

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 June 2022

Public Authority: Department of Health (Northern Ireland)

Address: Castle Buildings
Stormont
Belfast
BT4 3SQ

Decision (including any steps ordered)

1. The complainant requested from the Department of Health Northern Ireland ("DoH") information relating to the Covid-19 vaccine and medical consent law.
2. The Commissioner's decision is that the DoH does not hold any recorded information falling within the scope of the request. However, in failing to respond to the request within the statutory timescale, the Commissioner has determined that the DoH breached section 10(1) of FOIA.
3. The Commissioner does not require the DoH to take any further steps.

Request and response

4. On 3 August 2021, the complainant made the following request for information under FOIA:

"can the Department provide evidence of considerations given to medical consent law in Northern Ireland and detail at what point, does the Department believe its "encouragement" of Covid vaccination, becomes a violation of medical consent law in Northern Ireland, in particular relating to the below statement from 'Good practice in consent 12 key points' document - <https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/good-practice-consent-12-key-points.pdf> :

Is the patient's consent voluntary?

Consent must be given voluntarily: not under any form of duress or undue influence from health professionals, family or friends.

I feel under duress to take vaccination that may exacerbate a medical condition from the Departments efforts across all mediums - (not limited to) - Dawn McKee, High Street voucher scheme discrimination "encouragement" by Robin Swann. Please show evidence that this is not in violation of the above."

5. On 28 September, the DoH responded stating that the answer to the request was that all vaccinations in Northern Ireland are voluntary.
6. The complainant requested an internal review on 1 October 2021, stating that the DoH had not considered the medical consent part of their request.
7. Following intervention by the Commissioner, the DoH provided its internal review response on 13 December 2021 and stated that no information was held.

Scope of the case

8. The complainant contacted the Commissioner on 28 November 2021 to complain about the way their request for information had been handled.
9. The scope of this case is to consider whether, on the balance of probabilities, the DoH holds any information within the scope of the complainant's request.

Reasons for decision

Section 1 (Held/Not Held)

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. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.

12. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held, and any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.

13. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

The Complainant's position

14. In correspondence to the Commissioner the complainant stated dissatisfaction with the DoH's internal review response and stated:

"The Department did not answer the request at all and even more worryingly, the Department initiated a vaccination campaign - medical procedure - and states "it was not required" to consider medical consent law? This, cannot be true, it cannot!"

DoH's position

15. In its internal review, the DoH stated that it considered the first part of the complainant's request regarding medical consent to be a valid request but that the remainder of the request was outside the scope of the legislation for "it sought to engage in a discussion."
16. The DoH maintain that the initial response given was correct in that all vaccinations are voluntary and therefore no information was held on the consideration of medical consent law.
17. The DoH does admit that it could have been clearer in its response stating that "no information was held".

The Commissioner's view

18. The Commissioner's view is that the DoH does not hold the requested information. The Commissioner agrees with the DoH that the second part of the complainant's request would be classed as an opinion rather than a request for recorded information.
19. On the balance of probabilities, the Commissioner is satisfied that DoH does not hold any information falling within scope of the complainant's request.

Section 10 – time for compliance with request

20. 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."

21. Section 10 of FOIA states that:

"...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

22. The complainant submitted their request for information, to the DoH, on 3 August 2021.
23. The DoH issued its response to the complainant on 28 September 2021.

24. Therefore, the DoH failed to meet the 20 working day deadline and breached section 10(1) of FOIA.

Other matters

Section 45 – Internal review

25. There is no obligation under FOIA for a public authority to provide an internal review process. However, it is good practice to do so and, where an authority chooses to offer one, the section 45 code of practice sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
26. In this case the complainant requested an internal review on 1 October 2021 and the DoH provided the outcome of its review on 13 December 2021, 50 working days later.
27. While it would have been desirable for the DoH to have responded within 20 working days, the Commissioner notes the DoH's explanation for the delay in actioning the internal review which was due to the redeployment of staff during the Covid-19 pandemic. The Commissioner understands the immense pressures that were placed on public authorities during the pandemic and is sympathetic to the difficult decisions authorities had to make between prioritising front-line services and continuing to meet their obligations under FOIA.

Right of appeal

28. 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

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

29. 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.
30. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF