

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 21 June 2022

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

### **Decision (including any steps ordered)**

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1. The complainant requested information about the Department of Health and Social Care's involvement in the development or implementation of the NICE guidelines concerning Myalgic Encephalomyelitis or Chronic Fatigue Syndrome. By the date of this notice, the Department of Health and Social Care ("DHSC") had not issued a substantive response to this request.
2. The Commissioner's decision is that DHSC has breached section 10(1) of FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires DHSC to take the following step to ensure compliance with the legislation.
  - The DHSC must provide a substantive response to the request in accordance with its obligations under FOIA.
4. DHSC 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

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5. On 8 December 2021, the complainant wrote to DHSC and requested information in the following terms:

"Hello,

This email constitutes a request to the Department for Health and Social Care made pursuant to the provisions of the Freedom of Information Act.

Please provide all documents, records and communications pertaining to DHSC's involvement with the NICE ME/CFS (myalgic encephalomyelitis / chronic fatigue syndrome) guideline or its implementation, and with ME/CFS in general, in the period from August 1 2021 to the present day.

This includes materials relevant to the questions asked of Lord Kamall in the House of Lords on 12 October 2021, the roundtable held by NICE on 18 October 2021 and the meeting involving the Secretary of State for Health and Social Care on 19 November 2021.

For the purposes of this request, I define "communications" to include not only all messages sent via written or electronic means but also any notes on, or minutes of, telephone conversations regarding the above-stated matters. Please note that the NICE confidentiality/embargo period pertaining to this guideline expired on 29 October 2021 with its publication.

If any aspect of the above request is unclear, please do not hesitate to contact me. I confirm that I am happy to receive the response in electronic format.

Thank you for your assistance with this matter."

6. On 6 January 2022 the complainant revised the scope of their request as follows:

"Thank you for your email of 6 January. I would therefore like to revise this request by reducing the time period specified to "from August 1 2021 to October 29 2021" (replacing "from August 1 2021 to the present day"). October 29 2021 is the publication date of the NICE guideline in question."

7. To date, a substantive response has not been issued.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 10 May 2022 to complain about DHSC's failure to respond to their request.
9. The Commissioner has considered whether DHSC has complied with its obligations in relation to the time for compliance at section 10(1) of FOIA.

## **Reasons for decision**

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10. 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."
11. 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".
12. On 24 May 2022 the Commissioner wrote to DHSC, reminding it of its responsibilities and asking it to provide a substantive response to the complainant's request within 10 working days.
13. Despite this intervention DHSC has failed to respond to the complainant.
14. From the evidence provided to the Commissioner in this case, it is clear that DHSC did not deal with the request for information in accordance with FOIA. The Commissioner finds that DHSC has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with FOIA.

## Right of appeal

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15. 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](mailto:grc@justice.gov.uk)

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

16. 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.
17. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**