

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 February 2022

Public Authority: NHS Improvement
Address: Skipton House
80 London Road
London
SE1 6LH

Decision (including any steps ordered)

1. The complainant requested information from NHS Improvement (NHSI) relating to the publication of meeting minutes. By the date of this notice NHSI had not issued a substantive response to this request.
2. The Commissioner's decision is that NHSI has breached section 10(1) of the FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires NHSI to take the following step to ensure compliance with the legislation.
 - NHSI must provide a substantive response to the request in accordance with its obligations under the FOIA.
4. NHSI must take this step 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

5. On 7 December 2021, the complainant wrote to NHSI and requested information in the following terms:

“This request is in two parts:

Part 1

On 6.1.10 at or around 17:11, at the end of a series of emails which NHS England knows well, [name redacted] (Monitor’s Director of Legal Services) wrote to [name redacted] (Monitor’s Board Secretary) with copies to [name redacted] (Monitor Assessment Director) and someone in the Monitor Communications Department who was probably [name redacted] or possibly [name redacted]. The letter was to inform [names redacted] that she [name redacted] had directed the Communications Department to surreptitiously replace the online published minutes of the Monitor Board Meeting of 27.5.09 with her [name redacted] newly edited version in order to hide from the public the reasons why University Hospitals of Morecambe Bay NHS Trust (UHMB) had failed at the last moment to be authorised by Monitor as a Foundation Trust as expected on 1.6.09. No record was placed online to indicate that the minutes had been edited 6 months after publication, but I detected that this had been done and began the process of finding out how the editing had been contrived. This part of the request is for the full unredacted version of this letter in electronic (not paper) form.

Part 2

The enclosed file [file name redacted] contains the redacted versions of email letters between the two organisations, and this part of the request is for legible electronic versions of the full unredacted letters and for the name of the Chief Executive referred to in the 11.6.19 letter who is responsible for the letters from NHSE to ICO dated 17.6.19. This request includes a repeat request for the information requested in Part 1.

The additional enclosed file is for the benefit of The Information Tribunal which is where I anticipate, on the basis of past experience, the case will transfer. The file shows the result of all the secrecy around the first steps in the cover-up of the UHMB failings which led to the disastrous authorisation of 1.10.10, the first of the 3 (or 4) periods of ‘Special Measures’ which began in October 2011 and the spiralling UHMB debt which is admitted to be over £200 million”

6. Whilst NHSI has not acknowledged this request, the complainant has provided evidence which shows that the request was sent to the NHSI's published email address. Therefore, the Commissioner has assumed that the request was received by NHSI.
7. By the date of this notice, NHSI has not provided the complainant with a substantive response to their request.

Scope of the case

8. The complainant contacted the Commissioner on 9 January 2022 to complain about NHSI's failure to respond to their request.
9. The Commissioner has considered whether NHSI has complied with its obligations in relation to the time for compliance at section 10(1) of the FOIA.

Reasons for decision

10. 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."

11. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".
12. On 20 January 2022 the Commissioner wrote to NHSI, reminding it of its responsibilities and asking it to provide a substantive response to the complainant's request within 10 working days.
13. Despite this intervention, NHSI has failed to respond to the complainant.
14. From the evidence provided to the Commissioner in this case, it is clear that NHSI did not deal with the request for information in accordance with the FOIA. The Commissioner finds that NHSI has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the FOIA.

Right of appeal

15. 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

16. 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.
17. 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
Team Manager
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Wycliffe House
Water Lane
Wilmslow
Cheshire
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