

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

### **Information notice**

**Date:** 23 August 2021

**Public Authority:** The Department of Health and Social Care  
**Address:** 39 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 IC-95685-S3X5, for a decision whether a request for information made by the complainant to the Department of Health and Social Care ('DHSC') on 25 October 2020, has been dealt with in accordance with the requirements of Part I of the Act.

## Nature of complaint

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2. On 25 October 2020 the complainant requested the following information under the FOIA:  
  
*"Please provide every email sent or received by Prof Chris Whitty (CMO) between during March 2020 that contain the phrase 'herd immunity' in either the text or the subject. This includes attachments. If any information is redacted under any exemption, please give some indication of the quantity of material removed."*
3. On 26 January 2021 the DHSC responded and refused to provide the requested information. It cited section 14 (vexatious requests) of the FOIA as its basis for doing so, explaining that compliance with the request would be burdensome to the point of causing disproportionate or unjustified disruption.
4. The complainant requested an internal review on 26 January 2021.
5. The DHSC sent the outcome of its internal review on 23 February 2021, upholding its original position.
6. The Commissioner wrote to the DHSC on 16 June 2021 and asked several questions relating to the its application of section 14 of the FOIA. She requested that this information be provided by 14 July 2021.
7. On 15 July 2021 the Commissioner wrote to the DHSC and explained that, having checked her records, it did not appear that the DHSC had provided its response. The Commissioner asked that this information was provided by 29 July 2021.
8. On 27 July 2021 the DHSC wrote to the Commissioner and requested an extension.
9. The Commissioner granted this extension and asked that this information was provided by 12 August 2021.
10. On 3 August 2021 the DHSC wrote to the Commissioner and requested another extension.
11. The Commissioner granted this extension and asked that this information was provided by 20 August 2021. The Commissioner explained that, should the DHSC fail to provide its submission by this date, then an information notice would be served.

12. As of today's date the Commissioner is yet to receive the information she requires to progress this case.

### **Information required**

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13. 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) An answer to all of the Commissioner's questions in her original scoping letter.

### **Failure to comply**

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14. 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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15. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@Justice.gov.uk](mailto:grc@Justice.gov.uk)

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

16. 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**  
**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**