

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 6 January 2022

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

#### **Decision (including any steps ordered)**

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1. The complainant requested from the Department of Health and Social Care (DHSC) information relating to a number of phone calls declared by Lord Bethell. By the date of this notice, the DHSC had not issued a substantive response to the request.
2. The Commissioner's decision is that the DHSC has failed complete its deliberations on the balance of the public interest within a reasonable time and has therefore breached section 17(3) of the FOIA.
3. The Commissioner requires the DHSC to take the following steps to ensure compliance with the legislation.
  - Having confirmed that information is held within the scope of the request, either disclose the requested information or, issue a refusal notice in accordance with the requirements of section 17 of 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 12 August 2021 the complainant wrote to the DHSC and requested information in the following terms:

*"This is a request for information under the Freedom of Information Act. The request relates to a series of phone calls/meetings on the transparency register from 1st April 2020 to 6th April 2020, declared by Lord Bethell. They include:*

- 01/04/2020, a phone call with Secretary of State Matt Hancock/Lord Bethell/Lord Feldman/Oxford Nanopore*
- 01/04/2020, phone call with Abingdon Health*
- 02/04/2020, phone call with SureScreen Diagnostics Ltd*
- 02/04/2020, phone call with The BBI Group*
- 04/04/2020, phone call with Novacyt*

*For each phone call/meeting listed above, I would like the following information:*

- A description of what was discussed during the meeting/call*
- A copy of the agenda for the meeting/call*
- Minutes taken during the meeting/call*
- Notes taken during the meeting/call*
- Memos from the meeting/call, and/or similar records*

*I would like to receive this information in an electronic format. If you feel that a substantive response to this request is not possible within a reasonable time frame, I would be grateful if you could contact me and provide assistance as to how I can refine the request. If you need any clarification, please contact me. I look forward to receiving a response in 20 working days. Many thanks."*

6. The DHSC wrote to the complainant on 13 August 2021 to acknowledge the request.
7. The DHSC wrote to the complainant on 10 September 2021 and stated that it was extending the time to respond to the request in order to complete its public interest test.
8. The DHSC stated that it was considering the public interest test in line with section 10(3) of the FOIA. It stated that it was currently assessing the public interest test in relation to section 43 (commercial interests). The DHSC stated that it intended to respond to the request in full by 8 October 2021.

9. By the date of this notice, the DHSC had not provided the complainant with a substantive response to her request.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 9 December 2021 to complain about the delay in the DHSC's consideration of the public interest test.
11. The Commissioner contacted the DHSC on 15 December 2021 reminding it of its responsibilities and asking it to provide a substantive response to the complainant by 4 January 2022.
12. The Commissioner also contacted the complainant on 15 December 2021 to explain that the DHSC had been given 10 working days from that date within which to provide a response to their request.
13. The scope of this notice and the following analysis is to consider whether the DHSC has complied with its obligations in relation to section 17 of the FOIA.

### **Reasons for decision**

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14. 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."*

15. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and *"not later than the twentieth working day following the date of receipt"*.
16. Section 17(3) of the FOIA states that where a public authority is relying on a qualified exemption, it can have a "reasonable" extension of time to consider the public interest in maintaining the exemption or disclosing the information.
17. Although the FOIA does not define what constitutes a reasonable time, the Commissioner considers it reasonable to extend the time to provide

a full response, including public interest considerations, by up to a further 20 working days. This means that the total time spent dealing with the request should not exceed 40 working days, unless there are exceptional circumstances. A public authority would need to fully justify any extension beyond 40 working days.

18. In this case, the total time taken by the DHSC to respond to this request has exceeded 40 working days. The Commissioner does not consider there to be any exceptional circumstances and finds that, by failing to complete its deliberations on the public interest test within a reasonable timeframe, the DHSC has not complied with section 17(3).
19. The DHSC is now required to finalise its public interest considerations under section 17(3) of the FOIA and respond to the complainant.

## 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: 0203 936 8963

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)

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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**