested information. It confirmed that it has carried out all possible searches, considering the age of the requested information. It has also made all the enquiries it can. It remains the case that despite these searches and enquiries, it does not hold any relevant information.
17. The Commissioner is satisfied that on the balance of probabilities DHSC does not hold this information. It has carried out thorough searches of the records it holds and of all relevant locations. These all returned nil results. Despite the evidence supplied, DHSC is still unable to locate any relevant information.
18. The Commissioner considers DHSC has now met its obligations under FOIA, in particular in relation to section 1, by confirming that it does not hold the requested information. It was late in confirming that it does not in fact hold the requested information (as initially it said the information was held and proceeded to provide detail of what it does have) and for this the Commissioner has recorded a breach of section 10 of FOIA (failing to state that it does not hold the information within 20 working days of the receipt of the request).

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: 0203 936 8963

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