

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 May 2023

Public Authority: Department of Health and Social Care
Address: 39 Victoria Street
London
SW1H 0EU

Decision (including any steps ordered)

1. The Commissioner's decision is that the Department of Health and Social Care (DHSC) is entitled to refuse the complainant's requests for information about the COVID Pass letters service under section 12(1) of FOIA. This is because the cost of complying with the requests would exceed the appropriate limit. Although the Commissioner has identified breaches of section 10, 16 and 17 in relation to the two refined requests that were made, he has decided that it is not necessary for DHSC to take any corrective steps.

Request and response

2. On 25 July 2022, the complainant wrote to DHSC and requested information in the following terms:

"Please provide me with copies of all information you hold pertaining to the management and analysis of data regarding the issuance of covid pass letters. This information is to include all email communications, minutes of any meetings held where the topic was discussed. Please provide copies of the work orders or all formal documents detailing the management of the issuance of covid pass letters. The response is to include all versions of any document."

3. The complainant chased a response on 18 August 2022 and also requested an internal review.
4. DHSC responded on 22 August 2022. It refused to comply with the request citing section 12 of FOIA.
5. The complainant requested an internal review on 22 August 2022. They also made a refined request for the following information:

“I would like you to provide copies of work orders / instructions official documents pertaining to the management and analysis of the issuance of covid pass letters.”
6. DHSC wrote to the complainant on 16 September 2022 and advised them that there would be a delay.
7. DHSC carried out an internal review on 12 October 2022 and notified the complainant of its findings. It upheld its application of section 12 of FOIA to the complainant’s initial request. It failed to respond to the complainant’s refined request.
8. The complainant contacted DHSC on 12 October 2022 and requested another internal review. They also made a further refined request for the following information:

“At a minimum I would expect you to supply copies of all formal documents pertaining to the issuance and management of data pertaining to covid pass letters.

Please provide the minutes of all meetings where the issuance of covid pass letters was discussed.”
9. DHSC responded on 14 October 2022. It refused to carry out a further review and advised the complainant to approach the Commissioner. DHSC again failed to respond to the complainant’s refined request.

Scope of the case

10. The complainant contacted the Commissioner on 18 October 2022 to complain about the way their requests for information had been handled. They are unhappy with DHSC’s application of section 12 of FOIA and that it has failed to provide the information falling within their refined requests.
11. The Commissioner considers the scope of his investigation to be to determine whether or not DHSC is entitled to rely on section 12 of FOIA.

12. During the Commissioner's investigation DHSC was asked to address the refined requests the complainant had made. DHSC provided submissions demonstrating in its opinion that section 12 of FOIA continued to apply.
13. This notice will address all three requests and DHSC's application of section 12 of FOIA. It will also consider any procedural breaches of FOIA.

Reasons for decision

14. This reasoning covers DHSC's application of section 12(1) of FOIA to the complainant's requests of 25 July, 22 August and 12 October 2022. It will also consider whether there was a breach of section 10(1), 16(1) and 17(1).
15. Under section 1(1) of FOIA a public authority must confirm whether or not it holds information an applicant has requested. If it is held and is not exempt information, the authority must communicate the information to the applicant.
16. However, under section 12(1) of FOIA a public authority that is a Government department, such as DHSC, can refuse to comply with section 1(1) if the cost of complying would exceed the appropriate limit of £600 (24 hours work at £25 per hour). Section 16(1) obliges a public authority relying on section 12 to offer an applicant advice and assistance to refine their request if it is possible to do so.
17. The complainant's initial request is identical to an information request the Commissioner has already considered under case reference IC-207246-T8H1. A decision notice was served on 18 April 2023, upholding the application of section 12 of FOIA. It can be accessed here:

[| Search | ICO](#)
18. The timings of the requests in this case and in IC-207246-T8H1 make no material difference to DHSC's application of section 12 of FOIA. The time it would take for DHSC to locate, retrieve and extract the requested information would be essentially the same.
19. The Commissioner will not repeat the analysis of section 12 outlined in his decision notice of 18 April 2023 again here. He is however satisfied that section 12 of FOIA applies for the same reasons as outlined in paragraphs 13 to 32 and 37 of this notice.

20. With regards to the refined requests the complainant has made, the first is again almost identical to the refined request the complainant made in IC-207246-T8H1 (see paragraph 5 of the decision notice dated 18 April 2023). The only difference is the use of the wording 'official' rather than 'formal' documents. The Commissioner considers official also means formal and vice versa, so the task of complying with this request will be the same as outlined in the decision notice of 18 April 2023. Please see paragraphs 33 to 37.
21. Similarly the second, refined request in this case (dated 12 October 2022) is almost identical to the refined request the complainant made in case reference IC-207246-T8H1. Formal documents would include any work orders held and this second, refined request also asked for all minutes of meetings held in which the issuance of covid pass letters was discussed, making the scale of this request (and therefore the task of compliance) much larger than the refined request considered in case reference IC-207246-T8H1.
22. Again, the Commissioner will not repeat the analysis of section 12 of FOIA here. He would refer the complainant to his decision notice of 18 April 2023 and namely paragraphs 33 to 37. He is however satisfied that section 12 of FOIA applies to the complainant's refined requests.

Procedural breaches

23. In terms of section 16 and the duty to provide advice and assistance, the Commissioner notes that DHSC suggested to the complainant, in its response of 22 August 2022, to consider setting a specific timeframe to enable it to potentially comply within the cost limit. In terms of the initial request, DHSC therefore met its obligations under section 16.
24. With regards to the refined requests, as DHSC did not respond to them at all, it did not consider again its obligations under section 16 at these points. That being said, the Commissioner understands that DHSC would have again suggested to the complainant that they consider specifying a timeframe. So, although he finds a breach of section 16 of FOIA in terms of the complainant's refined requests, he does not consider any further steps or actions are required in this case.
25. As DHSC failed to acknowledge and therefore respond to the complainant's refined requests of 22 August and 12 October 2022, the Commissioner has recorded a breach of section 10 and 17 of FOIA. Again, however, as the requests were addressed during the Commissioner's investigation and the Commissioner was able to make a decision on section 12 of FOIA from DHSC's submissions (and

upheld its application), the Commissioner does not require any further steps or actions to be taken in this case.

Right of appeal

26. 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

27. 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.
28. 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

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