

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 October 2021

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 relating to the spend data above £25,000 between 1 April 2020 and 28 February 2021.
2. The Commissioner's decision is that The NHS Commissioning Board ("NHS England") failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner requires NHS England to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the FOIA, to the request.
4. NHS England 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 26 March 2021, the complainant wrote to NHS England and requested information in the following terms:

"Dear NHSE FOI officer,

Please can you answer the following FOI request:

1 - NHSE is required to regularly publish spend data above £25,000, however this information has not been published since March 2020. Therefore, please can you provide me with a copy of the spend data covering the period of 1st April 2020 to 28 February 2021.

For reference, here is a link to the NHSE transparency page which shows the latest available data covers the period up to the end of March 2020 <https://www.england.nhs.uk/publication/payments-over-25k-reports-2020/>

I look forward to receiving your response within 20 working days."

6. NHS England received the request on 26 March 2021 but had failed to provide a substantive response by the date of this notice.

Scope of the case

7. The complainant contacted the Commissioner on 16 June 2021 to complain about the failure, by NHS England, to respond to the request.
8. In line with her usual practice, the Commissioner contacted NHS England on 27 September 2021 to highlight the outstanding response. She requested that NHS England respond to the request within 10 working days. The correspondence was neither acknowledged nor responded to.
9. The complainant contacted the Commissioner on 19 October 2021 to request a decision notice considering NHS England's compliance with the FOIA.
10. The scope of this notice and the following analysis is to consider whether NHS England has complied with section 10 of the FOIA.

Reasons for decision

11. 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.*

12. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"

13. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, NHS England has breached section 10 of 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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