

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 7 October 2022

Public Authority: UK Health Security Agency (Executive Agency of the Department of Health and Social Care)

Address: Nobel House
17 Smith Square
London
SW1P 3JR

Section 51

Under section 51 of the Freedom of Information Act 2000 (FOIA), which is set out below, the Information Commissioner (the Commissioner) has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of FOIA.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

he may serve the authority with a notice (in FOIA referred to as “an information notice”) requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

1. The Commissioner has received an application under section 50, reference, IC-142398-T7Z2, for a decision whether a request for information made by the complainant to Public Health England (‘PHE’) on 7 July 2021, has been dealt with in accordance with the requirements of Part I of FOIA.

Nature of complaint

2. On 7 July 2021 the complainant made the following request for information:

"I would like to make a request under the Freedom of Information Act.

Please would you supply me with any emails, texts,Whatsapps or other written correspondence sent between 1 March 2020 and 2nd April 2020 in which the contents of this document – or earlier drafts of the document - were discussed before its release: Coronavirus (COVID-19): admission and care of people in care homes:

<https://www.gov.uk/government/publications/coronavirus-covid-19-admission-and-care-of-people-in-care-homes>

Please would you also supply me with any earlier drafts of the document. I would be interested in any information held by your organisation regarding my request. I understand that I do not have to specify particular files or documents and it is the department's responsibility to provide the information I require. If you need further clarification, please contact me by email or phone."

3. On 1 September 2021 PHE refused to provide the requested information, citing sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) (prejudice to the effective conduct of public affairs) of FOIA.
4. The complainant requested an internal review on 2 September 2021.
5. PHE sent the outcome to its internal review on 29 September 2021. It upheld its previous position.
6. On 1 October 2021 PHE became the UK Health Security Agency ('UKHSA').
7. Therefore, on 17 June 2022 the Commissioner wrote to the UKHSA and requested a copy of the withheld information, the UKHSA's submissions as to why section 36 applies and a copy of the qualified person's opinion in relation to section 36. The Commissioner asked that this information was provided by 15 July 2022.
8. On 12 August 2022 the UKHSA provided its submission. It explained to the Commissioner that 'For your reference we have attached a sample of the information held.'
9. On 15 August 2022 the Commissioner explained to the UKHSA that he requires all of the withheld information, not just a sample, unless the UKHSA is relying upon section 12(1) (cost of compliance exceeds

appropriate limit) of section 14(1) (vexatious requests) of FOIA. He asked that the outstanding information be provided by 22 August 2022.

10. On 23 August 2022 the Commissioner wrote to the UKHSA again, reiterating the above. He asked that the outstanding information be provided by 6 September 2022.
11. On 7 September 2022 the Commissioner wrote to the UKHSA again. He asked that the outstanding information be provided by 14 September 2022.
12. On the same day the UKHSA explained to the Commissioner that it had provided the information relevant to the case. The Commissioner reiterated his position once again.
13. On 20 September 2022 the Commissioner wrote to the UKHSA about this matter for the final time.
14. At the date of this notice, the Commissioner has still not received all of the withheld information, or confirmation that the UKHSA wishes to change its position.
15. The Commissioner also notes that the UKHSA is relying upon section 36, however, it has not provided evidence of the qualified person's opinion, from either PHE or the UKHSA.

Information required

16. In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of FOIA he requires that the UKHSA shall, within 30 calendar days of the date of this notice, furnish the Commissioner with:
 - The qualified person's opinion, if the UKHSA still wishes to rely upon section 36.
 - The remainder of the withheld information.

Failure to comply

17. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of FOIA, and may be dealt with as a contempt of court.

Right of appeal

18. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can 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

19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Signed

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF