

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 January 2023

Public Authority: NHS England
Address: Skipton House
80 London Road
London
SE1 6LH

Decision (including any steps ordered)

1. The complainant has requested NHS England to disclose information relating to the closure of pharmacies between 1st January 2022 and 31st March 2022. NHS England refused to comply with the request, citing section 12 of FOIA.
2. The Commissioner's decision is that NHS England is entitled to refuse to comply with the request in accordance with section 12 of FOIA. He has however recorded a breach of section 10 of FOIA, as NHS England failed to respond to the complainant's request within 20 working days of receipt.
3. The Commissioner does not require any further action to be taken.

Request and response

4. On 4 April 2022, the complainant wrote to NHS England and requested information in the following terms:

"I would like to have information pertaining to:

The names and addresses of pharmacies which informed their Local Pharmacy contract team or the NHS that they would not be opening their pharmacy between 1st January 2022 and 31st March 2022.

I would like to know the names and addresses of pharmacies which informed their Local Pharmacy contract team/ the NHS of any closures for the following reasons:

- an unplanned closure for a few hours where there have been local issues
- an unplanned closure due to flooding etc where they may be closed for more than a day
- Planned closures with the 3 months' notice – usually refurbishments etc
- Permanent closures – i.e. the contract has been surrendered
- Closures relating to Covid under the emergency powers, where pharmacies may have closed or amended hours under these powers.
- All of the above or a combination.

With regards dates, the FOI request is in relation to any closures within the time period of 1st January 2022 and 31st March 2022 and not closures for the entire time period.

I would be interested in any information held by your organisation regarding my request. I understand that I do not have to specify files or documents and it is the department's responsibility to provide the information I require. If you need further clarification, please contact me by email.

I would like the information to be emailed to me in electronic form. I would like the data presented in tabulated format..."

5. NHS England responded on 18 May 2022 refusing to comply with the request citing section 12 of FOIA.
6. The complainant requested an internal review on 23 May 2022.
7. NHS England failed to respond to the complainant's request for internal review despite the Commissioner's intervention on 27 July 2022, which required it to complete the process within 10 working days.

Scope of the case

8. As NHS England failed to carry out an internal review, the Commissioner decided to exercise his discretion and accept the complaint for full investigation on 12 August 2022.
9. NHS England confirmed that the internal review was later completed and the complainant was informed on 10 November 2022.
10. The Commissioner has obtained additional submissions from NHS England and he is satisfied that section 12 of FOIA applies. The following section of this notice will now explain why.

Reasons for decision

Section 12 – cost limit

11. Section 12 of FOIA states that a public authority is not obliged to comply with a request if it estimates that it would exceed the cost limit to do so. For NHS England the cost limit is 18 hours or £450.
12. NHS England is permitted to take into account the time or cost of determining if the information is held, locating and retrieving the information and extracting relevant information from non-relevant information.
13. NHS England states that it has seven regions which support local systems to provide more joined up and sustainable care for patients. The regional teams are responsible for the quality, financial and operational performance of all NHS organisations in their region.
14. The information requested will be partly held by the national primary care team and partly by each of the seven regional primary care teams. Within NHS England, some information is collected on a national level whereas other information is collected on a regional level.
15. Each region supports its own local system, as such, the information that is physically recorded from region to region can be different. Moreover, the ways each region collates information can also be different as there is not a single national framework on how information should be recorded.
16. Therefore to locate, retrieve and extract all of the information being requested, NHS England will need to approach all eight teams (the national primary care team and all seven regional primary care teams). It considers this exercise will take longer than 18 hours.

17. By way of an example, NHS England looked at the London region and this region alone would be likely to take longer than 18 hours. It said some information on pharmacy closures can be gathered reasonably quickly (e.g. information relating to which pharmacies were closed, the relocation of each pharmacy and in some cases the dates) as this information was routinely collected by NHS England's London regional team.
18. However, other parts would take longer. To gather information on pharmacy closures relating to any specific timings and the reason given by the contractor for pharmacy closure (whether that was for Covid-19 or otherwise), NHS England would need to locate the form or email that was received for that specific timeframe to retrieve these details. As it had no reason to believe that these might be needed, they have not all been filed in a way that is easily retrievable and this means that it would need to check and open all of the relevant files relating to Covid-19 closures over the entire period to find the exact ones requested. It said that although it may be between 50 and 100 entries that are in scope, it will still entail finding and opening approximately 400 documents to find this information and then extracting this onto a spreadsheet.
19. NHS England estimated that it would take 3 to 5 minutes to conduct this exercise (i.e. identifying the relevant individual within the organisation, finding the relevant email/document within the London regional team and then extracting the information onto a spreadsheet so it can be released). If it has to do this for all 400 documents, it will take in the region of 1,200 to 2000 minutes (or 20 to 33 hours). This exercise is for the London region only.
20. It confirmed that if you include the time required to gather this material for the remaining seven teams, compliance with the request would comfortably exceed the 18 hour time limit prescribed by FOIA.
21. The Commissioner is satisfied that NHS England has explained in sufficient detail why it would exceed the cost limit to comply with the complainant's request as worded. It has said how the information is not all held centrally and it would need each of the seven regions to carry out searches of its records in order to provide the requested information. NHS England's estimate of 3 minutes per document is reasonable based on what it has said and what would be involved in retrieving the requested information held in those 400 documents for the London region alone. A similar process would be required of the six remaining regions.
22. For these reasons, the Commissioner is satisfied that section 12 of FOIA applies.

Section 16 – advice and assistance

23. Section 12 of FOIA triggers the duty to provide advice and assistance under section 16, so far as this is reasonable and practicable to do so.
24. NHS England stated that it has advised the complainant how they may refine their request. It suggested refining the request to information held by the national primary care team only. It said that if it is only required to approach a single team, it will significantly reduce the time it would take to process the request. It also advised what elements of the request the national primary care team would be likely to hold.
25. Alternatively, it advised the complainant that if they were interested in a specific region, they could ask it to search for that region only and reduce the scope of the request that way.
26. The Commissioner considers NHS England provided appropriate advice and assistance to the complainant. It suggested ways they could limit the scope to enable it to be processed within the cost limit.

Section 10 – time for compliance

27. Section 10 of FOIA requires a public authority to respond to requests for information promptly and in any event no later than 20 working days from receipt.
28. NHS England failed to respond to the complainant's request within 20 working days. The Commissioner has therefore recorded a breach of section 10 of FOIA.

Other matters

29. The Section 45 Code of Practice advises all public authorities to carry out an internal review within 20 working days of receipt, and certainly no later than 40 working days from receipt. The additional 20 working days should only be required for those requests which are particularly voluminous or complex in nature.
30. NHS England failed to carry out an internal review for over 5 months. This is not acceptable. The Commissioner would therefore like to remind NHS England of the requirements of the code and the importance of carrying out timely internal reviews.

Right of appeal

31. 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

32. 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.
33. 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

Samantha Coward
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Wycliffe House
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