

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 August 2013

Public Authority: NHS Commissioning Board

Address: Southside
105 Victoria Street
London
SW1E 6QT

Decision (including any steps ordered)

1. The complainant has requested from NHS Norfolk Primary Care Trust ("NHS Norfolk") copies of Board minutes and consultation response papers in relation to plans to build a waste incinerator near King's Lynn. It provided her with some information falling within the scope of the request.
2. The Commissioner's decision is that NHS Norfolk did not respond to the complainant's request within the statutory timeframe of 20 working days and so it breached section 10(1) of FOIA.
3. At the time of the request and at the time that the complaint was made to the Commissioner, the responsible public authority was NHS Norfolk, a Primary Care Trust. However, from 1 April 2013, NHS Norfolk was disbanded and its functions taken over by the NHS Commissioning Board. Therefore for the purposes of this decision notice the public authority is the NHS Commissioning Board. However for the sake of clarity this decision notice refers to NHS Norfolk as if it were the public authority.

Request and response

4. On 29 November 2012, the complainant wrote to NHS Norfolk and requested information in the following terms:

"The approved Minutes of the NHS Norfolk Board Meeting of September 28th 2011 states:

"She confirmed that Board members had discussed the process for consideration and response to the application, the evidence base in relation to health implications of incinerators and any specific implications for the health and well-being of the local King's Lynn population at an earlier series of Executive and Non-Executive meetings. She also noted that the consultation response papers from NHS Norfolk were approved by Board members before submission to the relevant authorities."

Please would you supply me with the Minutes of the above mentioned Executive and Non-Executive meetings to which the above paragraph refers, the Minutes of the meetings at which the Board made its approval, together with copies of those consultation response papers also mentioned above."

5. On 14 March 2013, following the intervention of the Commissioner, NHS Norfolk provided the complainant with a response. It provided extracts from the minutes of the Board meetings that had been requested. Subsequently, on 28 March 2013, it provided the complainant with full copies of the relevant minutes of the Board meetings and copies of consultation responses.
6. In light of the delays in NHS Norfolk providing a response and that it was to be abolished on 31 March 2013, the Commissioner did not require the complainant to request an internal review before investigating the complaint.

Scope of the case

7. The complainant contacted the Commissioner 19 February 2013 to complain about the way her request for information had been handled. Her initial complaint concerned the failure of NHS Norfolk to provide a response to her. She was also subsequently dissatisfied with the response that she received in that she did not believe that had been provided with all of the information that was held by NHS Norfolk that fell within the scope of her request.
8. The decision notice concentrates on whether NHS Norfolk responded to the complainant within the statutory timeframe. The complainant subsequently decided to pursue the disclosure of information that she was seeking through Norfolk County Council which took over some of NHS Norfolk's public health responsibilities and dealt with planning matters related to the waste incinerator.

9. The Commissioner considered whether NHS Norfolk had responded to the complainant within the timeframe required by the Act.

Reasons for decision

Section 10 – Time for compliance with the request

10. The complainant made her request to NHS Norfolk on 29 November 2012. NHS Norfolk confirmed receipt of the request on 30 November 2012. Having received no response to her request, the complainant sent emails to NHS Norfolk on 13 and 14 January and 11 February 2013 pointing out that she had still not received a response to her request. On 13 February 2013, the complainant was informed that a request was in hand.
11. On 14 March 2013, following the intervention of the Commissioner, NHS Norfolk provided the complainant with a response. It provided extracts from the minutes of the Board meetings that had been requested. Subsequently, on 28 March 2013, it provided the complainant with full copies of the relevant minutes of the Board meetings and copies of some documents.
12. Section 1 of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to him. Section 10(1) of FOIA provides that this must be done within 20 working days of receiving a request.
13. NHS Norfolk did not therefore responded to the complainant's request within the statutory time frame and so it breached section 10(1) of FOIA.

Other matters

14. The complainant's request concerned minutes of meetings of NHS Norfolk's Board and its submissions to Norfolk County Council as part of the planning application process for the proposed incinerator near King's Lynn. These discussions and submissions concerned the health implications for the local population of the development of the incinerator. NHS Norfolk concluded that it did not expect there to be any adverse health effects as a result of its operation. The complainant wished to see the basis on which NHS Norfolk had reached these conclusions as they were clearly likely to be of significance in terms of any decision regarding the planning application for the incinerator.

15. At the time that the complainant made her request, the Department for Communities and Local Government had decided to set up a public planning inquiry into the proposed development. This commenced in February 2013 and concluded in May 2013. In addition to the parties already involved, it gave members of the public an opportunity to comment on the proposals. The complainant made her request in order to assist her in making submissions to the planning inquiry.
16. The complainant made her request on 29 November 2013 but did not receive any form of response until 14 March 2013, some three and a half months later, despite her repeated attempts to obtain a response. No explanation was offered to the complainant as to why it took so long to respond to what appears to be a relatively straightforward request for information.
17. The response that the complainant received on 14 March 2013, provided her with extracts of the Boards minutes that she had requested but not full copies. She was not provided with full copies until 28 March 2013. Added to this, she informed the Commissioner that, whilst she had received some documents, she did not believe that she had received all of the consultation responses that she had requested.
18. The complainant believes that she was only provided with extracts of the Board minutes to conceal the fact that some key members of staff at NHS Norfolk were absent from one of the meetings at which important issues related to the proposals were discussed. She is of the view that NHS Norfolk attempted to conceal the truth from her and that they were deliberately obstructive in providing a delayed and incomplete response to her request in order to adversely affect the evidence that could be presented to the planning inquiry.
19. The Commissioner notes the extremely lengthy delays in NHS Norfolk's response, the absence of any explanation to the complainant for those delays and the incomplete information provided in responses that she eventually received. He also notes that during this time interested parties were preparing and presenting evidence to a very high profile planning inquiry on the issues about which the complainant had made her request. Given these circumstances, it is very understandable that the complainant has formed the view that she has.
20. Whilst the Commissioner is not in a position to form a definite view on the above, he does note that had NHS Norfolk provided the complainant with a timely response and disclosed, within the statutory timeframe, the information that was eventually provided to her, it is likely that this would have prevented the suspicions that the complainant now holds from arising. Clearly, significant failures by public authorities to respond to requests in the time required by the legislation, as occurred in this

case, can obviously lead to a reduction in members of the public's confidence in the transparency and accountability that the Act is intended to promote.

Right of appeal

21. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

22. 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.
23. 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

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