

Freedom of Information Act 2000 (FOIA)

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 23 June 2023

Public Authority: NHS England
Address: Quarry House
Leeds
LS2 7UE

Decision (including any steps ordered)

1. The complainant has requested a comparative list of Accident & Emergency departments in England in 2010 to date with information on the services they provide. NHS England stated the information was not held.
2. The Commissioner's decision is that the requested information is not held by NHS England and it has complied with its obligations under section 1 of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 23 December 2022, the complainant wrote to NHS England and requested information in the following terms:

"I am writing to request the following information regarding A&E departments and their status on whether they have been downgraded or closed since May 2010 under the Freedom of Information Act.

I would like it presented in a form like the attached Excel spreadsheet.

1. All hospitals A&E/emergency departments in England in May 2010
 2. The NHS trust they are under
 3. The provision that was provided at the time (e.g. major A&E, minor injuries, urgent care centre, etc.)
 4. The provision that is provided today
 5. Whether or not each department has been 'downgraded', 'upgraded', had no change, or been shut down entirely, or if it is a brand new service (An downgrade means a reduction in provision, if a major A&E unit became an urgent care centre, an upgrade is the opposite)
 6. Whether
 7. Note: Please include new emergency departments created since May 2010 where no provision had existed before, and mark these N/A or 'Did not exist' – under the downgrade/upgrade column this could be classified as new department"
5. NHS England responded on 25 January 2023. It stated that the information was not held, explaining the roles and responsibilities of NHS England.
 6. The complainant asked for an internal review on 29 January 2023. They pointed to a [search tool for A&E departments](#) available on the NHSE website and argued that NHS England must therefore hold the information and have an archived list from 2010.
 7. Despite requesting an internal review NHS England has not, to date, conducted one. The Commissioner has therefore exercised his discretion to accept this case for investigation so as to avoid any further delays.

Scope of the case

8. The complainant contacted the Commissioner on 18 April 2023 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of his investigation is to determine if the information requested is held by NHS England.

Reasons for decision

10. Section 1(1) requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
11. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).
13. The main issue in this case seems to be that the complainant is of the view that as there is a current tool for searching the Accident & Emergency ("A&Es") and Urgent Care Centres in England on the NHS England website this demonstrates that the information they have asked for must be available behind this search tool ie a list of all A&Es.
14. However, the request asked for this information in 2010 – the complainant is looking to make a comparison between services in 2010 and present date. They are of the view that NHS England must hold archival data from 2010 of a similar list to that which is behind the current search tool.
15. As the remaining parts of the information request follow on from this and ask for information on the NHS Trust each A&E department is under and what each department was set up to provide, the logical first step for the Commissioner is to establish if a historical list of A&E departments from 2010 is held and if it isn't then it stands to reason the additional information asked for will also not be held.
16. The Commissioner therefore approached NHS England with some further questions to understand the position it had taken.
17. In its initial response NHS England had explained it is responsible for commissioning primary care services such as GP and dental surgeries, as well as some specialised secondary care services. Therefore, any recorded information it may be able to provide in response to an FOI request will generally relate to the services NHS England commissions.

18. When responding to the Commissioner NHS England further explained that NHS England and NHS Digital merged to become one statutory organisation on 1 February 2023. Prior to this date, information that was held by NHS Digital was not held by NHS England.
19. The search tool referred to by the complainant that allows members of the public to find live A&E services within England is not from NHS England's website. When the request was received the website was hosted by NHS Digital and this was prior to the merger. NHS England therefore states that any information contained within that website was not held or uploaded by NHS England so there is no reason to consider NHS England would hold a list from 2010.
20. However, NHS England did conduct searches within relevant departments most likely to hold information in scope of the request. NHS England has listed these departments in its response and these included teams with varied responsibilities and across all regions, all of which confirmed no information was held.
21. NHS England, following the Commissioner's intervention, did conduct additional searches to establish if the information was held in the new NHS England following the legal merger with NHS Digital.
22. It made enquiries with teams dealing with urgent care delivery and with organisational data teams – both confirming no information was held. It also approached NHS England's legacy teams and the department that currently manages the nhs.uk website in the newly merged organisation and were advised historic data from 2010 is not held.
23. NHS England has pointed out to the Commissioner that it has only existed since 2013 so it is highly unlikely it would hold information dating from 2010.
24. Having considered the explanations given by NHS England the Commissioner is of the view that, on the balance of probabilities, NHS England does not hold the 2010 archived data that has been requested. The searches conducted by NHS England have been appropriate and have been targeted at department likely to hold information if it was held.
25. As NHS England has pointed out, it did not exist in 2010 as a legal organisation. Whilst it did inherit some 'legacy' information when it was formed there is nothing to suggest the information that has been requested here would have been included. NHS England had already suggested to the complainant the information would be more likely to be held by individual NHS Trusts rather than centrally by NHS England given its role is in commissioning services and the Commissioner agrees this is the more likely route to obtain the information.

26. It is noted the complainant seeks this information to demonstrate how many A&E departments there used to be compared to how many there are now so as to be able to see if any have been 'downgraded' to provide lesser services. The Commissioner appreciates there may be public interest in this but in light of the explanations provided by NHS England he has concluded the 2010 information is not held. As such NHS England cannot provide information on whether A&E departments have been downgraded or closed since 2010 and therefore cannot also provide the proceeding information in the request.
27. The Commissioner is satisfied NHS England has complied with its obligations under section 1 of FOIA.

Right of appeal

28. 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

29. 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.

30. 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

Jill Hulley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF