

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 31 August 2017

**Public Authority:** NHS Commissioning Board (NHS England)  
**Address:** 4N22 Quarry House  
Quarry Hill  
Leeds  
LS2 7UE

### Decision (including any steps ordered)

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1. The complainant has requested information relating to the Children's Epilepsy Surgery Service (CESS) in England. NHS England has failed to respond to this request.
2. The Commissioner considers that NHS England breached section 10(1) FOIA in the handling of this request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - NHS England must provide the complainant with a response to this request in accordance with its obligations under 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 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 4 May 2017 the complainant made the following request to NHS England:

"We write using the FOI prerogative for all information (written/email/telephone) relating to the CESS Services in England with special reference to the following:

## **1. Process**

- a) All information relating to the initial procurement process including (but not limited to):
  - i) All the bids received
  - ii) Any telephone advice given (or advice given in any other format) to the various units applying.
  - iii) All material available regarding timing of submissions and of timings in relation to any advice given.
  - iv) Information on how the bids were marked in the initial phase and assessments of units made at this stage - and by whom this was undertaken.
  - v) Access to the reports and marks awarded in the formal on-site assessment phase. With information on who was involved in this process and what their role was.
  - vi) Specific information on how Kings College Hospital entered the procurement process with an independent bid and came out of the process as part of the GOSH bid
- b) Minutes from all the CESS Advisory Board meetings - and any meetings on paediatric epilepsy surgery held by NHS England (in any capacity) prior to the setting up of the CESS Board (including meetings at which the case of need for such a service was discussed and how best to go about achieving this goal).
- c) Who devised the questions used in the consultation process and what was done to ensure that patients/families were aware of the process?
- d) All information on the cost of the procurement phase and of the second phase to only allow epilepsy surgery on children under 19 in England at a CESS Centre. This should include salary and payments to advisors to the process and all costs associated in the on-site assessment phase.
- e) A breakdown of all the CESS annual costs - both administrative and clinically by CESS Unit
- f) Information on any appeals process against the decision to concentrate all paediatric epilepsy surgery within the CESS centres

## **2. Clinical Outcomes**

- a) Minutes of all CESS clinical meetings (with patient details redacted)
- b) Engels or ILEA outcomes (1y and 2y) for all patients by pathology and also by surgical approach and by age (<2; 2-6 and 7-19)

- c) Mortality and morbidity associated with surgery and by type of surgery
- d) 30day readmission rate
- e) Length of Stay for all cases
- f) For those patients having invasive monitoring - conversion rate to resective surgery
- g) All the above by CESS unit and by surgeon or at least by hospital

### **3. Future**

- a) Mechanisms/process for application to become a CESS centre
  - b) How CESS centres will be monitored and the performance indicators used to determine if a centre is failing."
6. NHS England has not to date responded to this request.

### **Scope of the case**

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- 7. The complainant contacted the Commissioner on 18 July 2017 to complain about the way her request for information had been handled.
- 8. The Commissioner has considered whether NHS England dealt with this request in accordance with its obligations under section 10(1) FOIA.

### **Reasons for decision**

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9. Section 10(1) provides that:

*"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."*

10. Section 1(1) provides 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."*

11. The request was made on 4 May 2017 and a response has not to date been provided. The Commissioner therefore finds that NHS England breached section 10(1) of the FOIA by failing to respond to the request within 20 working days.

## Right of appeal

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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: 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)

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 .....**

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