

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 20 June 2016

**Public Authority:** NHS Commissioning Board (NHS England)

**Address:** 4N22 Quarry House  
Quarry Hill  
Leeds  
LS2 7UE

#### **Decision (including any steps ordered)**

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1. The complainant has requested all papers in relation to the recent NHS England decision not to fund Deep Brain Stimulation (DBS) for Refractory Epilepsy as a specialised service. NHS England has failed to respond to this request for information.
2. The Commissioner considers that NHS England breached section 10(1) FOIA in the handling of this request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - NHS England must provide the complainant with a response to this request in accordance with its obligations under FOIA.
4. The public authority 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 Act and may be dealt with as a contempt of court.

#### **Request and response**

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5. On 3 July 2015 the complainant made the following request to NHS England:

"Any and all papers in relation to the recent NHS England decision not to fund Deep Brain Stimulation (DBS) for Refractory Epilepsy as a specialised service. Including, but not limited to:

1. Any advice or reports or papers submitted to CPAG
2. Any clinical panel advice in relation to DBS for Refractory Epilepsy
3. Any decision logs relating to DBS for Refractory Epilepsy
4. Any minutes of CPAG meetings relating to the decision
5. Any cost benefit analysis undertaken
6. Any consultation responses received in relation to this
7. Any advice or reports or papers submitted to the NHS England committee that took the decision – this may be the Specialised Commissioning Committee or Specialised Commissioning Oversight Group or other committee, papers from any and all such committees are requested
8. Any minutes of the NHS England committee that took the decision - this may be the Specialised Commissioning Committee or Specialised Commissioning Oversight Group or other committee, papers from any and all such committees are requested"

6. NHS England has not provided a substantive response to this request.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 23 May 2016 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether NHS England dealt with this request in accordance with its obligations under section 10(1) FOIA.

### **Reasons for decision**

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9. Section 10(1) provides that:

*"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."*

10. Section 1(1) provides 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.”*

11. The request was made on 3 July 2015 and a substantive response is yet to be provided. The Commissioner therefore finds that NHS England breached section 10(1) in failing to respond within 20 working days.

## Right of appeal

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12. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

13. 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.
14. 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 .....**

**Gemma Garvey**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**