

Freedom of Information Act 2000 (FOIA)

Decision notice

Date:

Public Authority: Department of Health Northern Ireland

**Address: Castle Buildings
Stormont
Belfast
BT4 3SQ**

Decision (including any steps ordered)

1. The complainant has requested information from the Department relating to the probability on a certain date of encountering an individual with Covid-19 in each of three Council areas in Northern Ireland.
2. The Commissioner's decision is that, on the balance of probabilities, the Department has complied with section 1 of the FOIA and does not hold the aforementioned minutes. Therefore the Commissioner requires no steps to be taken.

Request and response

3. On 23 July 2020, the complainant wrote to the Department and requested information in the following terms:

"I live in the North Down and Ards Council area and am a frequent visitor to both the Belfast and the Newry and Mourne LGDs. Under the Freedom of Information Act, can I ask - had I gone out yesterday (22/7/20), what would have been my chances of encountering someone with Covid 19 in each of these three Council areas?"

4. The Department responded on 24 July 2020. It stated that, under “normal business” the requested information would not be held by the Department. The complainant requested an internal review of the Department’s response on 4 August 2020, querying the Department’s use of the phrase “under normal business” and stating that she had originally requested the same information from NISRA (Northern Ireland Statistics and Research Agency) who had directed her to the statistics branch of the Department of Health.
5. Following an internal review the Department wrote to the complainant on 5 August 2020, stating that it did not hold the requested information, and directing her to the Covid-19 dashboard section of its website.

Scope of the case

6. The complainant contacted the Commissioner on 5 August 2020 to complain about the way her request for information had been handled.
7. The Commissioner has considered the Department’s handling of the complainant’s request.

Reasons for decision

Determining whether further information is held

8. Section 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.”
9. In this case, the complainant disputes the Department’s position that it does not hold the information sought in her information request of 23 July 2020.
10. In cases where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority held information relevant to the complainant’s request.

11. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the Department to check whether the information is held and any other reasons offered by the Department to explain why the information was not held. In addition, she will consider any reason why it is inherently likely or unlikely that the requested information is not held.
12. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.
13. As part of her investigation, the Commissioner wrote to the Department requesting its submissions in respect of a number of questions relating to the complainant's view that it should hold the requested minutes. The Commissioner's questions were focused on the Department's endeavours in searching for the requested information, and whether any information falling within the scope of the requests was deleted or destroyed. She also enquired as to whether the Department had given any thought to whether it held the 'building blocks' to enable it to put the requested information together.
14. The Department informed the Commissioner that it had never held any other recorded information within the scope of the complainant's request, nor had it concealed or attempted to conceal any such information. It stated that it had considered the available data on infection rates within Local Government District areas held by the Department and whether such data would enable it to answer the question submitted by the complainant. It concluded that it could not possibly make a reliable estimate as there were too many variables involved.
15. The Department further informed the Commissioner that there was no business purpose or statutory requirement for it to hold such information. If it were held, this would be in electronic format only. All data related to the COVID-19 pandemic is stored in folders on shared drives. All such folders were searched. As the particular question has not ever been addressed by the Department there would be no relevant information held on any individual files or folders.
16. In response to the Commissioner's enquiry as to whether it could hold the 'building blocks' necessary to compile the requested information, the Department stated that it holds (and publishes) data on the numbers of individuals testing positive for COVID-19 in Local Government Districts. However, it does not hold any information related to the chances of encountering someone with the virus and this could not be calculated from the information held, as there are too many variables, as previously stated, to make a reliable estimate. The Department

provided the complainant with a link to its Covid-19 dashboard, where the published data is available and is constantly updated.

17. As the complainant quoted the Deputy Chief Medical Officer for England apparently having provided similar information during a press briefing, the Commissioner enquired as to whether Northern Ireland's Chief Medical Officer, Dr Michael McBride, may hold such information. The Department stated that it had not been able to get specific answers from Dr McBride directly, due to his busy schedule throughout the current public health crisis, however the Department is confident that the only information held by it, including the Chief Medical Officer, is that contained in the Covid-19 dashboards. It reiterated that the question asked would have had to consider many more variables than what is routinely collected to arrive at anything close to a satisfactory answer.

The Commissioner's Conclusion

18. The Commissioner has examined the submissions of both parties. She has considered the searches performed by the Department and its explanations as to why the information requested could not be located.
19. The Commissioner's role is to make a decision based on whether on the balance of probabilities relevant recorded information was held by the Department.
20. The Commissioner appreciates that the complainant considers that the Department should hold such information. However, it is not for the Commissioner to judge whether information should be held, but to decide on the balance of probabilities whether it actually is held.
21. The Commissioner has examined the information contained in the dashboards, a link to which was provided to the complainant by the Department. From examining the figures regarding positive Covid tests in each Council area, it would be possible to calculate the amount of people in that area on the date in question who had tested positive for Covid 19.
22. However, in the Commissioner's view, the key point is that this is not what the complainant has requested. The complainant sought information as to the likelihood of her encountering someone "with Covid 19" in the three specified Council areas on any given date. Having been provided with the information contained in the dashboards, which gave her the means by which to calculate the figures for positive Covid tests in the areas, she was not satisfied with this and complained to the Commissioner.

23. The Commissioner consulted with the Department regarding the 'variables' it referred to which would prevent it from providing a reliable figure in response to the complainant's request. The Department confirmed that those variables were such factors as not everyone who may have the virus having been tested, potential asymptomatic carriers of the virus, and not being able to exactly pinpoint the movements of all individuals within the specified areas. The Commissioner agrees that this would mean not being able to calculate the figure requested by the complainant with any reasonable degree of accuracy.
24. In the absence of evidence to the contrary, the Commissioner is satisfied that the Department has provided plausible and convincing explanations that it has carried out the necessary steps to conclude whether it held the information requested by the complainant. It has also provided advice and assistance to the complainant by directing her to the information it did have available. Therefore, the Commissioner concludes that, on the balance of probabilities, the requested information is not held by the Department.

Right of appeal

25. 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

26. 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.
27. 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

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