

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 January 2019

Public Authority: NHS England
Address: 4N22 Quarry House
Quarry Hill
Leeds
LS2 7UE

Decision (including any steps ordered)

1. The complainant requested information relating to the amount of money that has been spent on commissioning non-NHS tier 4 mental health inpatient beds for young people. NHS England has failed to respond to this request.
2. The Commissioner considers that NHS England has 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 31 May 2018 the complainant wrote to NHS England and requested information in the following terms:

"My original request around a year ago was

'I was wondering if you would be able to tell me how much money has been spent on commissioning non-NHS tier 4 mental health inpatient

beds for young people (under 18) over the last ten years with an annual breakdown.'

A few months ago I then asked a follow up which was:

'Further to this email could you please provide me with the spend for 2015/2016 and if possible the projected spend for 2017/2018 in relation to tier 4 CAMHS.'

I presumed this would be interpreted as the non-nhs spend however I understand why this was not interpreted in this way.

As such just for clarity I would appreciate the following:

'The amount of money that has been spent on commissioning non-NHS tier 4 mental health inpatient beds for young people (under 18) for the year 2015/2016, 2017/2018 and if possible the projected spend for 2018/2018' "

6. On 3 August 2018 NHS England wrote to the complainant to apologise for the delay in providing a response to his request.

Scope of the case

7. The complainant contacted the Commissioner on 12 November 2018 to complaint about the way his request has been handled, as he had not received a response from NHS England.
8. On 22 December 2018 the Commissioner wrote to NHS England and asked it to ensure a response was provided to the complainant within 10 working days (that was by 10 January 2019).
9. On 4 January 2019, NHS England wrote to the Commissioner to confirm that her correspondence of 22 December 2018 had only been picked up that day.
10. Given the delay in the Commissioner's correspondence being picked up over the Christmas period, the Commissioner asked NHS England to ensure a response was provided by 17 January 2019 (10 working days from 4 January 2019).
11. NHS England failed to provide the response within the revised deadline.
12. The Commissioner has considered whether NHS England has dealt with this request in accordance with its obligations under section 10(1) FOIA.

Reasons for decision

13. 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."

14. 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."

15. The original request was made on 31 May 2018 and the response remains outstanding. The Commissioner therefore finds that NHS England breached section 10(1) in failing to respond within 20 working days.

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.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.....

Gemma Garvey
Senior Case Officer

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