

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 January 2023

Public Authority: Business Services Organisation

Address: 2 Franklin Street
Belfast
BT2 8DQ

Decision (including any steps ordered)

1. The complainant requested information from the Business Services Organisation ["BSO"] relating to discussions and communications of Emergency Care Summaries, Key Information Summaries, and Northern Ireland Electronic Care Records. By the date of this notice BSO had not issued a substantive response to this request.
2. The Commissioner's decision is that BSO has breached section 10(1) of FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires BSO to take the following step to ensure compliance with the legislation.
 - BSO must provide a substantive response to the request in accordance with its obligations under FOIA.
4. BSO 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 5 October 2022, the complainant wrote to BSO and requested information in the following terms:

"This is a Freedom of Information Request for the following information:

Copies of all discussions and communications, both internal and external, since 01/01/2010 right up to the present day relating to the following aspects of *each* of Emergency Care Summary (ECS), Key Information Summary (KIS), and Northern Ireland Electronic Care Record (NIECR):

- the lawful purpose(s) at any time for sharing personal data, including sensitive/special category personal data, and how & when these were/are agreed by each of the individual participant organisations of the sharing. This should include any communications regarding the definition of the original lawful purpose(s) and also any changes (including additions) to the lawful purpose(s).

- the lawful bases/lawful condition(s) at any time for sharing personal data, including sensitive/special category personal data, and how & when these were/are agreed by each of the individual participant organisations of the sharing. This should include any communications regarding the definition of the original lawful condition(s) and also any changes (including additions) to the lawful bases and lawful condition(s).

- the roles (i.e. Data Controller, Data Processor, Data Controllers-in-common, Joint Data Controllers) at any time of individual participant organisations including BSO including any changes to these roles.

- any Data Processor contracts/agreements in place at any time between BSO and any other participant organisations.

- any Data Controller contracts/agreements in place at any time between BSO and any other participant organisations.

- any Data Controller contracts/agreements in place at any time between any other participant organisations.

- opt-outs available to individuals at any time from any or all aspects of personal data sharing.

- any removal of the ability of individuals to partially or completely opt-out from sharing - this includes both opt-outs from sharing occurring with the NIECR system/NIECR participants in the first place (typically administered by GP Practices) and also opt-outs from personal data already stored on the relevant IT systems being made available to participant organisations (typically administered by BSO).
- any discussions regarding possible future removals of any opt-outs (of any type, such as opt-outs from sharing or opt-outs from access).
- any ECS Data Sharing Agreement or alternative equivalent contracts/agreements between participant organisations including BSO.
- the NIECR Data Sharing Agreement and any alternative equivalent contracts/agreements between participant organisations including BSO.
- the general legality of ECS or KIS or NIECR data sharing (including, but not limited to, compliance with current and previous Data Protection Laws) and any compliance concerns or highlighted non-compliance or potential non-compliance by any participant organisation(s) including BSO.
- the addition of new participant organisations to ECS/KIS/NIECR sharing, including mechanisms for obtaining agreement from existing participant organisations to such additions.
- the need, or potential need, or intention, to create Data Processing Impact Assessments (DPIAs) for any aspect of data sharing; the creation and revision of any such DPIAs; and the contents (such as answers to the questions contained with) of any such DPIAs. This includes any draft versions of DPIAs.
- the "agreed addendum" to the NIECR Data Sharing Agreement referred to in the NIECR (draft) Covid DPIA document.
- Privacy Notices or other aspects of meeting transparency or fairness requirements of Data Protection law, including such aspects related to changes in ECS / KIS / NIECR lawful purposes, changes in lawful bases/lawful conditions, participant organisation additions, changes in items of personal data collected/shared, or other changes.

In particular this request includes, but is not limited to, information and discussions relating to my ICO Complaint case, IC-92767-F1B4.

The provided information should include, but not be limited to, any such discussions/communications with the following organisations (or members of/individuals representing them):

- internal to BSO
- British Medical Association
- Department of Health (NI)
- the Encompass Programme/Project
- GP Federations
- Health Trusts
- the HSC Board
- the Information Commissioner's Office
- Integrated Care Partnerships
- GP Practices including, but not limited to, Knock Medical Centre (my GP's Practice)
- Patient Client Council
- Privacy Advisory Committee
- the NIECR Information Governance group/work group/workstream
- the NIECR steering group
- the Northern Ireland Assembly including MLAs and committees
- the Northern Ireland Health Minister
- vendors of GP Practices' Electronic Patient Records Systems such as EMIS, Vision/INPA, and Merlok
- Orion Health, the software vendor for NIECR
- the UK Department of Health and Social Care

ECS means both the original 'standalone' ECS system/project (I.e. which existed from 2011-2013) as well as ECS as a part of NIECR sharing.

The provided information should include communications received by BSO as well as communications sent by BSO."

6. BSO acknowledged the request on 5 October 2022. To date, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 30 November 2022 to complain about BSO's failure to respond to their request.

8. The Commissioner has considered whether BSO has complied with its obligations in relation to the time for compliance at section 10(1) of FOIA.

Reasons for decision

9. Section 1(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.”

10. Section 10(1) of 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”.
11. On 7 December 2022 the Commissioner wrote to BSO, reminding it of its responsibilities and asking it to provide a substantive response to the complainant’s request within 10 working days.
12. Despite this intervention BSO has failed to respond to the complainant.
13. From the evidence provided to the Commissioner in this case, it is clear that BSO did not deal with the request for information in accordance with FOIA. The Commissioner finds that BSO has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with FOIA.

Right of appeal

14. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

15. 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.
16. 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