

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 March 2025

Public Authority: Department of Health Northern Ireland
Address: Castle Buildings
Stormont
Belfast
BT4 3SQ

Decision (including any steps ordered)

1. The complainant requested from Department of Health Northern Ireland (DoH) information regarding DoH's involvement in the Northern Ireland Electronic Care Record (NIECR). DoH provided information to some of the questions within the request, but considered the remaining questions not a valid request under section 8(1)(c) (request for information) of FOIA.
2. The Commissioner's decision is that questions 1, 3, 4 and 6 are valid requests under section 8(1)(c) of FOIA. DoH incorrectly determined the questions are not valid and therefore, it was not entitled to apply the exemption.
3. The Commissioner requires DoH to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with a fresh response which states whether or not it holds the information to the unanswered parts of the request relating to questions 1, 3, 4 and 6. If the requested information is held, DoH should disclose it to the complainant or issue a valid refusal notice.
4. DoH must take these steps within 30 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 13 May 2024, the complainant wrote to DoH and requested information in the following terms:

"This is a Freedom of Information Request regarding the DoH's involvement in the Northern Ireland Electronic Care Record (NIECR).

Question 1: when did DoH first become involved in NIECR and what has been the nature of DoH's involvement in NIECR?

Question 2: what has been, and also currently is, DoH's data protection-related role in NIECR? Has DoH acted as a Joint Data Controller? As an Independent Data Controller? As a Data Processor? As a Sub Data Processor? Or has DoH no data protection-related role at all with regard to the NIECR?

Please state each distinct data protection-related role that DoH has held with regard to NIECR and the date ranges for each such role.

Question 3: what is DoH's involvement/role in the NIECR Steering Group and when did DoH's involvement/membership in this group begin? How precisely did DoH come to be involved in/to become a member of the NIECR Steering Group?

Question 4: was DoH ever been involved in/a member of the ECS Oversight Group, the NIECR Project Board, the NIECR Editorial Board, or the NIECR Information Governance Workstream/Group or any other similar organisation?

If so, please provide details of DoH role(s) in each of these organisations, the date ranges for DoH involvement in each of them, and how DoH came to be involved in each of them.

Question 5: regarding the letter dated 27th October 2023 (a highlighted copy is attached to this FOI Request) that DoH sent to Community Optometry Practices regarding a NIECR Data Processing Agreement, what precisely did DoH mean in this letter when it referred to the DPA (sent by DoH together with this letter) as "the revised Data Processing Agreement"? Did this mean that:

(a) the DPA attached to this letter was a revised version of a NIECR DPA where at least one previous version of this DPA had been previously signed by Optometry Contractor Practices?
or:

(b) the DPA attached to this letter was a revised version of a NIECR DPA where no previous version of this DPA had been previously signed by Optometry Contractor Practices but where at least one version of a different NIECR DPA document had been previously signed by Optometry Contractor Practices?

or:

(c) the DPA attached to this letter was a revised version of a NIECR DPA but that no previous version(s) of any NIECR DPA document had been previously signed by Optometry Contractor Practices?

If DoH's answer to this question is either "(a)" or "(b)" then please provide copies of all such previously signed NIECR DPA documents.

Question 6: was DoH involved in the reviews of each of the NIECR DSA, DPA, Privacy Notice and DPIA(s) that this letter referred to?

Please indicate which of these documents (and versions of those documents) that DoH was involved in reviewing and which of these documents (and versions of those documents) that DoH was involved in approving.

Question 7: regarding the letter dated 27th October 2023 that DoH sent to Community Optometry Practices, when DoH stated "Each Community Optometry Contractor has always been recognised as a stand-alone Data Processor within the definitions of the Data Protection Act" how precisely did DoH come to this conclusion?

Please provide all documents and/or emails, both internal and external, that DoH relied upon to come to this conclusion.

Question 8: regarding the letter dated 27th October 2023 that DoH sent to Community Optometry Practices, when DoH stated "each Practice is required to sign the revised Data Processing Agreement" was DoH requiring Optometry Practices to sign the DPA?

If so, under what authority did DoH make this requirement?

If not, then precisely which organisation(s) was DoH indirectly referring to that were requiring Optometry Practices to sign this DPA?

Question 9: regarding the letter dated 27th October 2023 that DoH sent to Community Optometry Practices, DoH stated "Please note that failure to agree acceptance to the DPA and return of same may call into question the legal basis for the Practice to continue to access NIECR".

Please provide all documents and/or emails, both internal and external, that DoH relied upon to come to this conclusion."

