

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 September 2021

Public Authority: Department of Health of Northern Ireland
Address: Castle Buildings
Stormont
Belfast
BT4 3SQ

Decision (including any steps ordered)

1. The complainant requested information relating to the 'Covid vaccine for under 18s is welcome news' face covering messaging. By the date of this notice the Department of Health of Northern Ireland ("the DoH") had not issued a substantive response to this request.
2. The Commissioner's decision is that the DoH has breached section 10(1) of the 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 the DoH to take the following steps to ensure compliance with the legislation.
 - The DoH must provide a substantive response to the request in accordance with its obligations under the FOIA.
4. The DoH 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 5 June 2021, the complainant wrote to the DoH and requested information in the following terms:

"Continued failure to promote and recognise "Reasonable excuses" provision.

<https://www.whatdotheyknow.com/request/c...>

<https://www.health-ni.gov.uk/news/covid-...>

"Always remember to wear your face covering where recommended".

As per the covid vaccine under 18s welcome link above, yet again, the Department fails to include the "reasonable excuse" provision allowed for within the Regulations.

*A/ Please can the Department provide evidence that shows (i) how the duty to have due regard to the need to promote equality of opportunity between persons with a disability and persons without, was considered and applied in this instance and please also (ii) detail the considerations that led to the Department, once again, isolating those of us unable to wear a face covering and potentially, excluding us from participating equally within society by **not** treating "Reasonable Excuses" OR "Exemptions" - that are allowed for within the Regulations - equally, in its Covid-19 awareness messaging?*

B/ In relation to the below statements, taken from the Departments face mask equality screening template, please can the Department evidence how excluding exemptions from content like that found at <https://www.health-ni.gov.uk/news/covid-...> fulfills Section 75 duties.

In relation to the linked content:

'This group should benefit from protections offered by these regulations' - please provide evidence that shows how I have benefited from 'protections' offered through the exclusion of face covering exemption messaging.

'These measures will help to ensure safeguarding and protection of those at higher risk including those with a disability or underlying health condition' - please provide evidence that the Department has 'safeguarded and protected' me from the detrimental impacts of the Regulations, through the exclusion of face covering exemption messaging.

'As such, this policy is offering more equality of opportunity' - please provide evidence that details how 'more equality of opportunity' has been achieved through the exclusion of face covering exemption messaging.

'No direct promotion of equality of opportunity, however, measures demonstrate solidarity and care for those with disabilities who may be at higher risk, enabling their return to a more normal lifestyle at the earliest opportunity' - please provide evidence that details how the Department shows 'solidarity and care for those with disabilities', through the continued exclusion of face covering exemption messaging in content created by the Department.

'The Department is committed to ensuring equality of opportunity for everyone in NI and complies with all relevant Disability legislation, including the Disability Discrimination Act 1995 and the United Nations Convention on the Rights of people with disabilities' - please provide evidence that shows how this statement is supported through the Departments exclusion of face covering exemption messaging in relation to the above link."

6. The DoH has not acknowledged the request, nor has it provided a substantive response by the date of this notice.

Scope of the case

7. The complainant contacted the Commissioner on 18 July 2021 to complain about the failure, by the DoH, to respond to the request.
8. In line with her usual practice, the Commissioner contacted the DoH on 18 August 2021 to highlight the outstanding response. She requested that the DoH respond to the request within 10 working days.
9. The DoH responded to the Commissioner on 1 September 2021 to explain that the request remained outstanding partly on account of it having experienced stretched resources in recent months due to high volumes of information requests.
10. The scope of this notice and the following analysis is to consider whether the DoH has complied with section 10 of the FOIA.

Reasons for decision

11. 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.*

12. Section 10(1) 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.*"

13. From the evidence presented to the Commissioner in this case, it is clear that the DoH did not deal with the request for information in accordance with the FOIA. The Commissioner finds that the DoH 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 the FOIA.

Other matters

14. The Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA.

15. Whilst the Commissioner is alert to the pressures experienced by the DoH, she must balance this against the information rights of the complainant.

Right of appeal

16. 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

17. 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.
18. 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