

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 March 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 a review by the Kings Fund commissioned by NHSI. 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 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 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 26 January 2022, the complainant wrote to NHSI and requested information in the following terms:

"FOI request Kings Fund external review and leadership issues at HSIB

With reference to reports in the last week by the Health Service Journal and The Independent about serious issues of culture, racism and bullying at HSIB that were reported in an external review by the Kings Fund, please disclose:

1. When was this external review by the Kings Fund commissioned?
2. Who in NHS England/ NHS Improvement commissioned this external review?
3. Why was the external review commissioned? What were the trigger/triggers?
4. Did any HSIB staff make protected disclosures about any matters, events, acts or omissions at HSIB?

If so,

- i) If NHSE/ NHSI's holds the data, how many HSIB staff made such disclosures
 - ii) If NHSE/ NHSI's holds the data, how many disclosures were made
 - iii) If NHSE/ NHSI's holds the data, over what period were the disclosures made?
 - iv) If NHSE/ NHSI's holds the data, broadly what did the disclosures concern?
5. Please share the correspondence between the Kings Fund and NHSE/ NHSI that related to the commissioning of the external review from the Kings Fund and to the production of the review report
6. Please disclose a copy of the above mentioned external review report on HSIB by the Kings Fund."

6. NHSI acknowledged the request on 27 January 2022. To date, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 24 February 2022 to complain about the failure by NHSI to respond to their request.
8. 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

9. 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."
10. 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."
11. On 2 March 2022 the Commissioner wrote to NHSI, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
12. Despite this intervention NHSI has failed to respond to the complainant.
13. 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 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 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: 0300 1234504

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
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF