

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 June 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 three part request for information to NHS Commissioning Board (NHS England) in relation to a document entitled "Specialised Commissioning Standard Procedure for the Annual Assessment Quality Assurance Process". 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 the FOIA.
3. The Commissioner requires NHS England to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the 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 the FOIA and may be dealt with as a contempt of court.

Background information

5. The complainant has previously submitted an information request to NHS England for the document entitled "Specialised Commissioning Standard Operating Procedure for the Annual Assessment Quality Assurance Process". Since he did not receive a response from NHS England, he submitted a complaint to the Commissioner.
6. On 28 January 2021, the Commissioner issued a decision notice¹ ordering NHS England to provide the complainant with a substantive response in relation to the information request received.
7. On 4 March 2021, NHS England complied with the step ordered by the Commissioner in her decision notice of 28 January and provided the complainant with the document requested.

Request and response

8. Following the receipt of the information requested on the previous request, on 5 March 2021 the complainant wrote to NHS England and requested additional information. For the purpose of FOIA, this communication constituted a fresh information request, and it was formulated as follows:

"1. I would like an electronic copy of the same "Version" of the document that you discussed in 2019 which you named "Specialised Commissioning Standard Operating Procedure for the Annual Assessment Quality Assurance Process"" (please see your Ref: FOI-060054).

2. If the above document was not in production/being actively used in the Quality Assurance Process as you discussed in your response (Ref: FOI-060054) then I request a copy of the document that was in active use even if the name was different to that you advised.

3. In the document that you released to me entitled "Specialised Commissioning Standard Operating Procedure for the Annual Assessment Quality Assurance Process" which had the file name of "Annex A SC SOP AA Quality Assurance Process FINAL v1.pdf", on the

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2021/2619199/ico-75506-1414.pdf>

last page, page 21 in the supporting information section, the last item on the list is a link to a document "QST - Self-Declaration Guide". As I do not have a logon to NHS England's SharePoint server, then I request the following copies of this document.

a. An electronic copy of the latest version of the "QST - Self-Declaration Guide"

b. A electronic copy of the "QST - Self-Declaration Guide" that was in effect in 2019."

9. On 19 March 2021, NHS England acknowledged receipt of the present information request. However, by the date of this notice, it has failed to provide a substantive response.

Scope of the case

10. The complainant contacted the Commissioner on 8 April 2021 to complain about the failure, by NHS England, to respond to the request.
11. In line with her usual practice, the Commissioner contacted NHS England on 25 May 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.
12. 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

13. 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.*

14. 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.*"

15. 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 the FOIA.

Other matters

16. 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 the FOIA.

Right of appeal

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

Website: 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

Susan Duffy
Senior Case Office
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF