

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 15 June 2016

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

#### **Decision (including any steps ordered)**

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1. The complainant made a request to NHS England for information about disruption to the NHS 111 telephone service. NHS England failed to respond to the request.
2. The Commissioner's decision is that NHS England has breached section 10(1) of FOIA by failing to respond to the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - NHS England shall disclose the requested information to the complainant or else issue a refusal notice in accordance with section 17 of FOIA.
4. 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 Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

#### **Request and response**

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5. On 20 March 2016 the complainant made a freedom of information request to NHS England which read as follows:

*On 22nd November 2014 there was a serious disruption to the NHS 111 telephone service.*

*I would like:*

- confirmation that an internal or external enquiry took place into that disruption*
- a copy of the report into that enquiry, including confirmation that any actions recommended have taken place.*

*I am happy to receive all information by email.*

6. NHS England acknowledged receipt of the request the following day.
7. On 19 April 2016 NHS England contacted the complainant again to say that it was yet not in a position to respond to the request in full. It explained that it was still in the process of assessing the request and it hoped to provide a full response as soon as possible.
8. On 7 May 2016 the complainant contacted NHS England, complaining that it had failed to meet the legal requirements of FOIA and its own published commitments on how it would respond to requests for information. The complainant asked it to complete an internal review.
9. NHS England subsequently completed an internal review and presented its findings on 11 May 2016. Its review acknowledged that its response was significantly beyond the statutory deadline and it apologised for the delay. It also said that it was unable to provide an estimate of when it would be in a position to respond.

## **Scope of the case**

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10. On 11 May 2016 the complainant contacted the Commissioner to complain that NHS England had failed to respond to his request, had not given him regular updates and had failed to inform him when it would respond. He also complained that it had not conducted a proper internal review and had not informed him of his right to request an internal review when acknowledging his request.
11. The Commissioner's investigation is limited to considering the delay in responding to the request. There is no requirement under FOIA to provide regular updates and internal reviews are dealt with under the non-statutory section 45 Code of Practice. Whilst public authorities are

obliged to inform applicants of any procedure they may have for dealing with complaints about their handling of information requests, this only applies once the public authority has refused the request in accordance with section 17 of FOIA. In this case NHS England has not refused the request – it has not responded at all.

12. After receiving the complaint the Commissioner contacted NHS England to remind it of its obligations under FOIA and to give it a final opportunity to respond to the complainant. To date NHS England has still not responded to the request.

## **Reasons for decision**

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### **Section 10 – Time for compliance with request**

13. Section 10(1) of FOIA provides that a public authority must respond to a request promptly and in any event within 20 working days.
14. The complainant made his request for information to NHS England on 20 March 2016 but has failed to receive a response. NHS England has clearly exceeded the 20 working day limit and therefore the Commissioner has found that it breached section 10(1) in its handling of the request.

## Right of appeal

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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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

**Paul Warbrick**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**