

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 January 2021

Public Authority: 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 information relating to cases eligible for NHS Continuing Health Care. By the date of this notice a substantive response to this request had not been issued.
2. The Commissioner's decision is that NHS England has breached section 10(1) of the FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires NHS England to take the following steps to ensure compliance with the legislation.
 - Respond to the complainant's request in accordance with 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 3 September 2020, the complainant wrote to NHS England and requested information in the following terms:

"Please let me know the following:

- 1. The number of cases that were found to be eligible for NHS Continuing Health Care following a Multidisciplinary Team assessment using a Decision Support Tool in England in the last year; in the last three years; in the last five years.*
- 2. The number of cases as in 1 above but for Midlands and Lancashire Commissioning Support Unit.*
- 3. The number of cases that were found to be ineligible using the same criteria as in 1 and 2 above.*
- 4. The number of cases that were the subject of a Local Resolution Panel in 3 above for both England, and Midlands and Lancashire CSU and the number of decisions overturned by the LRP.*
- 5. Of the decisions that were not overturned by the LRP, the number that proceeded to an Independent Review Panel (IRP) and the number of decisions that were both upheld by the IRP and the number that were overruled by the IRP, both for England, and Midlands and Lancashire CSU."*

6. To date, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 19 November 2020 to complain about the failure by NHS England to respond to his request.
8. The Commissioner has considered whether NHS England has complied with its obligations in relation to the time for compliance at section 10(1) of the FOIA.

Reasons for decision

9. 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.*

10. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt.”
11. On 9 December 2020 the Commissioner wrote to NHS England, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
12. Despite this intervention NHS England has failed to respond to the complainant.
13. From the evidence provided to the Commissioner in this case, it is clear that NHS England did not deal with the request for information in accordance with the FOIA. The Commissioner finds that NHS England has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the FOIA.

Right of appeal

14. 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

15. 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.
16. 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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