

## **Freedom of Information Act 2000 (Section 51)**

### **Information notice**

**Date:** 2 March 2020

**Public Authority:** Department for Health and Social Care  
**Address:** 37 Victoria Street  
London  
SW1H 0EU

### **Section 51**

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Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish her with any information she requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

she may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

### **Application under section 50**

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1. The Commissioner has received an application under section 50, reference FS50844525, for a decision whether a request for information made by the complainant to the Department of Health and Social Care (DHSC) on 14 February 2019, has been dealt with in accordance with the requirements of Part I of the Act.

## **Nature of complaint**

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2. The information request dated 14 February 2019 was worded as follows:  
"Please provide a copy of the declaration of interests made by each current departmental special adviser to your department."
3. The DHSC responded on 14 March 2019 refusing to disclose the requested information, citing section 40(2) and 41 of the FOIA.
4. The complainant requested an internal review on 16 March 2019.
5. The DHSC carried out an internal review and notified the complainant of its findings on 17 May 2019. It upheld its previous application of section 40(2) and 41 of the FOIA.
6. The complainant referred the matter to the Commissioner on 21 May 2019.
7. The Commissioner wrote to the DHSC on 6 September 2019. She requested a copy of the withheld information and for the DHSC to address a series of questions, explaining in more detail how section 40(2) and 41 of the FOIA applies to this request.
8. The DHSC responded on 3 October 2019 and requested an extension to 4 November 2019.
9. The Commissioner wrote to the DHSC on 10 October 2019 to confirm that the deadline had been revised to 4 November 2019.
10. The DHSC informed the Commissioner on 25 October 2019 that it would be unable to respond by 4 November 2019 and would provide a further update in due course.
11. The DHSC contacted the Commissioner again on 18 November 2019. It stated that it now aimed to respond by 2 December 2019.
12. On 6 January 2020 the DHSC wrote to the Commissioner again advising her that it now anticipated responding by 27 January 2020.
13. To the date of this notice, no response to the Commissioner's correspondence of 6 September 2019 has been received.

## **Information required**

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14. In view of the matters described above the Commissioner hereby gives notice that in the exercise of her powers under section 51 of the Act she requires that the DHSC shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information:

- A copy of the withheld information.
- A full and final response to the Commissioner's letter of 6 September 2019.
- Confirm what the DHSC's policy is on the publication of declaration of interests received at the different levels of seniority within the department.
- The Commissioner understands that special advisers' names and pay bands are routinely published across government. The DHSC is required to explain why, despite this and the information already available about special advisers, the requested information is exempt from disclosure under sections 40(2) and 41 of the FOIA.

## **Failure to comply**

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15. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

## Right of appeal

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16. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can 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](mailto:grc@Justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

17. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

## Signed

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