

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 August 2012

Public Authority: Department of Health
Address: Room 317
Richmond House
79 Whitehall
London
SW1A 2NS

Decision (including any steps ordered)

1. The complainant has requested information around the Secretary of State's decision to request the Care Quality Commission (CQC) inspect abortion premises. The Department of Health (DoH) informed the complainant information was held but was being withheld under sections 31(1)(g), 35(1), 40(2) and 41. The DoH provided this information to the complainant during the Commissioner's investigation and the DoH therefore withdrew its application of these exemptions.
2. The Commissioner's decision is that the DoH breached section 10(1) of the FOIA as it did not provide this information within the statutory time for compliance. The Commissioner requires no steps to be taken.

Request and response

3. On 5 April 2012, the complainant wrote to the DoH and requested information in the following terms:

"Under the Freedom of Information Act, I should like to know the decision process, minutes of any meetings and the full reasons for the SoS requesting the CQC to urgently inspect abortion providers last month."

4. The DoH responded on 3 May 2012. It confirmed information was held within the scope of the request but that it was being withheld on the basis of sections 31(1)(g), 35(1), 40(2) and 41.
5. The complainant requested an internal review of the decision to withhold this information and following an internal review the DoH wrote to the complainant on 29 May 2012 and upheld its original decision.
6. During the Commissioner's investigation the DoH provided the complainant with the withheld information which consisted of emails and records of telephone calls. It no longer wished to apply the exemptions previously stated to withhold this information.

Scope of the case

7. The Commissioner has considered whether the DoH complied with its obligations under the FOIA when dealing with this request.
8. As the information has now been provided to the complainant the Commissioner will not however consider whether the exemptions were applicable at the time of the request.

Reasons for decision

9. Section 10(1) states that:

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt”.
10. During the course of the Commissioner's investigation the DoH provided the complainant with information within the scope of his request, including emails and notes of telephone calls on the subject. As this information was not provided within the statutory time for compliance, the Commissioner considers that the DoH breached section 10(1) in its handling of this request.

Right of appeal

11. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

12. 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.
13. 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

Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF