

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

### **Information notice**

**Date:** 05 July 2021

**Public Authority:** 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, or

(b) reasonably requires any information

(i) for the purpose of determining whether a public authority has complied or is complying with any of the requirements of Part I, or

(ii) for the purpose of determining whether the practice of a public authority in relation to the exercise of its functions under this Act conforms with that proposed in the codes of practice under sections 45 and 46,

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.

## Reasonably requires any information

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1. Following a number of media reports, the Commissioner considers that she reasonably requires the information set out below in the Notice in order to determine whether the alleged use by Ministers, special advisors (Spads) and other Senior Officials at the Department of Health and Social Care (DHSC) of private email accounts (or other private channels of communication such as WhatsApp) to conduct Departmental business conforms with the Codes of Practice at sections 45 and 46 of the Act.
2. The Commissioner considers that she reasonably requires the information set out below because it relates to the existing procedures in place and how the DHSC handles information generated from multiple channels, including the accessibility of information pertaining to decision making and policy consideration. The Commissioner is keen to ensure that the appropriate safeguards are in place for the retention of, and access to, information that should be maintained for the public record

## Nature of concerns

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3. The Commissioner suspects that this alleged use of private emails (or other private channels of communication such as WhatsApp) by Ministers, Spads and other Senior Officials to conduct Departmental business may have been in breach of sections 45 and 46 codes of practice. Pursuant to Code of Practice at section 46, the Commissioner is guided by the following:
  - *The need to refer to authoritative information about past actions and decisions for current business purposes.*
  - *The need to explain, and if necessary justify, past actions in the event of an audit, public inquiry or other investigation.*
  - *[the need to] set business rules identifying [w]hat records should be kept ... [b]y whom this should be done ... [and at] what point in the process or transaction this should be done.*
4. Regarding section 45, the Commissioner will be investigating whether the DHSC's 'need to search for requested information in order to communicate to the applicant whether the information they are seeking is held or not held' is being complied with in respect of information requests received that are considered to cover information that is held outside of the DHSC's own official registries.

5. The Commissioner's suspicions are based predominantly on a series of consistent reports in the media that during at least the time of the pandemic, from 26 March 2020 onwards, certain senior individuals at DHSC (in particular; Matt Hancock, Helen Whately and Lord Bethell) have conducted official Department affairs from private email accounts or other private channels of communication. Most recently, for example, the consideration of government contracts<sup>1</sup> and the routine use of email<sup>2</sup> for official business<sup>3</sup>.

## Information required

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6. 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 the following information:-

### General

- i. Please provide details of the management structure of the DHSC, to include the Ministers, spads and other Senior Officials and their relevant reporting lines, names and job titles.

### DHSC Policy

- ii. Please provide a copy of the DHSC's present policy on the use of non-departmental email for official business. In the event that a policy is not held, please explain the DHSC's expectations in this regard.
- iii. Please provide DHSC's relevant policies and procedures around record keeping and handling FOIA 2000 requests in line with the codes.
- iv. Please explain how the above policies, procedures and expectations are communicated to senior staff, government officials, Ministers, special advisors or any other relevant parties.

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<sup>1</sup> [UK health minister used private emails for government business, No 10 admits | Conservatives | The Guardian](#)

<sup>2</sup> [No 10 admits Matt Hancock did use private email for official work and refuses to say if rules were broken | The Independent](#)

<sup>3</sup> [Health minister Helen Whately used private email for government work | Health policy | The Guardian](#)

- v. Please confirm when the above policies, procedures and expectations were last communicated to senior staff, government officials, Ministers, special advisors and any other relevant parties, providing the Commissioner with the relevant supporting documentation.

**DHSC Conduct over the relevant period (01 March 2020 – 05 July 2021)**

- vi. Please confirm whether the DHSC is aware of the use of any non-departmental personal email accounts (or other private channels of communication such as WhatsApp) for the exchange of information relating to the government business, including but not limited to:
  - a) Departmental or government contracting, procurement or tenders;
  - b) The proposal, discussion, or approval of decisions that require input from senior staff, government officials, Ministers, special advisors or any other relevant parties;
  - c) The arranging of meetings;
  - d) The recording or exchange of minutes of meetings or calls;
  - e) Any other official business conducted by the Department.

In the event of such use, please provide copies of these emails.

- vii. Please provide confirmation of any private email addresses (or other private channels of communication such as WhatsApp) used to contact senior staff, government officials, Ministers, special advisors and any other relevant internal or external parties. Where these relate to the conduct of government business, please provide copies of these emails.
- viii. Please provide a list of relevant individuals and their roles in relation to any such accounts.
- ix. Please provide copies of any documents including, but not limited to, decision-making or briefing documents regarding the use of private email addresses or other private channels of communication for senior staff, government officials, Ministers, special advisors and any other relevant parties.

- x. Please provide copies of any emails sent to and from private email addresses and departmental or external email accounts regarding government business for the last 16 months (i.e. 01 March 2020 and 05 July 2021). Please provide any summaries made by private office staff or other officials to reflect exchanges (internal notes in relation to emails sent to private accounts) they have had with senior staff, government officials, Ministers, special advisors or any other relevant parties.

### **Handling FoIA requests**

- xi. Please provide any examples of recorded contact with Ministers to confirm checks of private email account held official information to inform responses to FOIA.
- xii. Please provide a list of all FOI requests, and the dates received, over the last two years and exchanges about locating information in ministerial accounts related to these.

### **Failure to comply**

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- 7. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of appeal

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

9. 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

  
**Stephen Eckersley**  
**Director of Investigations**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**