

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 October 2021

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") relating to the pathway/referral process, the Individual Funding Review panel and NHS England's targets for replying to correspondence from MPs. By the date of this notice, NHS England had not provided a substantive response.
2. The Commissioner's decision is that NHS England has 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.
 - NHS England must 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 Act and may be dealt with as a contempt of court.

Request and response

5. On 2 June 2021, the complainant wrote to NHS England and requested information in the following terms:

"Freedom of Information Request 1 - please see attachment 'NHS - IG Team - FOI Request':

On 31 May 2019 [redacted] wrote to [redacted] 'I admit there have been problems with her [redacted] pathway and also problems with regards to how she has been referred at various points, which we as commissioners need to address, and we also are challenged by the lack of resource available in the south west.'. One: Please could you tell me the job title and department (and/or the name) of the person who wrote this and also of the recipient? Two: Has any action been taken since May 2019 to improve the pathway/referral process for patients and to address the lack of resources available in the south west? If yes, please supply details. If no, please state this.

Freedom of Information Request 2:

I understand that the Individual Funding Review (IFR) panel meets approximately once a month. Please could you tell me the dates of the IFR (dentistry) panels between 1st November 2020 and 31st October 2021?

Freedom of Information Request 3:

I understand that within the civil service, not necessarily the NHS, all departments should set targets for replying to correspondence from Members of Parliament (MPs) which for routine correspondence, for example, should be a maximum of 20 working days (starting the day after the correspondence was received) but that departments should consider setting themselves more challenging targets. Has NHS England set targets for replying to routine and non-routine correspondence from MPs? If yes, please supply details of these targets including time period/s. If no, please state this."

6. On 9 July 2021, as the complainant had not received a response, she wrote to NHS England to ask for an update on the status of her request.
7. NHS England wrote to the complainant on 9 July 2021 to acknowledge the complainant's request.

8. On 2 August 2021 and 30 August 2021, as the complainant had not received a response, she wrote to NHS England to ask for a further update on the status of her request.
9. By the date of this notice, the complainant had not received a substantive response to her request.

Scope of the case

10. The complainant contacted the Commissioner on 30 August 2021 to complain about NHS England's failure to respond to her request.
11. The Commissioner contacted NHS England on 22 September 2021 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
12. The Commissioner also contacted the complainant on 22 September 2021 to explain that NHS England had been given 10 working days from that date within which to provide a response to their request.
13. The complainant has provided evidence that she has received an acknowledgement from NHS England but, by the date of this notice, had not received a substantive response to her information request.
14. 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

15. Section 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.*
16. 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.*"

17. 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

18. 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

19. 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.
20. 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

Michael Lea
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