

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 January 2024

Public Authority: Department of Health and Social Care
Address: 1st Floor North
39 Victoria Street
London
SW1H 0EU

Decision (including any steps ordered)

1. The complainant requested information from the Department of Health and Social Care (the public authority). By the date of this notice the public authority had not issued a substantive response to this request.
2. The Commissioner's decision is that the public authority has failed to complete its deliberations on the balance of the public interest within a reasonable time and has therefore breached section 17(3) of FOIA.
3. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation.
 - Having confirmed whether or not information is held within the scope of the request: either disclose the requested information or, to the extent that information is to be withheld, issue a refusal notice in accordance with the requirements of section 17 of the FOIA.
4. The public authority must take this step 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 19 September 2023, the complainant made the following request for information to the public authority:

"This request concerns the 2019 industry consultation over measures to restrict multi-buy promotions on goods high in fat, sugar and salt.

[Restricting promotions of food and drink that is high in fat, sugar and salt - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/restricting-promotions-of-food-and-drink-that-is-high-in-fat-sugar-and-salt)

Please provide a copy of the submissions made by the following companies and industry bodies.

Asda

Premier Foods

British Soft Drinks Association (BSDA)

Coca-Cola Great Britain & Coca-Cola European Partners Dairy UK

Federation of Bakers

General Mills

Lucozade Ribena Suntory

PepsiCo

UK Hospitality"

6. On 14 November 2023, the public authority wrote to the complainant to explain that it held information relevant to the complainant's request, but that it would need to extend the time taken to complete its public interest test considerations in respect of an exemption under section 43 of FOIA.

Reasons for decision

7. Section 1(1) of 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.”

8. Section 10(1) of 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”.
9. Section 17(3) of FOIA states that where a public authority is relying on a qualified exemption, it can have a “reasonable” extension of time to consider the public interest in maintaining the exemption or disclosing the information.
10. FOIA does not define how long a reasonable time is. The section 45 Code of Practice on request handling states that “it is best practice for an extension to be for no more than a further 20 working days”.¹ This means that the total time spent responding to a request should not exceed 40 working days unless there are exceptional circumstances.
11. On 24 November 2023 the Commissioner wrote to the public authority, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days. On 12, 13 and 14 December the public authority contacted the Commissioner to discuss the case and request an extension to complete its public interest test. It argued that there were exceptional circumstances which contributed to delays, notably the need to consult with third parties, some of which are not based in the UK, and the volume of related information sought by the complainant across multiple requests. An extension was agreed until 8 January 2024. To date, a substantive response has still not been provided.

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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

12. In this case, the total time taken by the public authority has exceeded 40 working days and by some margin. The Commissioner considers that the reasons the public authority have put forward do not justify such a lengthy delay. Firstly, extending the timeframe should only be for the purpose of considering the balance of the public interest. In his

experience, consultation with third parties is usually for the purposes of assessing whether an exemption is engaged – in any case the third parties have already had sufficient opportunity to provide their views.

13. Secondly, the public authority is not entitled to extend the timeframe simply because it may have received other requests from the same requester. If the combined burden of dealing with this request and any other the complainant may have submitted within 60 working days would have exceeded the appropriate limit, the public authority would have been entitled to rely on section 12 of FOIA refuse them all.
14. The Commissioner finds that in failing to complete its deliberations on the public interest within a reasonable timeframe, the public authority has breached section 17(3) of FOIA.
15. The public authority is now required to finalise its public interest considerations under section 17(3) of FOIA and respond to the complainant.

Other Matters

16. The Commissioner recognises that there will be occasions where a public authority wishes to consult with third parties before disclosing information. There is no requirement to do so, but the Commissioner recognises that it can be a worthwhile exercise – particularly when a public authority wishes to claim that disclosure would harm that third party's interests.
17. However, when consulting, the public authority must make it clear, to consultees, what its deadline for responding is and that it is the consultee's responsibility to meet that deadline if it wishes to have its views considered. The public authority should also make clear to consultees that it will take the final decision on disclosure itself. It is ultimately the public authority's responsibility for ensuring that it complies with FOIA.

Right of appeal

18. 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-regulatorychamber

19. 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.
20. 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.....

Roger Cawthorne
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF