

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

### **Decision notice**

**Date:** 2 March 2023

**Public Authority:** Department of Health and Social Care  
**Address:** 1<sup>st</sup> Floor North  
39 Victoria Street  
London  
SW1H 0EU

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

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1. The complainant, who is sight impaired, attempted to request information from the Department of Health and Social Care ("DHSC").
2. The Commissioner's decision is that DHSC failed to provide adequate advice and assistance to the complainant and therefore breached its duty under section 16 of FOIA.
3. The Commissioner requires DHSC to take the following step to ensure compliance with the legislation.
  - Provide the complainant with a telephone number that they can use to submit verbal requests for information in the future.
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. The complainant contacted DHSC on numerous occasions, attempting to submit a request for information. The complainant has explained that they are sight impaired and have no access to the internet. Therefore their only option is to submit requests for information verbally. The

complainant explained that previously the DHSC had a public enquiry helpline which they could contact to submit a verbal request. Whilst there is still an option on the automated helpline for Health and Social Care enquiries, this directs callers to visit the website and there is not an option to speak to a member of staff.

6. When the complainant has been able to reach a member of staff, no assistance has been provided and therefore no request could be made.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 20 January 2022 to complain about DHSC's failure to deal with their verbal request.
8. The Commissioner has considered whether DHSC has complied with its obligations in relation to compliance at section 16 of FOIA.
9. The Commissioner has no remit to consider whether DHSC has complied with any other legislation regarding an organisation's obligations towards individuals who have a disability or disabilities. He therefore has not considered DHSC's compliance with other legislation in this case.

### **Reasons for decision**

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10. Section 8 of FOIA requires that a request must be made in writing in order to be valid. However, the Commissioner recognises that, for a small number of people, submitting a request in writing is either impractical or impossible.
11. Public authorities must also consider their responsibilities under section 16 of FOIA when dealing with a person who wishes to exercise their rights under FOIA, but would have difficulty in submitting a written request. The Commissioner also notes that public authorities should already have procedures in place to deal with verbal requests made under either data protection legislation or the Environmental Information Regulations – neither of which require requests to be made in writing.
12. DHSC confirmed that its position was that, in instances where it is contacted by an individual who wishes to submit a verbal request, they require a reasonable adjustment in writing and then it is able to take a request over the telephone. However, DHSC no longer has a public enquiry helpline and there is no specific telephone number for the department that would deal with requests for information.
13. Section 16 of FOIA states that:

(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

14. The section 45 Code of Practice says the following about the advice and assistance expected for those making requests:

"Advice and assistance to those proposing to make requests:

4. Public authorities should publish their procedures for dealing with requests for information...
5. The procedures should include an address or addresses (including an e-mail address where possible) to which applicants may direct requests for information or for assistance. A telephone number should also be provided, where possible that of a named individual who can provide assistance. These procedures should be referred to in the authority's publication scheme.
6. Staff working in public authorities in contact with the public should bear in mind that not everyone will be aware of the Act, or Regulations made under it, and they will need where appropriate to draw these to the attention of potential applicants who appear unaware of them.
7. Where a person is unable to frame his or her request in writing, the public authority should ensure that appropriate assistance is given to enable that person to make a request for information. Depending on the circumstances, consideration should be given to: - advising the person that another person or agency (such as a Citizens Advice Bureau) may be able to assist them with the application, or make the application on their behalf; - in exceptional circumstances, offering to take a note of the application over the telephone and then send the note to the applicant for confirmation (in which case the written note of the telephone request, once verified by the applicant and returned, would constitute a written request for information and the statutory time limit for reply would begin when the written confirmation was received). This list is not exhaustive, and public authorities should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant."

15. The Commissioner encourages public authorities to be flexible and pragmatic when dealing with would-be requesters who would struggle to make a request in writing. However, in order to meet the section 8 requirements of FOIA it is important that a written version of the request is created and agreed by both parties.
16. In this case, it has not been possible for a mutually agreed record to be created. This is because the complainant has not been able to contact an individual at DHSC who has been willing to assist them to make a request for information. The available phone line does not assist the complainant in making a request.
17. Section 16 is a broad obligation. When considering whether a public authority has complied with its section 16 obligation, the Commissioner will consider two main factors: firstly, that appropriate amount of advice and assistance can vary considerably depending on the circumstances – with some requesters requiring more advice or assistance than others. Secondly, public authorities that do not follow the section 45 Code of Practice are less likely to have discharged their section 16 obligations.
18. As the Code of Practice sets out, there are a number of options that public authorities can take when presented with a person unable to make a request in writing. On the available evidence, the DHSC did not make any of these options available to the complainant in this case.
19. The Commissioner has concluded that the DHSC failed to follow the requirements of the Code of Practice and failed to provide adequate advice and assistance to the complainant in this case. The DHSC thus failed to comply with section 16 of FOIA.

## **Other matters**

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18. Public authorities are not required to have a specific phonenumber dedicated to Freedom of Information requests and instead it is up to them to decide how to receive such enquiries.
19. However, the Commissioner would expect that every public authority has procedures in place to ensure that as many people as possible are able to exercise their rights under FOIA. It cannot be assumed that every requester has access to the internet to make requests online, therefore this is not an adequate alternative.
20. If an individual is unable to submit a request by the means of the internet, public authorities should not require them to overcome significant procedural hurdles before being able to submit a request.

21. It should also not be the case that the Commissioner has to contact a public authority, to provide it with the contact details of a complainant, in order for an individual to submit a request. Requesters should not have to resort to complaining to the Commissioner in order to exercise their right to make requests.
22. In recent correspondence with the Commissioner the Cabinet Office has indicated that it will be reminding all government departments of their responsibilities, both under FOIA and equalities legislation, to ensure that rights of access can be used as widely as possible.

## Right of appeal

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23. 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)

24. 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.
25. 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** .....

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