Reference: PR0987670

Freedom of Information Act 2000 (Section 48) Practice Recommendation

Medicines & Healthcare Products Regulatory Agency

1 August 2023

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Information Commissioner's Office

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Summary

Section 48 of the Freedom of Information Act (FOIA) empowers the information Commissioner (the Commissioner) to issue a practice recommendation where it appears to him that a public authority has failed to conform, specifically, to the FOIA Codes of Practice. These failures are addressed in the recommendations section below.

Prior to 2021 MHRA had manageable levels of information requests and systems in place which were sufficient to cope with those volumes. However, volumes and the complexity of information requests (especially with the introduction of covid vaccines) has increased from 2021/2022 onwards and it has become increasingly apparent that its systems and procedures are no longer fit for purpose or sufficient to meet increased volumes and increasing levels of complexity.

MHRA has therefore shown a declining trend in performance in terms of the time limits for complying with information requests. It has also consistently failed to carry out internal reviews within the recommended timeframes. Following engagement by his staff with MHRA about the underlying reasons for these failings, the Commissioner has reached the view that MHRA's request handling practices do not conform to parts 4 and 5 of the section 45 Freedom of Information Code of Practice, issued by the Cabinet Office in July 2018 (the Code).

Recommendations

The Commissioner has recently had discussions with MHRA concerning the issues set out above and is aware that it is in the process of implementing a number of improvements to its information request handling processes. MHRA has drawn up an action plan designed to remedy the current position and bring its request handling back to acceptable levels of compliance. The Commissioner has therefore designed the following recommendations to support and enhance MHRA's plans to improve its information rights practices. In considering these recommendations, he expects MHRA to ensure that it meets the requirements of all information rights legislation to which it is subject.

Area of Code	Non-conformity	Recommendation of steps to be taken
• **Part 4 – time limits for responding to requests** Section 4.1 of the Code highlights the "clear" requirement that public authorities respond to requests for information promptly, and within 20 working days of receipt in accordance with section 10(1) of FOIA.	For the period 1 May to 31 May 2023 MRHA had only met the deadline 'in time' in 71% of its information requests. It also received 6 section 10 decision notices between 30 March and 18 May 2023. It had 32 information requests over 6 months old, with the oldest at this time being 6 July 2022.	MHRA should consider using the Commissioner's FOI self-assessment toolkit to improve its timeliness compliance. MHRA should also request a consensual audit of its FOIA policies, practices and procedures from the ICO.
		MHRA should ensure that requests for information are responded to in a timely manner in accordance with section 10(1) of FOIA. When chased to issue responses by the Commissioner's Case Officers, MHRA should respond in a timely and appropriate manner. This will avoid unnecessary decision notices and subsequent further delays for the requesters.
		MHRA should analyse and review its current request handling procedures to ensure that it has adequate long term resources in the right areas . Its systems and procedures need to be able to cope with sustained increased volumes. For example introduce a case management system or consider a dedicated FOI request handling areas which is separate to general enquiries and other correspondence. It should also consider developing an FOIA policy that enables it to respond to the increased volumes of information requests within the statutory or recommended timeframes.

		MHRA should ensure that its processes enable it to comply with the requirements of the Commissioner's decision notices in the timeframes they specify.
		MHRA should publish its action plan, which incorporates any recovery plan already in development, with appropriate processes put into place to ensure 90% timeliness is achieved by 31st December 2023. This action plan should be supported by a 'lessons learned' exercise, which examines the root cause of delays from allocation through to clearance at different stages, with mitigations for any recurring problems addressed specifically in the plan.
		MHRA must ensure that its information rights training is sufficient and delivered to all staff to ensure that all information requests are processed within the required timeframes. This should include training on recognising information requests on receipt so that they are transferred to the relevant staff for processing in a timely manner, seeking clarification early if MHRA is uncertain what information is required. It should also identify where training is required for specific exemptions and delivering this to all relevant staff.
		MHRA's request handling procedures should include provision for when a response is late, or is likely to be late at any stage of the internal processes. It must be clear when and to whom the matter will be escalated, who is responsible for taking action, the action they will need to take, and by when.

		In accordance with part 8.5 of the Code MRHA should publish its information access request statistics and make these easily accessible on its website. The statistics should include the number of information access requests that have not been processed and the number of completed requests where the processing took longer than 20 working days. MHRA should also consider publishing its responses to information requests on its disclosure log and making this information easily accessible on its website. For those FOIA responses issued since this practice was suspended approximately 2 years ago, consider putting a back catalogue together of those responses and making that available on its website.
Part 5 – Internal reviews Sections 5.4 and 5.5 of the Code establish that internal reviews should be carried out within 20 working days, or 40 working days where the matter is complex.	Between 1 May and 31 May 2023 MHRA had 19 open internal reviews, of which 13 were overdue.	MHRA should ensure that internal reviews are carried out and the outcome communicated to the requester in a timely manner. In order to ensure that this happens consistently, MHRA should refresh its procedures for carrying out internal reviews and ensure that these are effective and robust.

Reasons for issuing this Practice Recommendation

The Commissioner is issuing a Practice Recommendation at this time, rather than an Enforcement Notice, because MHRA has engaged openly with his Office about the problems it is facing. It has also put together an action plan, detailing what it needs to address in order to bring its compliance with FOIA back up to acceptable standards.

Through the evidence provided in a series of complaints, it appears that the handling of information requests within MHRA has declined and has fallen below the expectations set out in the Section 45 Code of Practice. As outlined above the volume of complaints received by the Commissioner relating to a lack of timeliness by the MHRA at various stages of the FOIA request process has surged in the past year.

This practice recommendation formalises the Commissioner's concerns and holds MHRA accountable for improving its freedom of information request handling practices and, in turn, increase public confidence and trust in its information rights practices.

Failure to comply

A practice recommendation cannot be directly enforced by the Commissioner. However, failure to comply with a practice recommendation may lead to a failure to comply with FOIA, which in turn may result in the issuing of an enforcement notice. Further, a failure to take account of a practice recommendation may lead in some circumstances to an adverse comment in a report to Parliament by the Commissioner.

MHRA should write to the Commissioner each quarter before publishing the update set out in this recommendation on its website to update on progress against its action plan and the additional measures set out in this recommendation. A full year review of MHRA's performance against its action plan and this practice recommendation should then be provided one year after the date that MHRA publishes its action plan.

The Commissioner will have regard to this practice recommendation in his handling of subsequent cases involving MHRA.

MHRA should write to the Commissioner by December 31 2023 to confirm that it has complied with the recommendations above and to explain how it has achieved this.