

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2022

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

Decision

1. The complainant made a request to NHS England for information relating to the use of NHS facilities for any private practice.
2. The Commissioner's decision is that, on the balance of probabilities, NHS England holds no further recorded information relevant to the complainant's request and has complied with section 1(1) of FOIA.
3. However, the Commissioner has recorded a procedural breach of section 10(1) (time for compliance) of FOIA.
4. The Commissioner does not require NHS England to take any steps as a result of this decision notice.

Request and response

5. The complainant made the following information request to NHS England on 16 July 2021:
 - a) "Are GPs employed under an NHS contract and whom work only three days per week and not available to patients at weekends entitled to 'full-time' pay under the provisions of NHS contracts via CCGs? Or is their public funding reduced proportionately when they work only part-time as local GPs and paid relative only to hours actually devoted to their NHS contracts?"
 - b) Are GPs currently funded from public taxation allowed to use NHS facilities for any private practice they may choose to conduct outside of their NHS contractual responsibilities (hospitals, et cetera) and, thus, add to public waiting times for NHS services?

- c) Does the standard NHS contract for GPs in the UK stipulate a minimum number of hours to be worked in order to qualify for 'full-time' pay from public funds? If so, what is the stipulation?"
6. NHS England's final position in relation to parts a) and c) of the request was:

"GPs are independent contractors to the NHS. They are paid on the basis of delivering services under a contract, largely dependent on how many patients they have on their list. What an individual GP is paid is determined by the GP practice itself, not by the NHS. The contract does not stipulate how many hours an individual GP must work; again, this is for the practice to decide."

7. NHS England's final position in relation to part b) of the request was:

"... that under the terms of their contract, GP practices must not allow private GP services to be delivered from their NHS premises. If they do this, the commissioner may take action against them for breach of contract. They may however, offer private services which are not available on the NHS to patients outside of normal surgery hours, which would not add to public waiting times for appointments."

8. NHS England also confirmed:

"... guidance related to private services has been published on our website: GP Contract documentation 2021/22 under Standard General Medical Services Contract under part 7.14.

Given that you have stated you are computer illiterate, we reproduced the relevant section below for your reference:

7.14 Private services

7.14.1. Where the Contractor proposes to provide private services in addition to primary medical services, to persons other than its patients the provision must take place:

- (a) outside of the hours the Contractor has agreed to provide primary medical services; and
- (b) on no part of any practice premises in respect of which the Board makes any payments pursuant to the National Health Service (General Medical Services - Premises Costs) Directions 2013 save where the private services are those specified in clause 19.1.2B.

NHS England does not hold any further information in relation to this question.

Please note that the FOI Act applies to recorded information held by a public authority at the time of a request, we are not obliged to create new information under the law to answer requests considered under this legislation.”

9. The complainant remains of the view that NHS England has not responded to part b) of their request.

Reasons for decision

10. This reasoning covers whether NHS England has complied with section 1 of FOIA.
11. Under section 1(1) of FOIA, anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
12. As NHS England has pointed out to the complainant, FOIA concerns recorded information only. It does not require a public authority to answer general questions, provide opinions or explanations.
13. The Commissioner has reviewed part b) of the complainant's request and notes that, for the most part, it is framed as a general question rather than a request for specific pieces of recorded information.
14. NHS England advised the complainant that it holds information falling within the scope of part b) of the request and has provided the information held to the complainant. NHS England has confirmed that it does not hold any further information in relation to this question. The Commissioner sees no reason to doubt NHS England's explanation. The complainant has not provided any evidence or reasoning that would indicate that NHS England holds further relevant information.
15. Having considered all the circumstances, the Commissioner therefore accepts NHS England's position that it does not hold any further recorded information that would address part b) of the complainant's request. As such, the Commissioner has decided that NHS England has complied with section 1(1) of FOIA.

Procedural matters

Sections 10

16. Section 10(1) of FOIA says that a public authority should comply with section 1(1) promptly and by no later than the twentieth working day following the date of receipt.
17. The request was made on 16 July 2021. NHS England provided the response detailed in paragraph 7 to the complainant on 16 May 2022, and the response detailed in paragraph 8 was provided to the complainant on 9 June 2022. This is clearly outside the required 20 working days stipulated in section 10 of FOIA.
18. In this case, the total time taken by NHS England to confirm that it held information falling within the scope of part b) of the request and provide the complainant with the information exceeded 20 working days. The Commissioner therefore considers NHS England to have breached section 10(1) of FOIA in this case.

Other matters

Internal review request

19. The Commissioner notes that the time taken for NHS England to respond to the internal review request exceeded 40 working days. Although there is no statutory time limit set out in FOIA within which public authorities must complete a review, the Commissioner takes the view that a reasonable time for completing an internal review is 20 working days from the date of the request for review, and in no case should the total time taken exceed 40 working days. The Commissioner therefore recommends that the Trust review the Section 45 code of practice¹.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

20. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

21. 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.
22. 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

Pamela Clements
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