

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 February 2022

Public Authority: Department of Health and Social Care

Address: 39 Victoria Street

London

SW1H 0EU

Decision (including any steps ordered)

1. The complainant requested information from the Department of Health and Social Care (DHSC) about correspondence between ministers of the department and Steve Brine MP relating to "Remedium Partners, Microlink PC and Sigma Pharmaceuticals". By the date of this notice DHSC had failed to provide a substantive response to this request.
2. The Commissioner's decision is that DHSC has breached section 10(1) of the 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 steps to ensure compliance with the legislation.
 - Respond to the complainant's request in accordance with the FOIA.
4. DHSC must take these steps 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 the Act and may be dealt with as a contempt of court.

Request and response

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

"1) Please provide a copy of all correspondence (sent and received) between ministers of your department and Steve Brine MP concerning

- Remedium Partners
- Microlink PC
- Sigma Pharmaceuticals

Please include emails, texts, WhatsApp messages or messages on equivalent platforms such as Signal, internal work instant messages such as on Slack, Teams or Gchat, and a list of and minutes of any calls.

Please also list the titles of attachments to emails or messages within the scope of this request.

2) Please provide a record of all meetings between ministers of your department and Steve Brine MP relating to the above companies, including that held on 10th February.

Please provide

- A list of these meetings, including topics.
- A copy of the minutes recorded of these meetings
- A copy of civil service briefings prepared ahead of these meetings for the minister concerned.
- A list of the titles of any documents considered at these meetings.

Please provide information held from 25 March 2019 to date."

6. On 9 November 2021, DHSC refused the request under section 12 of FOIA.
7. On 9 November 2021, the complainant wrote to DHSC and made a new amended request in the following terms:

"Thanks for your response. I note you state in your response that:

'In this instance to determine if all the information requested is held we would be required to searched manual/electronic systems, interrogate relevant database/statistics and speak to the relevant policy officials.'

I am happy for this request to be limited to electronically held records only.

It seems highly unlikely that this request would now fall outside the cost limit, given it would effectively be a search of a limited number of electronic ministerial and private office staff inboxes for emails, and then a search of ministerial diaries for any relevant meetings, from which responsive records relating to the meetings could be located in the appropriate electronic departmental folder.

In any case, under your duty to provide advice and assistance under the act, please also provide a copy of the detailed cost calculation workings (i.e. how many emails responsive to this request have been located) that were conducted by FOI officers in estimating the cost of compliance for this request, to allow you to estimate that it would cost more than the FOIA limit to provide a response.

Given the very clear public interest in full disclosure of this information, I look forward to a substantive response without unreasonable delay.”

8. To date, a substantive response to the narrowed request for information has not been issued.

Scope of the case

9. The complainant contacted the Commissioner on 17 January 2022 to complain about the failure by DHSC to respond to his request.
10. The Commissioner has considered whether DHSC complied with its obligations in relation to the time for compliance at section 10 (1) of the FOIA.

Reasons for decision

11. Section 1(1) of the 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.”

12. Section 10(1) of the 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.”

13. On 2 February 2022, the Commissioner wrote to DHSC, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
14. Despite this intervention DHSC has failed to respond to the complainant.
15. 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 the FOIA. The Commissioner finds 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 the FOIA.

Right of appeal

16. 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

17. 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.
18. 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
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