6. On 25 June 2024 DoH informed the complainant that his request "is in the main outside of the FOI legislation as you haven't asked for recorded information." However, DoH said it would be answering the questions within his request under normal business.
7. On 2 July 2024 the complainant questioned DoH as to how his original request was outside of FOIA. He said his questions did constitute a request for information and that his request was a valid FOI request.
8. On 11 July 2024 DoH provided its response to the complainant and answered all his questions within the request. It reiterated its decision not to answer the questions under FOI legislation.
9. On 19 July 2024 the complainant replied to DoH and argued its view that his request is not a valid FOI request. He also referred to its answers to questions 3 and 6 of his request, he said its answer to question 3 conflicted with other information he possessed, and its answer to question 6 he considered DoH had not fully provided the information requested.
10. On 24 July 2024 DoH provided the complainant with some documents to support its response to several questions, but not relating to the information requested.
11. On the same day, the complainant stated to DoH that it had not made any comments regarding issues which he highlighted in his previous correspondence.
12. On 25 July 2024 DoH changed its answer to question 3 of the request.
13. On 7 August 2024 the complainant highlighted to DoH that its revised/corrected answer to question 3 had not fully provided the requested information. He also said DoH had still not fully provided information to question 6 of the request.
14. On 3 September 2024 the complainant asked for an internal review.
15. On 10 September 2024 DoH emphasised that the request was not deemed a request under FOIA "due to the series of conversational questions posed, and a response explaining this along with responses to the questions posed, was issued on 12 July 2024." DoH stated there is no process for an internal review in this instance.

Reasons for decision

Section 8 – request for information

16. Section 8(1) defines a valid request for information under FOIA as a request which:
 - (a) is in writing
 - (b) states the name of the applicant and an address for correspondence, and
 - (c) describes the information requested.
17. In this case, the complainant's request was in writing, and they provided an address for correspondence. Therefore, the Commissioner will only consider whether it describes the information requested.
18. The Commissioner considers that a request will meet the requirements of section 8(1)(c) if it contains a sufficient description of the recorded information that the requester is seeking. This description should allow the public authority to distinguish between the information being requested and any other recorded information it may hold.
19. The public authority must also be able to make an objective assessment of what information does and does not fall within scope.
20. The Commissioner accepts that a request in the form of a question can be valid under section 8(1)(c), provided it still describes distinguishing characteristics of the information.¹
21. The DoH recognised that some of the questions asked by the complainant within his request were outside of FOIA. The complainant was not asking for copies of documents, but asking a series of questions in relation to the DoH's involvement with the NIECR. The DoH said that in order to provide the background which the complainant was seeking, it handled his queries through other channels.

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/recognising-a-request-made-under-the-freedom-of-information-act-section-8/#arerequestsframed2>

22. The DoH explained to the complainant that it had not answered some parts of his request under FOIA, because of the nature of the conversational questions posed. The DoH believes it attempted to answer each of his questions accordingly.
23. The complainant was asked by the Commissioner to state the questions which he considered had been completely answered by the DoH, these were: questions 2, 5, 7 to 9. With regard to the remaining questions of his request (1, 3, 4 and 6) the complainant argued that these had not been answered and detailed the response he required to each question.
24. The complainant said DoH "wilfully attempted to avoid their FOIA responsibilities in their handling of my FOI request through declaring my FOI request was not a FOI request...". He expressed his dissatisfaction with DoH's handling of it, and referred to what he considered to be misinterpretation of his request. The complainant is of the view that partial responses to the information had been provided, and that there were no responses to some of the information requested. He also argued that DoH, in order to avoid its obligations under FOIA, converted FOI requests where possible into "correspondence".
25. Having considered the wording of questions 1, 3, 4 and 6 of the request and DoH's responses, the Commissioner notes that DoH had not completely answered these questions. There is specific reference to recorded information within some of the questions and which DoH had not addressed. With regard to question 1, DoH answered part of the question by stating when it first became involved in NIECR but it did not provide a response to the remaining part of the request concerning the nature of DoH's involvement. Question 3, DoH did not provide any information, question 4, DoH provided only partial information, it did not provide details concerning other similar groups/organisations it was involved in. Regarding question 6, DoH did not provide all the information requested, it only disclosed certain details.
26. The Commissioner notes DoH had not indicated if any searches had been conducted to ascertain whether or not it holds information within scope of the questions. DoH stated to the Commissioner that the complainant was made aware it would not be considering his request under FOIA. It did not deem it a request for "recorded information" and it would answer under normal business².

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#recognising>

27. It could be the case that there is no additional information held with regard to DoH and its involvement in NIECR. However, DoH would be required to provide its arguments, having conducted adequate searches, that information within scope of the questions (1, 3, 4 and 6) is not held.
28. The Commissioner's view is that by dealing with the questions under normal course of business, the requests have not been subject to the same rigour as an FOI request.
29. The Commissioner is satisfied the complainant described the information which he is seeking, and he deems the test at section 8(1)(c) of FOIA is met.

Conclusion

30. The Commissioner's decision is that the request for information is valid under section 8 of FOIA, and DoH was incorrect to state that it wasn't.

Right of appeal

31. 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

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Joanna Marshall
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