

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 December 2015

Public Authority: NHS England
Address: PO Box 16738
Redditch
B97 9PT

Decision (including any steps ordered)

1. The complainant has requested details relating to the decision to close a certain primary care support service and the subsequent transfer of medical records. NHS England did not respond to the request within the twenty working days prescribed in section 10 of the FOIA.
2. The Commissioner's decision is that NHS England has breached section 10 of the FOIA.
3. However, as ultimately NHS England did provide a response, it is not required to take any further action in respect of this complaint.

Request and response

4. On 12 August 2015, the complainant wrote to NHS England and requested information in the following terms:

"I write to request the following information:

1. The date when the decision was made to close the South London Primary Care Support Services based at/on First Floor, Cantilever House, Eltham Road, London SE12 8RN
2. The date when staff based at Cantilever House were first informed the office was to close?

3. The address and contact details for where my NHS GP medical records – or rather what appears to actually be left of the – are now being held / stored?
4. The date when whomever (see No3 above) took over responsibility for holding / storing my NHS GP medical records – or rather what appears to actually be left of them?”
5. NHS England contacted the complainant on 25 September 2015 acknowledging receipt of the request and apologising for its delay responding. It said that it would seek to prioritise his request.

Scope of the case

6. The complainant contacted the Commissioner on 3 November 2015 to complain that as yet he had not received any further response to his request.
7. During the course of the Commissioner’s investigation NHS England provided the Commissioner with a copy of letter dated 6th October 2015 which it had sent the complainant in response to the request. However it became apparent that the complainant had never received that letter. Therefore NHS England sent the response again on 2 December 2015. The complainant has confirmed that he received that response.
8. The Commissioner considers that the matter to be decided is whether NHS England provided a response within the time frame specified in section 10 of the FOIA.

Reasons for decision

Section 10 – time for compliance

9. Section 10 of FOIA states that a public authority must comply with a request promptly and in any event not later than the twentieth working following the date of receipt.
10. The request, which was sent via ‘Royal Mail Signed For’, was dated 12 September 2015. It was received by NHS England on 14 August 2015. Allowing for the August Bank Holiday, this means that the twentieth working following receipt of the request would have been 14 September 2015.

11. Although NHS England did not furnish the Commissioner with proof that its response was sent to the complainant on or around the 6 October 2015 he does not dispute such a response was sent. However the Commissioner equally accepts that the complainant never received that response. Ultimately the complainant did receive the response when it was re-sent in December 2015.
12. The Commissioner is satisfied that by failing to respond to the request until the 6 October 2015 at the earliest, NHS England breached section 10 of the FOIA.
13. As the complainant has now received a response the Commissioner does not require NHS England to take any further action in respect of this complaint. However this record of the public authority's late compliance will form part of the Commissioner's on-going activity to consider the performance of public authorities.

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.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

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