

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

### **Decision notice**

**Date:** 15 February 2021

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

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

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

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1. The complainant requested from the NHS Commissioning Board ("NHS England") information relating to the finances and accountability of NHSX. By the date of this notice NHS England had not provided a substantive response to this request.
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.
  - 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

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5. On 29 September 2020, the complainant wrote to NHS England via the What Do They Know website and requested information in the following terms:

*"I am writing for information on NHSX.*

- 1. In advertisements for jobs at NHSX, the following statement is being used:*

*'With investment of more than £1 billion pounds a year nationally and a significant additional spend locally, NHSX has been created to give staff and citizens the technology they need.'*

*Could you please provide a breakdown of how the £1 billion a year technology figure is arrived at, plus what is meant by the 'significant additional spend locally'. A breakdown to the nearest £10m would be sufficient.*

- 2. Of this £1 billion annually, please publish details on how much of this figure NHSX is accountable for.*
- 3. Please publish details of the governance and control functions that have been put in place by NHSX to ensure accountability."*

6. NHS England wrote to the complainant on 29 September 2020 to acknowledge the request.
7. On 28 October 2020, NHS England wrote to the complainant to apologise for its delay in responding to the complainant's information request.
8. On 21 November 2020, as the complainant had not received a response to his request, he wrote to NHS England and requested an internal review. By the date of this notice NHS England had not responded to the complainant.

## Scope of the case

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9. The complainant contacted the Commissioner on 29 December 2020 to complain about NHS England's failure to respond to his request.

10. The Commissioner contacted NHS England on 22 January 2021 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
11. The Commissioner also contacted the complainant on 22 January 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 he has received an acknowledgement from NHS England but, by the date of this notice, had not received a substantive response to his 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 10 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. The Commissioner considers that the request in question fulfilled the above criteria and therefore constituted a valid request for recorded information under the FOIA.
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

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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: 0300 1234504

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)

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 .....**

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