

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 January 2018

Public Authority: Department of Health and Social Care
Address: Richmond House
79 Whitehall
London
SW1A 2NS

Decision (including any steps ordered)

1. The complainant has requested information on the guidance provided to doctors in respect of treating patients who may have suffered sexual abuse. The Department of Health and Social Care (DHSC) originally denied holding the information. At the internal review stage the DHSC confirmed the information was held but refused the request under section 21 – information reasonably accessible to the applicant, and provided the complainant with links to where the information could be accessed on the internet. Unfortunately the links did not work and ultimately the DHSC provided the complainant with electronic copies of the documents it held. Inevitably this was outside the 20 working days for responding to requests.
2. The Commissioner's decision is that DHSC breached section 10 by failing to provide the requested information within 20 working days. By failing to issue a refusal notice in respect of the exemption it was relying on at the time of the internal review within 20 working days of receipt of the request the DHSC also breached section 17(1). However the Commissioner finds that the DHSC did not breach its obligations to provide advice and assistance under section 16 as alleged by the complainant.
3. As the DHSC has now provided the complainant with the requested information the Commissioner does not require the public authority to take any further action in this matter.

Request and response

4. The request was originally made to the Department of Health. In the period between the request being made and the conclusion of the Commissioner's investigation the department has taken on new responsibilities and is now known as the Department of Health and Social Care.

5. On 28 December 2016 the complainant requested information of the following description:

"I wish to receive a copy of publications you hold regarding Sexual Abuse in which the target audience was GP's and also that the publications were available for GP's to use from 2009. Amongst the publications you provide it would be helpful to receive Best Practice Guidance publications.

Also information which covers the following:-

a. What are the ways a GP should respond when their patient informs them that they have been harmed as a result of being sexually abused.

b. What are the signs and symptoms that mean the patient might be likely to have been harmed as a result of being sexually abused.

c. What environment is best suited for a patient to be asked relevant questions to help them disclose their past or current experiences of sexual abuse to their GP.

d. What steps can the whole GP practice team (clinical and non-clinical) take to make it easier for patients to disclose that they have been a victim of sexual abuse.

When I say Sexual abuse I am also including Sexual violence and assault."

6. On 23 January 2017 the DHSC responded. It denied holding any information falling within the scope of the request. The DHSC advised the complainant to contact NHS England which it believed may hold the information and provided the complainant with the relevant contact details.

7. The complainant requested an internal review on 22 March 2016. The DHSC sent him the outcome of its internal review on 24 April 2017. The department revised its position. The DHSC informed the complainant that his request had initially been treated as 'regular correspondence'. The DHSC then confirmed that it did hold information described by the request, however it went on to refuse the request under section 21 –

information reasonably accessible to the applicant, and provided the complainant with links to where it believed the information was published on the internet.

8. Unfortunately the links provided did not work and this resulted in the complaint to the Commissioner. Following the Commissioner's intervention the DHSC proposed to send the complainant a fresh response containing the correct links. When these were checked and again found to be broken, the DHSC provided the complainant with electronic copies of the requested information.

Scope of the case

9. The complainant contacted the Commissioner 9 July 2017 to complain about the way his request for information had been handled. In particular he complained that the DHSC failed to provide him with the information he requested within 20 working days, that it had failed to provide a valid refusal notice within the 20 working days, that the DHSC had not originally treated his request as a valid request made under the FOIA and the DHSC had failed to provide appropriate advice and assistance.
10. The Commissioner considers that the matters to be decided are whether the DHSC provided the requested information within 20 working days in accordance with section 10 of the FOIA, whether it satisfied any obligation it had under section 17 to issue a refusal notice and whether it satisfied any obligation it had under section 16 to provide appropriate advice and assistance.
11. The Commissioner notes that the complainant has also raised concerns that initially the DHSC may not have treated his request as one made under the FOIA. However any breaches arising from such an approach are reflected in her consideration of the DHSC's compliance with sections 10 and 17.

Reasons for decision

Section 10 – time for compliance

12. Section 10 provides that where a public authority holds the requested information it is obliged to communicate that information to the applicant no later than the twentieth working day following the date the request was received. This is of course subject to the application of any exemptions.

