

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 January 2022

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 a contract between NHS England and the New Foscote Hospital, Banbury. By the date of this notice NHS England had not issued a substantive response to this request.
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 step to ensure compliance with the legislation.
 - NHS England must provide a substantive response to the request in accordance with its obligations under the FOIA.
4. NHS England must take this step 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 7 October 2021, the complainant wrote to NHS England and requested information in the following terms:

"During 2020 as part of the response to the covid-19 pandemic, the NHS subcontracted a number of private hospitals to provide healthcare to the public. One of the private hospitals was the The [sic] New Foscote Hospital, Banbury.

1. Please provide dates that the NHS's contract with the The [sic] New Foscote Hospital started and ended.

2. Please detail the total cost to the NHS for period listed above when the The [sic] New Foscote Hospital was subcontracted to the NHS.

3. Please detail the number of patients treated by the The [sic] New Foscote Hospital on behalf of the NHS on weekly basis for the period it was subcontracted to the NHS."

6. NHS England wrote to the complainant on 11 October 2021 to acknowledge the request. By the date of this notice, NHS England had not provided the complainant with a substantive response to their request.

Scope of the case

7. The complainant contacted the Commissioner on 28 November 2021 to complain about NHS England's failure to respond to their 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 3 December 2021 the Commissioner wrote to NHS England, reminding it of its responsibilities and asking it to provide a substantive response to the complainant's request 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: 0203 936 8963

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

Michael Lea
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