

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 13 August 2021

**Public Authority:** The NHS Commissioning Board (NHS England)

**Address:** Quarry House  
Quarry Hill  
Leeds  
LS2 7UE

#### **Decision (including any steps ordered)**

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1. The complainant requested information from the NHS Commissioning Board ("NHS England") about its contract with St. Peter's Andrology Service London and a forthcoming tender exercise for a replacement provider.
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 to the request in accordance with its obligations under the FOIA.
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

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5. On 11 May 2021, the complainant wrote to NHS England and requested information in the following terms:

*"I wish to request the following information under the FOIA.*

- 1) On what date did NHS England decide not to renew its contract with St. Peter's Andrology Service, London?*
- 2) On what date did/does the current NHS England contract with St. Peter's Andrology Service, London end?*
- 3) Was this the original end date of this contract?*
- 4) Did the NHS England contract with St. Peter's Andrology Service include services for Northern Ireland? If not, who dealt with the contract for services for Northern Ireland?*
- 5) Did the HSCB NI or NHS England initiate the decision not to renew the current contract?*

*Regarding the current tender for a replacement provider for these services;*

- 6) On what date did/does this current NHS England tendering process for a new provider open?*
  - 7) By what closing date are all submissions for this tender meant to be received?*
  - 8) By what date are the providers who have tendered to deliver this service to be notified of the success/failure of their tender?"*
6. On 11 May 2021 NHS England wrote to the complainant to acknowledge the request.
7. On 3 July 2021, as the complainant had not received a response, he wrote to NHS England to ask for an update on the status of the request. NHS England acknowledged this correspondence on the same day.
8. By the date of this notice, NHS England had not provided a substantive response to the request.

## Scope of the case

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9. The complainant contacted the Commissioner on 12 July 2021 to complain about NHS England's failure to respond to the request.
10. The Commissioner contacted NHS England on 26 July 2021 reminding it of its responsibilities and asking it to provide a substantive response to

the complainant within 10 working days. The correspondence was neither acknowledged nor responded to.

11. The Commissioner also contacted the complainant on 26 July 2021 to explain that NHS England had been given 10 working days from that date within which to provide a response to their request.
12. The complainant has provided evidence that they have received an acknowledgement from NHS England but, by the date of this notice, had not received a substantive response to their information request.
13. 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

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14. 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.*

15. Section 10(1) 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.*"
16. NHS England did not provide a substantive response to the request within 20 working days of receipt. Therefore, the Commissioner's decision is that NHS England has breached section 10 of the FOIA.

## Right of appeal

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17. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

18. 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.
19. 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 .....**

**Sarah Clouston**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**