

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 November 2020

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

#### Decision (including any steps ordered)

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1. The complainant requested information regarding Covid-19 testing in the Walthamstow area.
2. The Commissioner's decision is that the Department of Health and Social Care failed to respond to the request within 20 working days and has therefore breached Section 10 of the FOIA.
3. The Commissioner's decision is that the Department of Health and Social Care breached sections 1 (general right of access) and 10 (time for compliance) of the FOIA, by failing to disclose to the complainant information to which he is entitled within 20 working days of his request.
4. The Commissioner requires the Department of Health and Social Care to take the following step to ensure compliance with the legislation.
  - The Department of Health and Social Care must provide a substantive response to the request in accordance with its obligations under the FOIA.
5. The Department of Health and Social Care 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 the Act and may be dealt with as a contempt of court.

## Request and Response

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6. On 11 September 2020, the complainant wrote to the Department of Health and Social Care and requested information in the following terms:

*"Understandably, the constituents who have been in touch are frustrated and anxious in the current situation and are looking for assurance that the Government is doing all it can to make sure tests are available, effective and efficient. Given, these problems I would appreciate the following information:*

*a. How many tests have been requested from those with postcodes beginning E17 in the last two weeks.*

*b. How many tests have been undertaken at the new Walk Through Centre at the Stanley Road Carpark in Walthamstow on each day it has been open since the 29th August 2020 and how many of these are from individuals with an E17 postcode.*

*c. How many of those seeking tests with postcodes beginning E17 have been tested at a centre within 10 miles of this postcode.*

*d. Who is responsible for management of requests for testing for the E17 postcode.*

*e. Further to the response to my parliamentary question of the 22nd June 2020, the total value of the contract to manage the testing system awarded to Deloitte.*

*Please treat this as a freedom of information request on behalf of the people of Walthamstow. I look forward to your response and would be happy to provide further details of the experiences of residents of Walthamstow of this service.."*

7. The Department of Health and Social Care acknowledged the request on 09 November 2020 but had failed to provide a substantive response by the date of this notice.

## Scope of the case

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8. The complainant contacted the Commissioner on 02 November 2020 to complain about the failure, by Department of Health and Social Care, to respond to the request.
9. In line with her usual practice, the Commissioner contacted the Department of Health and Social Care on 06 November 2020 to highlight the outstanding response. She requested that the Department of Health and Social Care respond to the request within 10 working days. The Correspondence was Acknowledged.
10. The Department of Health and Social Care stated that the request had been passed to the Ministerial Correspondence and Public Enquiries (MCPE) unit, as the request had been made by an MP. This was regardless of the fact that the request explicitly stated that it was a request under the Freedom of Information act. The request has not been responded to.
11. The complainant contacted the Commissioner on 23 November 2020 to request a decision notice considering the Department of Health and Social Care's compliance with the FOIA.
12. The scope of this notice and the following analysis is to consider whether Department of Health and Social Care has complied with Section 10 of the FOIA.

## Reasons for decision

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13. 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.*

14. 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.*

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

16. 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.*"

17. 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 Department of Health and Social Care has breached Section 10 of the FOIA.

## Other matters

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18. As recorded above at paragraph 10, the DHSC stated that as the request was handled by its Ministerial Correspondence and Public Enquiries (MCPE) unit, as is the norm with correspondence from MPs. It advised that MCPE handles cases separately from the FOI Team and the FOI Team has not had sight of the complainant's email. It confirmed that the request was now being handled as an FOI request and it would respond as soon as it was able to. However, regardless of whether its FOI department has sight of the request, the original date on which the request was received should be recorded as 11 September 2020. The DHSC must ensure that its processes do not conflict with the requirements of FOIA, in particular in this case the time to respond to the request.
  
19. While the Commissioner has adapted a flexible and pragmatic approach to public authorities during the Covid19 pandemic, this approach does not extend to approval of any processes adopted by DHSC which may impact on its ability to respond to requests in accordance with FOIA.

## Right of appeal

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20. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

21. 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.
22. 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** .....

**Pam Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**