

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 June 2023

Public Authority: NHS England
Address: Quarry House
Quarry Hill
Leeds
LS2 7UE

Decision (including any steps ordered)

1. The complainant requested information relating to any conclusions of a National Medical Examiner's Office report, as well as correspondence between specific individuals and other recorded statistics. By the date of this notice NHS England (NHSE) had not issued a substantive response to this request.
2. The Commissioner's decision is that NHSE 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 NHSE to take the following step to ensure compliance with the legislation.
 - NHSE must provide a substantive response to the request in accordance with its obligations under FOIA.
4. NHSE 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 22 November 2022, the complainant wrote to NHSE and requested information in the following terms:

"The following request is made under the Freedom of information Act. It pertains to the independent process established in July 2020 for medical examiners to scrutinise the deaths of health service and adult social care staff who died after contracting COVID-19. This was concluded in April 2022 – according to the report by the national medical examiners annual report: <https://www.england.nhs.uk/wp-content/uploads/2021/04/B1580-national-medical-examiner-report-for-2021.pdf>

I would like to request the following information. **Unless otherwise stated the time frame for this request is from 1 July 2020 up to the present day**

- 1) Any summary or report of this review and its findings by the National Medical Examiner's Office
- 2) Following conclusion of the programme, all communications **from April 2022 until the present day** regarding this review **between** [NAME REDACTED] (National Medical Examiner), **and/or** [NAME REDACTED] (Policy and Programme lead) **and individuals and board members at NHS England and NHS Improvement (now NHSEI) named below.** Given the organisational changes over this time and recent abolition of NHSI, this request applies to named individuals in roles across both organisations. I would also like to remind you of the recent updated guidance from the ICO on official communications held in non-corporate communication channels which can be found here <https://ico.org.uk/for-organisations/foi-and-eir-guidance/official-information-held-in-non-corporate-communications-channels/> Please read my FOI request in this context – I would like all communications covered in the scope of my request across any and all messaging platforms between the named individuals on this topic.
[NAMES REDACTED]
- 3) In relation to the deaths of health and social care workers examined by medical examiners, please provide (i) the total number of deaths reviewed and (ii) the number of deaths where the reviewing medical examiner considered there was reason to suspect the death was a result of the person being exposed to

COVID-19 at work, and where the employer and/or coroners were to be notified.

- 4) In relation to the deaths outlined in point (3) please provide the number of cases for which employers were asked to consider whether this would give rise to an obligation under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) to report the death to the Health and Safety Executive
- 5) If a national report or summary of this review programme has not yet been produced by the National Medical Examiner's office, please provide all separate accounts by RMEs of the reviews undertaken in their region under this programme and which were reported in any way to the NME's office.

If you are encountering practical difficulties with complying with this request, please can you contact me as soon as possible so that we can discuss the matter and if necessary I can modify the request.

If you are able to supply some of this information more quickly than other items, please could you supply each item when you can rather than delay everything until it is all available.

If it is necessary for any reason to redact any information, please can you redact the minimum necessary and send me the rest of the material, explaining the legal grounds for each redaction."

6. NHSE acknowledged the request on 30 November 2022. To date, a substantive response has not been issued.

Reasons for decision

7. Section 1(1) of 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."

8. Section 10(1) of 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".
9. On 18 January 2023 the Commissioner wrote to NHSE, reminding it of its responsibilities and asking it to provide a substantive response to the complainant's request within 10 working days.
10. Despite this intervention, as well as repeated correspondence to confirm that a substantive response was on its way, NHSE has failed to respond to the complainant.
11. From the evidence provided to the Commissioner in this case, it is clear that NHSE did not deal with the request for information in accordance with FOIA. The Commissioner finds that NHSE 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

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: 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

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