

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 October 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 has requested information from the NHS Commissioning Board (NHS England) about mental health funds. At the date of this notice, NHS England has not provided a response to the request.
2. The Commissioner's decision is as follows:
 - NHS England has breached section 10(1) of the FOIA as it has not provided a valid response to the request within the statutory timeframe of 20 working days.
3. The Commissioner requires NHS England to take the following step to ensure compliance with the legislation:
 - Provide a response to the complainant's request of 9 March 2020 that complies with the FOIA.
4. NHS England must take this step 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 19 February 2020, the complainant wrote to NHS England and requested information in the following terms:

"I am writing the following request to obtain the following information under the FOI Act:

Any documents which contain or relate to information regarding the triangulation and/or diversion of mental health funds. This will have been authored/researched (at least in part) by [Redacted] who is (or was at the time) part of NHS England and NHS Improvement Mental Health Infrastructure team"

6. The complainant subsequently clarified his request as follows:

"Regarding time frame, I didn't have any specific time frame in mind. However, if one is required the past 10 years would suffice. If there is a possibility of this making the FOI too expensive, then please let me know as soon as possible. Re the second point, I am also requesting documents relating to any drafted by the named person. For example (but not limited to), if this were part of a group of documents, I would like to request the rest of the documents in that group, or if any references are made within this document to other documents, I would like to request those as well."

7. Following correspondence from NHS England, on 9 March 2020, the complainant submitted the following refinement to his request:

"I would like to limit the time frame to the last four years and only would like to specifically refer to any relevant documents which worked on by the named person."

8. In correspondence to the complainant dated 24 July 2020 NHS England acknowledged the continuing delay in responding to the request. It explained that its service was being impacted by the coronavirus pandemic.
9. The complainant has advised the Commissioner that NHS England has yet to provide a response to the refined request.

Scope of the case

10. The complainant contacted the Commissioner on 30 September 2020 to complain about the way his request for information had been handled.
11. The Commissioner's investigation has focussed on whether NHS England has complied with its obligation under section 10(1) of the FOIA.

Reasons for decision

Section 10 – time for compliance

12. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told whether the authority holds the information and, under subsection (b) to have the information communicated to him or her if it is held and is not subject to an exemption.
13. Section 10(1) says that a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
14. The Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA. The Commissioner has made it clear that she will allow flexibility where this is required by public authorities in order to respond to the pandemic.
15. However, in this case, the complainant submitted his request to NHS England on 9 March 2020 and to date has not received a response – that is a significant delay. The Commissioner therefore finds that that NHS England has breached section 10(1) of the FOIA in failing to respond to the request 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@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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF