

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 September 2016

Public Authority: NHS Commissioning Board (NHS England)

Address: 4N22 Quarry House
Quarry Hill
Leeds
LS2 7UE

Decision (including any steps ordered)

1. The complainant has requested emails sent or received by particular named employees on particular subject matters. NHS England has failed to respond to this request for information.
2. The Commissioner considers that NHS England breached section 10(1) FOIA in the handling of this request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - NHS England must provide the complainant with a response to this request in accordance with its obligations under FOIA.
4. The public authority 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 Act and may be dealt with as a contempt of court.

Request and response

5. On 20 May 2016 the complainant made the following request to NHS England:

For the following NHS England Employees:

[five named individuals]

Please provide all emails sent or received (or cc:d in) between any of the above employees for the two months July August 2015 inclusive.

For this request I am happy you restrict emails to the following topics:

Any assessment of excess mortality in the NHS at the weekend (or other times)

Any use of Jeremy Hunt's use of excess weekend mortality statistics at any time

Anything concerning any study (including but not limited to the BMJ study) on weekend mortality

Any requests from anyone, or giving information out, about weekend mortality data

Anything involved in any calculations of mortality data, or estimates of it.

Anything involving any press releases on any subject

Anything involving any work with Deloitte

Any correspondence with the Department of Health (or any ministers of it)

Any correspondence with the Office of National Statistics

Any correspondence involving [named individual]

Anything involving Junior Doctor contract negotiations"

6. NHS England has not provided a response to this request.

Scope of the case

7. The complainant contacted the Commissioner on 2 July 2016 to complain about the way his request for information had been handled.

8. The Commissioner has considered whether NHS England dealt with this request in accordance with its obligations under section 10(1) FOIA.

Reasons for decision

9. Section 10(1) provides that:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

10. Section 1(1) provides 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."*

11. The request was made on 20 May 2016 and a response is yet to be provided. The Commissioner therefore finds that NHS England breached section 10(1) in failing to respond within 20 working days.

Right of appeal

12. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

13. 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.
14. 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

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