

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 June 2019

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 information relating to a tendering exercise undertaken to find an organisation able to develop/deliver a solution to reduce Delayed Transfers of Care (DTOC).
2. The Commissioner's decision is that NHS England has failed to respond to the complainant's information request within 20 working days of receipt and has therefore breached section 10(1) of the FOIA.
3. Since the Commissioner considers that NHS England has now responded to the request seeking clarification, she does not require NHS England to take any further steps in relation to this complaint.

Request and response

4. On 13 March 2019, the complainant wrote to NHS England and requested information in the following terms:

"In response to the answers provided to FOI-058190 (below) on 13 March 2019, may I respectfully ask for the following information under the Freedom of Information Act:

A copy of the specification produced for the tendering exercise? as described here - A specification was written and a tendering exercise undertaken to find an organisation able to develop/deliver a solution to reduce DTOC. However, as outlined above, no organisation was engaged.

Where was the tender application posted, when was it posted (month and Year) and how long did it run for?

How many responses did the tender process receive and what was the development/existing solution split across the number of responses?

When did development for NHS Bed Tracker actually begin - meaning, at what point in time did the code start to be written? (Month and Year)

What was headcount footprint throughout the project, as a whole and broken down by respective roles: eg: Project Managers, Analysts, Developers, designers, Solution/Database architects, Testers etc?

Were all members of the team full-time employees of the NHS and, if not, could you kindly provide the FTE/Contractor headcount split?

Were any aspects of the project given to external organisations to complete or participate in or given as a deliverable piece of work?

What is the development roadmap of the NHS Bed Tracker project and the current dev/support team size?

If you require any clarification on the above, please contact me at your earliest opportunity."

5. NHS England acknowledged receipt of the information request on 15 March 2019.
6. On 16 April 2019, NHS England wrote to the complainant, apologising for the delay in responding to his request. NHS England advised the complainant that it was not in a position to respond to his request at that time but it was still in the process of assessing the request and would provide him with a full response as soon as possible.
7. On 1 June 2019, NHS England responded to the complainant seeking clarification of his information request.

Scope of the case

8. The complainant contacted the Commissioner on 23 April 2019 to complain about the way his request for information had been handled.
9. The Commissioner has considered whether NHS England dealt with the request in accordance with its obligations under section 10(1) of the FOIA.

Reasons for decision

Section 10 – time for compliance

10. Section 1(1) of FOIA states any person making a request is entitled to be told whether the information they have asked for is held and, if so, to have that information communicated to them, subject of course to the application of any exemptions that are appropriate.
11. Section 10(1) states that a public authority shall respond to information requests promptly and in any event no later than 20 working days from receipt.
12. The request was made on 13 March 2019 and a response should have been provided no later than 10 April 2019.
13. On 27 April 2019, the Commissioner wrote to NHS England advising it to respond to the request within 10 working days. She provided NHS England with a copy of the request and asked NHS England to state in its response whether or not the requested information was held and, if held, to either provide the information or issue a refusal notice in accordance with the requirements of section 17 of the FOIA. She also provided links to her Guide to Freedom of Information, and guidance issued in respect of the time in which a response to a request for information should be provided.
14. On 14 May 2019, the complainant confirmed to the Commissioner that he had still not received a response to the request.
15. On 17 May 2019, the Commissioner contacted NHS England for an update on the progress of the complainant's information request. NHS England advised that it would contact the complainant about the matter.
16. NHS England wrote to the complainant on 17 May 2019, advising that it was still dealing with his request and hoped to provide him with a further update on 24 May 2019.
17. The complainant contacted the Commissioner on 20 May 2019, asking for advice on what further action could be taken to expedite the matter to a close.
18. On 25 May 2019, the complainant contacted the Commissioner to confirm that NHS England had not provided him with an update on 24 May 2019 as promised, and he asked what the next steps might be to securing a closure on this long overdue request.

19. The Commissioner responded to the complainant on 29 May 2019, advising him that the Commissioner can issue a decision notice ordering NHS England to provide him with a response to his information request within 35 days.
20. The complainant responded to the Commissioner on the 29 May 2019, advising that he would like to proceed with a decision notice.
21. NHS England wrote to the Commissioner on 4 June 2019 and provided her with a copy of the response it sent to the complainant on 1 June 2019.
22. It is clear to the Commissioner that, in this case, NHS England has failed to respond to the request in accordance with the legislation. The Commissioner therefore finds that NHS England breached section 10(1) of the FOIA in failing to respond to the request within 20 working days.

Other matters

23. The Commissioner notes that NHS England's response to the complainant seeking clarification exceeded 20 working days. Although public authorities are entitled to seek clarification of an information request in order to identify and locate the requested information. Public authorities must contact the requester within 20 working days to ask for clarification of the request.
24. The Commissioner therefore recommends that NHS England review its handling of this request and complaint to ensure lessons are learned and improvements made.

Right of appeal

25. 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@justice.gov.uk

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

26. 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.
27. 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

Pamela Clements
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