

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 December 2020

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

Decision (including any steps ordered)

1. The complainant requested any evidence or data held by the Department of Health (DoH) to support public statements made by the Minister of Health in relation to potential mortality rates and the Covid19 pandemic.
2. The Commissioner's decision is that the DoH failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner requires the DoH to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the FOIA, to the request.
4. The DoH 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 23 September 2020, the complainant wrote to the DoH and requested information in the following terms:

"Please will you provide the following information?"

- 1. On 19th March Robin Swann advised 'around 15,200 would die as a reasonable worst case scenario'. Please provide the data and all evidence to support this claim?*
- 2. On 20th March Robin Swann appeared on the Stephen Nolan show and advised '14,000 people could die'. Please provide the data and all evidence to support this claim?*
- 3. Please provide a specific reference and point to the data highlighting why there was a reduction of 1200 in 24 hours?*
- 4. On 1st April Robin Swann claimed in an interview to the Irish News newspaper '3,000 deaths is a reasonable worst case scenario.' Please provide the data and all evidence to support this claim?*
- 5. Please provide a specific reference and point to the data highlighting why there was a reduction of 13,200 in 12 days?*
- 6. On 20th April Robin Swann claimed to the Newsletter 'there would be 1,500 deaths "in the first wave"'. Please provide the data and all evidence to support this claim?"*

6. The DoH acknowledged the request on 28 September 2020 but had failed to provide a substantive response by the date of this notice.

Scope of the case

7. The complainant contacted the Commissioner on 22 October 2020 to complain about the failure, by the DoH, to respond to the request.
8. In line with her usual practice, the Commissioner contacted the DoH on 17 November 2020 to highlight the outstanding response. She requested that the DoH respond to the request within 10 working days.
9. On 17 November 2020, the DoH responded to the Commissioner's letter to explain that it had experienced increased pressure on its resources over recent months due to the Covid19 pandemic.
10. On 1 December 2020 the DoH provided a further update to the complainant about the progress of his request but failed to provide a substantive response.
11. The scope of this notice and the following analysis is to consider whether DoH has complied with section 10 of the FOIA.

Reasons for decision

12. 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.*

13. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such 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.*

14. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.

15. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"

16. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the DoH has breached section 10 of the FOIA.

Right of appeal

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

18. 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.
19. 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

Ben Tomes
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Cheshire
SK9 5AF