

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 August 2023

Public Authority: UK Health Security Agency
Address: Wellington House
133 - 155 Waterloo Road
London
SE1 8UG

Decision (including any steps ordered)

1. The complainant has requested meta-data associated with an earlier information request they had made to the UK Health Security Agency. The UK Health Security Agency (UKHSA) acknowledged the request but failed to respond within the time limits for compliance.
2. The Commissioner's decision is that the Council should have relied on section 14 of FOIA to refuse the request and has proactively applied this exemption himself. The Commissioner also finds that UKHSA breached section 10(1) of FOIA as it failed to provide its response within the statutory 20 working days.
3. The Commissioner does not require further steps.

Request and response

4. On 22 December 2022, the complainant wrote to UKHSA and requested information in the following terms:

"A - On the 21 December 2022, UKHSA provided a response to my FOI regarding 'details of 'referrers' to the 'VIP' Covid testing route' (ICO Case reference: IC-150101-Z2Z4). The response was sent to my email address and also to my 'What do they know' account.

B- Furthermore on the same day UKHSA published a similar response on its website titled 'Covid-19 testing procurement' (Link - <https://www.gov.uk/government/publicatio...>)

My request:

1 - Please provide a copy of all email correspondence held regarding the handling of my Freedom of Information request (Referenced in item A and B above),.

Note - Please limit the search to correspondence between officials within the UKHSA and DHSC FOI teams, press teams and ministerial offices."

5. UKHSA wrote to the requester on 24 January 2023 and confirmed it held the information requested. However, it considered the information subject to section 42 of the FOIA (legal privilege), and required an additional 20 working days to consider the public interest test.
6. UKHSA then wrote to the requester every month stating it required more time to consider the public interest test. On 22 May the complainant wrote to UKSHA advising that if it did not provide a substantive response by close of business on 26 May, they would raise a complaint with the Commissioner. UKSHA responded on 24 May again advising it required more time to consider the PIT and it would 'endeavour' to provide a response on 16 June.
7. A complaint was finally made to the Commissioner on 30 June 2023.

Reasons for decision

8. In this case, the Commissioner has exercised his discretion and proactively applied section 14(1) of FOIA to the request, based on the grossly oppressive burden compliance with the request would impose. The reasons for the Commissioner's decision are explained below.
9. Section 12 of FOIA provides an exemption from the duty to comply with a request where doing so would exceed the appropriate limit. This is £600 for a central government department such as the Home Office which equates to 24 hours of work at approximately £25 per hour. This limit is laid down by The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Fees Regulations").
10. The following activities may be taken into account to determine whether compliance with a request would exceed the appropriate limit:

- determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
11. The Commissioner's guidance states: "An authority cannot claim section 12 for the cost and effort associated with considering exemptions or redacting exempt information."
 12. In such circumstances a public authority may apply section 14(1) of FOIA, if it can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on the organisation.
 13. In its correspondence with the Commissioner, UKHSA stated while it was working on the request, due to the large volume of the information requested, the time taken for redaction, and staff absences, the request could not be completed within the time limits.
 14. For the above reasons, UKHSA requested an additional three week extension to respond, which the Commissioner granted. When this time period had lapsed, UKHSA requested an extension of a further three weeks, which the Commissioner refused.
 15. In the circumstances of this case, the Commissioner is satisfied that compliance with the request would represent a grossly oppressive burden on UKHSA.
 16. The Commissioner therefore concludes UKHSA should have cited section 14(1) as a basis for refusing the request.

Procedural matters

Section 10(1) – time for compliance

17. Section 10(1) provides that "Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."
18. The Commissioner notes the complainant made his request on 22 December 2022, and as of the date of this decision notice, UKHSA have not provided a response.

19. The Commissioner has therefore determined UKHSA did not comply with the requirements of section 10(1) of the FOIA.

Other matters

20. The Commissioner notes UKHSA wrote to the complainant on several occasions after receiving the request to extend the length of time required to complete the public interest test.
21. The Commissioner reminds UKHSA that while it is possible to extend the working day limit for this reason, this must only be for a "reasonable" period of time. In his guidance, the Commissioner has advised this should not be more than an additional twenty days, for a total of forty working days.
22. The Commissioner also notes that UKSHA are of the view that the information should be disclosed and is willing to do so. That being the case it may have been prudent for UKSHA to advise the complainant that it could provide the information at a later date outside of FOIA, or cited section 22 FOIA (information for future publication).
23. The Commissioner acknowledges UKSHA is willing to disclose the requested information and the pressures the department is experiencing. Nevertheless he cannot continue to grant extensions, particularly with the delays already experienced by the complainant.

Right of appeal

24. 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

25. 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.
26. 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