

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 6 July 2021

**Public Authority:** The NHS Commissioning Board

**Address:** Quarry House  
Quarry Hill  
Leeds  
LS2 7UE

#### Decision (including any steps ordered)

---

1. The complainant has requested information from the NHS Commissioning Board (NHS England) relating to the number of patients treated at the Nightingale Hospitals during the pandemic.
2. The Commissioner's decision is that NHS England failed to respond to the request for information within 20 working days and has therefore breached section 10(1) (time for compliance with the request) of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - Issue a response, in accordance with its obligations under the FOIA, to the request.
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

---

5. On 9 March 2021, the complainant wrote to NHS England (NHSE) and requested information in the following terms:

*"Please can you tell me the total number of patients treated in ALL Nightingale Hospitals between March 2020 and March 8th, 2021?"*

6. NHSE acknowledged it had received the request on 9 March 2021 but had failed to provide a substantive response by the date of this notice.
7. The Commissioner notes that the complainant has requested an internal review into the handling of their request. The Commissioner considers it will be most appropriate for NHSE to conduct this internal review once a substantive response has been provided to this request.

### **Scope of the case**

---

8. The complainant contacted the Commissioner on 4 May 2021 to complain about the way their request for information had been handled, specifically the fact that a response was yet to be provided by NHSE.
9. The complainant informed the Commissioner that they had chased NHSE for a response to their request on 9 April, 11 April, 16 April and 4 May 2021.
10. Therefore, the Commissioner considers the scope of this notice is to determine whether NHSE has complied with section 10(1) of the FOIA.

### **Reasons for decision**

---

11. Section 1(1) (general right of access to information held by public authorities) 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."*

12. Section 10(1) (time for compliance with the request) of the FOIA states that:

*"...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."*

13. The request was made on 9 March 2021 and therefore a response should have been provided to the complainant no later than 9 April 2021.
14. In line with her established processes, the Commissioner contacted NHSE on 27 May 2021 to highlight the outstanding response. Taking into account the front-line pressures that NHSE is facing during the coronavirus pandemic, the Commissioner requested that NHSE provide a

response within 20 working days of receiving her correspondence. The Commissioner also provided guidance designed to aid the public authority in its handling of requests received under the FOIA.

15. NHS England did not acknowledge or respond to the Commissioner's correspondence of 27 May 2021.
16. On 27 June 2021 the complainant wrote to the Commissioner and explained that NHSE had still not provided a substantive response to their request for information.
17. The Commissioner's decision is that NHS England has breached section 10(1) of FOIA in its handling of this request. She also notes that NHS England failed to provide its response within the timeframe provided to it by the Commissioner on 27 May 2021.

## **Right of appeal**

---

18. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

19. 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.
20. 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**

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