

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 August 2013

Public Authority: NHS Commissioning Board
Address: Southside
105 Victoria Street
London
SW1E 6QT

Decision (including any steps)

1. The complainant has requested information about the suspension of children's heart surgery at the Leeds General Infirmary; to date he has not received a substantive response. The Information Commissioner's decision is that the public authority has failed to provide a response to the request within the statutory time frame of 20 working days. He requires it to issue a response in accordance with FOIA.
2. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Information 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

3. On 17 April 2013, the complainant wrote to the public authority and requested information in the following terms:

'I am making a request under the Freedom of Information Act with regard to recent events regarding Children's Heart Surgery at the Leeds General Infirmary.

I would like copies of all correspondence (email, letter, text message or noted conversations) between Sir Bruce Keogh and Professor Sir Roger Boyle between 20th March 2013 and 17th April 2013 that are connected in any way to events surrounding the suspension of children's heart surgery in Leeds or the wider Safe & Sustainable review.

If you are encountering practical difficulties with complying with this request, please contact me (in line with your section 16 duty to advise and assist requesters) so that we can discuss the matter and if necessary I can modify the request.'

4. The public authority acknowledged the response and sent updates to the complainant but did not issue a response.
5. The complainant wrote to the Information Commissioner on 3 June 2013.
6. The Information Commissioner wrote to the public authority on 14 June 2013 asking that it issue a response to the complainant. NHS England sent updates to the Commissioner on 3, 19 and 26 July 2013. On 2 August 2013 NHS England said that they 'hope to be in a position to provide the final responses and information to be disclosed on or before 16 August 2013.' To date no such response has been forthcoming.

Reasons for decision

7. Section 10(1) of the FOIA states that on receipt of a request for information a public authority should respond to the applicant within 20 working days.
8. From the information provided to the Information Commissioner in this case it is evident that the public authority did not respond to the complainant within the statutory time frame and so it is in breach of section 10(1) of the FOIA.

Right of appeal

9. 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

10. 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.
11. 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
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF