

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

### **Decision notice**

**Date:** 28 February 2023

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

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

---

1. The complainant requested information from the Department of Health and Social Care ("DHSC") about correspondence relating to the types of potential integrated care contract providers during the formulation of the Health and Social Care Bill.
2. The Commissioner's decision is that DHSC has not conducted sufficient searches to determine if it holds information within the scope of the request.
3. The Commissioner requires DHSC to take the following steps to ensure compliance with the legislation.
  - DHSC must issue a fresh response to the request based on more thorough searches.
4. 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 FOIA and may be dealt with as a contempt of court

## Request and response

---

5. On 1 December 2021, the complainant wrote to DHSC with a refined request and requested information in the following terms:

"[...]

You have again asked me to narrow my question. Accordingly I ask you to provide me with any correspondence between the lead official for the Health and Care Bill and the Secretary of State that discusses whether the providers of integrated care contracts should be confined or open to public sector bodies. You may limit the period of this correspondence to the 6 months before the Bill was published. If again this breaches Section 12(2) of the FOIA then you may reduce the period as necessary."

6. DHSC responded on 24 December 2021 and advised that it did not hold the requested information.
7. Following an internal review, DHSC wrote to the complainant on 11 March 2022 and upheld its original decision.
8. Following communication from the Commissioner, DHSC contacted the complainant on 10 October 2022 to request clarification. The complainant provided the following clarification on 15 November 2022:

"My FOI request is quite clear. Namely to provide me with any correspondence between the lead official for the Health and Care Bill and the Secretary of State that discusses whether the providers of integrated care contracts should be confined or open to public sector bodies. Both Matt Hancock and Simon Stevens said this would be the case when meeting the House of Commons Health and Social Care Committee (HSCC) in January 2019. According to your letter of 10 October 2022, reference to integrated care contracts did not form part of the policy discussions in the run up to the publication and passage of the Health and Care Bill.

If that is true then your answer to my request is that there is no correspondence that you can provide me in answer to my FOI request. I find this strange because the link in your letter to a 2019/2020 paper about the use of the Integrated Care Provider Contract within NHS England's Long Term Plan states that the HSCC recommended that the law should rule out the option of non-statutory providers holding an Integrated Care Provider Contract. The paper adds that this was the expectation of NHS England. This expectation is in accordance with the

comments made by Matt Hancock and Simon Stevens to the HSCC in January 2019.

Without any further delaying tactics, please confirm whether or not any of my requested correspondence exists and if it does provide me with a copy”

9. DHSC provided a response on 12 December 2022, advising again that the information was not held.

### **Scope of the case**

---

10. The complainant originally contacted the Commissioner on 30 January 2022, to complain about the way their request for information had been handled.
11. The Commissioner has considered whether, on the balance of probabilities, DHSC holds recorded information within scope of the request and whether it has complied with section 1(1) of FOIA.

### **Reasons for decision**

---

#### **Section 1 general right of access**

12. Section 1 of 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”.

13. The Commissioner has sought to determine whether, on the balance of probabilities, DHSC holds the requested information.
14. DHSC has explained that it is highly unlikely that the requested information exists, as although NHS England led work to develop an Integrated Care Provider Contract over several years, which was published in 2019, there is no apparent indication that it was ever used by anyone in the NHS. DHSC explained that as the contract was forming there was some public discussion of whether a lead

commissioner could or should be a private provider – and as a result the contract was published in a form that was suitable for statutory bodies only. After this, in 2019-21, NHS England developed proposals for a legislative reframing for the NHS and its core bodies that was then further developed with DHSC. While this included changes to service provision, the work did not touch on the Integrated Care Provider Contract.

15. DHSC further explained that this was in part because the Integrated Care Provider Contract had not had any real effect on services and had rather fallen by the wayside. DHSC stated therefore it did not need to discuss the contract specifically with Ministers. It added that the issue of private providers leading on the contract had been resolved by NHS England's approach to the contract itself when they published it.
16. DHSC acknowledged that it is understandable for the complainant to ask whether the policy process for the new legislative framework for service procurement included discussion of the Integrated Care Provider Contract with Ministers, however this did not happen because the Integrated Care Provider contract was not a live part of how the system worked and was at a level of detail that didn't really matter for the overall service procurement framework.
17. DHSC has attempted to search for any evidence of discussions relating to the requested information but has explained that this is challenging as the search terms 'ICP', 'Integrated Care Provider' and 'Integrated Care Provider Contract' would each generate a very large number of results if applied to the relevant shared files or email accounts of officials working on the legislation. It explained that this is because these terms overlap with terms that were used for elements of the legislation – ICP for Integrated Care Partnership for example.
18. DHSC has stated that this would return a large number of 'false positive' search results. Previous responses to earlier iterations of the complainant's request advised that over 900 results were returned for the terms 'integrated care providers' and 'integrated care contracts' alone.
19. On the balance of probabilities, the Commissioner is unable to decide whether or not the requested information is held by DHSC, as he has not been provided with sufficient evidence that DHSC has been able to carry out adequate searches to determine that the requested information is held or not.
20. DHSC's view that it is "highly unlikely" to hold any information is not definitive enough to reach a view and implies that further searches would be needed to determine one way or another.

21. While the Commissioner appreciates the difficulty DHSC has had in conducting searches for the requested information, he notes that the same difficulty means that DHSC cannot say for certain that the requested information is not held. Following more adequate searches, DHSC should issue a new response to the complainant accordingly. If it determines that the cost of confirming whether or not it holds any information within scope is too prohibitive under section 12(2) of FOIA it will need to provide reasonable estimates to justify such a response.

### **Other Matters**

---

22. The Commissioner notes that the complainant has displayed a great deal of patience and cooperation in refining their request over the course of their dealings with DHSC. While it is unlikely that it would have changed the outcome of the responses provided to date, the Commissioner feels that DHSC could have scoped the request more efficiently and asked for clarification sooner in order to reduce the amount of time that the complainant has had to wait.

## Right of appeal

---

23. 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)

24. 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.
25. 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**