

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 26 January 2021

Public Authority: Department of Health and Social Care
39 Victoria Street
London
SW1H 0EU

Section 51

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

1. The Commissioner has received an application under section 50, reference IC-46203-V2V0, for a decision whether a request for information made by the complainant to the Department of Health and Social Care ('DHSC') on 4 October 2019, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of complaint

2. On 4 October 2019 the complainant made the following request for information under the FOIA:

"Under the Freedom of Information Act 2000, please could I have a copy of the analysis referred to on page 7 in the National Audit Office's "Investigation into NHS spending on generic medicines in primary care" report, which found an increase in wholesalers' margins that was described as "unexpected"? Please could you also supply any further analysis into wholesalers margins?"

3. DHSC responded on 1 November 2019. It confirmed that it held the relevant information but said that it was exempt from disclosure under sections 41 (information provided in confidence) and 43 (commercial interests) of the FOIA.
4. The complainant requested an internal review on 4 November 2019 and DHSC responded on 29 November 2019. It referred the complainant to certain information which was in the public domain, which it believed might be of interest. However, it maintained its application of the previously cited exemptions for the request as a whole.
5. The complainant contacted the Commissioner on 2 December 2019 to complain about the application of the exemptions at sections 41(1) and 43(2) of the FOIA to refuse the request.
6. The Commissioner wrote to DHSC on 4 June 2020 about the complaint, asking it a series of questions about its application of the two exemptions and for a copy of the withheld information.
7. DHSC replied on 3 July 2020, explaining that due to the ongoing Covid pandemic, it did not currently have capacity to deal with the complaint. It confirmed that this position had not changed in further correspondence to the Commissioner, dated 20 August 2020 and 9 November 2020.
8. On 10 November 2020, the Commissioner wrote to DHSC to notify it that if it did not provide a full response to her enquiries by 15 January 2021 she would issue an information notice, formally requiring it to do so.
9. To date, DHSC's response to the Commissioner's letter of 4 June 2020 remains outstanding.

Information required

10. 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 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; and
- Answers to all of the questions about sections 41 and 43 in the Commissioner's letter of 4 June 2020, a copy of which is attached to this information notice.

Failure to comply

11. 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

12. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

13. 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 Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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SK9 5AF