13. By the conclusion of its internal review the DHSC had refused the request under section 21 which provides that information is exempt if it is reasonably accessible to the applicant. If the DHSC had been entitled to rely on this exemption the obligation to provide the information within 20 working days would not arise. However as the links provided by the DHSC did not work the Commissioner is not satisfied that the DHSC would be entitled to rely on section 21. In any event, during the Commissioner's investigation the DHSC decided the most pragmatic approach to resolving the complaint would be to send the information it held directly to the complainant. The Commissioner understands that in effect the department withdrew its reliance on section 21. In light of this the Commissioner considers the DHSC was under an obligation to communicate the requested information.
14. The request was received on 28 December 2016. Allowing for bank holidays, including those in Scotland, the twentieth working day following its receipt would be 27 January 2017. The DHSC did not provide the information until 9 October 2017. This is a breach of section 10.

Section 17 – refusal notice

15. Section 17(1) states that where a public authority is relying on an exemption it is required to issue the applicant with a notice stating the fact that the request is being refused, specify the exemption in question and explain why the exemption applies. Such a notice must be served within 20 working days of receipt of the request.
16. The Commissioner's approach when determining whether a public authority should have issued a refusal notice is to consider what the public authority should have done based on its position at the end of the internal review. In this case the internal review was completed on 24 April 2017 and at that stage the DHSC was relying on section 21 of the Act to refuse the request. In its letter setting out the conclusions of the review the DHSC explained that the information was being withheld under section 21, referred to this exemption as applying where the requested information was accessible to the applicant and explained that it was applying the exemption because the information was already in the public domain. It went onto provide what it believed to be working links to where the information was published on the internet. The Commissioner is satisfied that this letter complies with the requirements of section 17(1) in that it states an exemption is being relied on, specifies the exemption in question and explains, as far as is necessary, the department's grounds for applying that exemption.
17. However under section 17(1) such a notice must also be issued within 20 working days of the request being received. Clearly the notice was issued outside that time limit. Therefore, despite the fact that the DHSC

later withdrew its reliance on section 21, the department did breach section 17(1).

Section 16 advice and assistance

18. Section 16(1) places a duty on public authorities to provide advice and assistance so far as it would be reasonable to expect a public authority to do so. Under section 16(2) a public authority will have met its obligations under section 16(1) if the advice and assistance it provides conforms to that set out in the code of practice published under section 45 of the Act.
19. The code of practice identifies particular situations where the duty to provide advice and assistance will arise. These are limited to where a potential applicant needs assistance in making a request, where a public authority needs additional information from an applicant in order to clarify what information is being requested and, finally, where complying with a request would exceed the cost threshold established under section 12 of the Act, a public authority is required to assist the applicant in refining their request so that it can be dealt with within that cost limit.
20. Looking at these three situations which trigger a duty to provide advice and assistance the Commissioner is satisfied that the complainant was well capable of making a request. Nor has there been any question that the cost of dealing with the request would exceed the cost limit. Therefore the only potential duty to provide advice and assistance would arise from the need to clarify the information being sought.
21. The request appears to be clear in specifying the type of information being sought. Although the DHSC initially stated that it did not hold the requested information, this does not necessarily indicate any problem in understanding the scope of the request. Rather it appears to be an error in determining what information, matching that described by the request, it did hold. Certainly by the conclusion of the internal review, which provides a public authority with the opportunity to rectify any mistakes it may have made in its initial handling of a request, the DHSC had no problem in identifying three documents captured by the request. In light of this the Commissioner is satisfied that the duty to assist the complainant in clarifying his request did not arise.
22. In addition the Commissioner notes that when initially responding to the request, at which stage it believed it did not hold any information, the DHSC did suggest where he may be able to obtain the information he wanted and provided him with the appropriate contact details.
23. In light of the above the Commissioner finds that the DHSC did not breach its obligation under section 16 to provide advice and assistance.

Right of appeal

24. 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: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. 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.
26. 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

Rob Mehan
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF