

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 August 2021

Public Authority: NHS Commissioning Board (NHS England)
Address: Quarry House
Quarry Hill
Leeds
LS2 7UE

Decision (including any steps ordered)

1. The complainant submitted a two part request for information to NHS Commissioning Board (NHS England) in relation to a framework agreement. By the date of this notice, NHS England had failed to provide a substantive response.
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 FOIA.
3. The Commissioner requires NHS England to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 5 June 2021 , the complainant wrote to NHS England and requested information in the following terms:

"1) Please provide a copy of the Framework Agreement call-off enquiry to Palantir and of their response (and the response of any other suppliers if applicable). Also provide a copy of the scope of works included in the 2 year contract. This is all standard contract information that is not commercially sensitive.

2) If not clear in the scope of works please advise whether the contract forbids Palantir from using any public health information that it may obtain from the contract for its own commercial use?"
6. Whilst NHS England did not acknowledge this request, the complainant has provided evidence which shows that the request was sent to a valid email address of NHS England. Therefore, the Commissioner has assumed that the request was received by NHS England.
7. By the date of this notice, NHS England has failed to provide a substantive response.

Scope of the case

8. The complainant contacted the Commissioner on 5 July 2021 to complain about NHS England's failure to respond to their information request.
9. In line with her usual practice, the Commissioner contacted NHS England on 19 July 2021 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.
10. On 3 August 2021, the complainant informed the Commissioner, that they did not receive any substantive response, despite the Commissioner's instruction to NHS England to do so.
11. The scope of this notice and the following analysis is to consider whether NHS England has complied with section 10 of FOIA.

Reasons for decision

12. Section 1(1) of 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.*

13. Section 10 of 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."*
14. 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 FOIA.

Other matters

15. 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 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: 0203 936 8963
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

Susan Duffy
Senior Case Officer
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Wilmslow
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