

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 September 2020

Public Authority: The NHS Commissioning Board (NHS England)

Address: Quarry House
Quarry Hill
Leeds
LS2 7UE

Decision (including any steps ordered)

1. The complainant requested information from The NHS Commissioning Board (NHS England) about the number and subsequent assessment of recommendations submitted by CCGs, between 2015/16 and 2019/20, for funding through NHS England's Estates and Technology Transformation Fund (ETTF). NHS England had failed to provide a substantive response by the date of this notice.
2. The Commissioner's decision is that NHS England failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner requires NHS England to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the FOIA, to the request.
4. NHS England 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 15 June 2020, the complainant wrote to NHS England and requested information in the following terms:

"I would like to make a Freedom of Information request about NHS estates allowed for under the FOI Act 2000.

The information needed for my request are associated with the following questions:

1. Under the Estates and Technology Transformation Fund (Primary Care) scheme (<https://www.england.nhs.uk/gp/review-of-access/infrastructure/estates-technology/>), how many recommendations were submitted from CCGs (between 2015/16 and 2019/20)?

2. Of the total submissions identified as your answer to question 1 above, and specifically by reference to Section 10 - Assessment Criteria Estates and Technology Transformation Fund (Primary Care) Guidance for CCGs – How to submit recommendations for funding – May 2016, of the successful submissions:

3.

1. How many were unable to demonstrate that they were "Deliverable within the programme timeline"?

2. How many were unable to demonstrate that they were "Deliverable"?

4. Would NHS England fund a project that could not be completed as planned or at all?

5. During the NHS England Stage 3 due diligence test of recommended submissions for ETTF funding, specifically where "all schemes will be expected to comply with relevant legal requirements and technical guidance", how do you ensure that all Applicants comply with all legal requirements post CCG submission?

6. Is there a continual duty on Applicants to disclose information which is or could be adverse to their application and funding?

7. Does NHS England enforce the contract terms of the funding contracts agreed?"

6. NHS England acknowledged the request on 22 June 2020 but had failed to provide a substantive response by the date of this notice.

Scope of the case

7. The complainant contacted the Commissioner on 11 August 2020 to complain about the failure, by NHS England, to respond to the request.
8. In line with her usual practice, the Commissioner contacted NHS England on 28 August 2020 to highlight the outstanding response. She requested that NHS England respond to the request within 10 working days. The correspondence was neither acknowledged nor responded to.
9. The complainant contacted the Commissioner on 29 September 2020 to request a decision notice considering NHS England's compliance with the FOIA.
10. The scope of this notice and the following analysis is to consider whether NHS England 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 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

13. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.
14. Section 10 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.*"

15. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, NHS England has breached section 10 of the FOIA.

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@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

Ben Tomes
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