

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 January 2021

**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 from the Department of Health and Social Care ("DHSC") correspondence between the Health Minister Lord Bethel, and Portland Communications. By the date of this notice the Council had not provided a substantive response to this request.
2. The Commissioner's decision is that the DHSC has failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner requires the DHSC to take the following steps to ensure compliance with the legislation.
  - Issue a substantive response to the request in accordance with its obligations under the FOIA.
4. The DHSC 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 Act and may be dealt with as a contempt of court.

## Request and response

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5. On 9 August 2020, the complainant wrote to the DHSC and requested information in the following terms:

*"Please could you provide the following under the FOI Act:*

- *All electronic correspondence between health minister, Lord Bethell and Portland Communications (<https://portland-communications.com>) between 1 March and 31 March 2020.*

*Please include all email correspondence, as well as any phone messaging (WhatsApps, texts etc)."*

6. The DHSC wrote to the complainant on 9 August 2020 to acknowledge the request.
7. On 5 November 2020, as the complainant had not received a response, she wrote to the DHSC and requested an update on the status of her information request. By the date of this notice the Council had not responded to the complainant.

## Scope of the case

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8. The complainant contacted the Commissioner on 19 November 2020 to complain about the DHSC's failure to respond to her request.
9. The Commissioner contacted the DHSC on 10 December 2020 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
10. The Commissioner also contacted the complainant on 10 December 2020 to explain that the DHSC had been given 10 working days from that date within which to provide a response to their request.
11. The DHSC responded to the Commissioner on 11 November 2020 and asked her to provide it with a copy of the request.
12. The complainant has provided evidence that she has received an acknowledgement from the DHSC but, by the date of this notice, had not received a substantive response to her information request.
13. The scope of this notice and the following analysis is to consider whether the DHSC has complied with section 10 of the FOIA.

## Reasons for decision

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14. Section 10 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.*

15. The Commissioner considers that the request in question fulfilled the above 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. The Council did not provide a substantive response to the request within 20 working days of receipt. Therefore, the Commissioner's decision is that the Council has breached section 10 of the FOIA.

## Right of appeal

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18. 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](mailto:grc@justice.gov.uk)

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

19. 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.
20. 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**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**