

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 November 2020

Public Authority: The NHS Commissioning Board (NHS England)

Address: Quarry House
Quarry Hill
Leeds
LS2 7UE

Decision (including any steps ordered)

1. The complainant requested from the NHS Commissioning Board (NHS England) information regarding the orthodontic procurement process run by NHS England.
2. The Commissioner's decision is that NHS England has failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner requires NHS England to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response to the request in accordance with its obligations under the FOIA.
4. NHS England 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

5. On 23 December 2019 the complainant wrote to NHS England and requested information in the following terms:

"Under the Freedom of Information Act I would like to request the following information regarding the orthodontic procurement process run by NHS England

These questions relate to the recent NHS England orthodontic procurement (PDPS/DPS) process up to 24 December 2019.

1. Please provide the total amount spent in running the orthodontic procurement process, please could the following be provided:

- a. The cost of the procurement process for NHS England South,*
- b. The cost of the procurement process for NHS England London*
- c. The cost of the procurement process for NHS England North for the successfully awarded lots*
- d. The cost of the procurement for the postponed lots - Lot 3 (Cheshire East, South) & Lot 4 (Cheshire East, East) NHS England North.*
- e. The cost of the procurement process for NHS Midlands and East.*

2. The total amount paid to Proactis to run the orthodontic procurement via DPS or PDPS in the four NHS regions (North Midlands and East, London and South).

3. Please provide the amount paid to NHS Arden and Gem to run the orthodontic procurement process in NHS Midlands and East.

4. For the orthodontic procurement process which was run and abandoned by NHS England Midlands and East in December 2019, please could the following be provided:

a. all copies of legal challenges relating to the orthodontic procurement

5. For the orthodontic procurement which was run and abandoned by NHS England North, please could the following be provided:

- a. all copies of legal challenges relating to the orthodontic procurement regarding Lot 3 (Cheshire East, South) & Lot 4 (Cheshire East, East)*
 - 6. In relation to the abandoned orthodontic procurement process in the NHS Midlands and East, please provide copies of:*
 - a. any instructions received or sent by NHS Midlands and East to abandon the orthodontic procurement process.*
 - b. any instructions/supporting documents or minutes of meetings where the abandonment of the orthodontic procurement in the NHS Midlands and East region was discussed at a local, regional or national NHS England level."*
6. NHS England wrote to the complainant on 7 January 2020 to acknowledge this request.
7. As the complainant had not received a response to her request, she wrote to NHS England again on 7 February 2020 and 4 March 2020.
8. The complainant also resent her request to NHS England on 3 June 2020.

Scope of the case

9. The complainant contacted the Commissioner on 12 March 2020 to complain about NHS England's failure to respond to her request.
10. The Commissioner contacted NHS England on 8 October 2020 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
11. The Commissioner also contacted the complainant on 8 October 2020 to explain that NHS England had been given 10 working days from 8 October 2020 within which to provide a response to their request.
12. The Commissioner contacted NHS England by telephone on 22 October 2020 as she has not received any acknowledgement or response to her correspondence. NHS England confirmed that it was unable to provide a response to this request within the specified ten working day deadline however it confirmed that it was working on its response to this request.
13. The complainant has provided evidence that she has received an acknowledgement from NHS England but, by the date of this notice, had not received a substantive response to her information request.

14. The scope of this notice and the following analysis is to consider whether NHS England has complied with section 10 of the FOIA.

Reasons for decision

15. Section 10 of the 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.*
16. The Commissioner considers that the request in question fulfilled the above criteria and therefore constituted a valid request for recorded information under the FOIA.
17. Section 10 of the FOIA states that responses to requests made under the Act must be provided, "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
18. NHS England did not provide a substantive response to the request within 20 working days of receipt. Therefore, the Commissioner's decision is that NHS England has breached section 10 of the FOIA.

Right of appeal

19. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

20. 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.
21. 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

Ben Tomes
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