

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 January 2021

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

Decision (including any steps ordered)

1. The complainant has requested information relating to the abandonment of the procurement of services. NHS England has failed to provide a response to the request in accordance with the FOIA.
2. The Commissioner's decision is that NHS England has failed to respond to the complainant's request of 28 July 2020 within 20 working days of receipt and has therefore breached section 10(1) of the FOIA.
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 the request in accordance with its obligations under the 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

5. On 2 December 2019, the complainant wrote to NHS England and requested information in the following terms:

"I wish to make a request under the Freedom of Information Act regarding the abandonment of Procurement for Orthodontic Services.

Please can you provide the reason that Lots CM1 to CM13 and WM1 to WM11 were abandoned in the Batch 2 process as detailed to bidders on Monday 25th November by NECS?"

6. On 3 December 2019, the complainant wrote to NHS England again and said

"I have not received a reply to the email of yesterday but could I add to my FOI request the names of the clinical markers of the affected lots."

7. On 23 December 2019, NHS England responded to the request. It denied holding the information. It said that it was not involved in the procurement process mentioned in the request. It said the request may be in relation to a 'call off' procurement for Midlands and East which is being managed by [redacted]. It said it would be happy to process the request in relation to [redacted], but required confirmation from the complainant before doing so. NHS England failed to mention its process for requesting an internal review if the complainant was not satisfied with its response.

8. On 28 July 2020, after speaking with a Programme Manager at NHS England, the complainant re-submitted his original request. He said

"I have been asked by [redacted] at NHS England to resubmit this FOI as she assures me it will be answered.

I would appreciate your earliest response as I have been waiting nearly 8 months for a reply and the original reply suggested the CSU was responsible for the decision which is clearly not the case."

9. NHS England acknowledged receipt of the request on 30 July 2020.

10. To date the complainant has not received a response to his request for information.

Scope of the case

11. On 14 December 2020, the complainant contacted the Commissioner to complain about the way his requests for information had been handled. He explained that he did not request a review of NHS England's handling of his initial request at the time because it said that it was not involved in the procurement process. However, while speaking with a Programme Manager at NHS England in July (2020), the complainant was told that she was not made aware of his request, she asked him to re-submit it and assured him that it would be answered. He also explained that he waited five months before raising a complaint to the Commissioner about NHS England's handling of his second request because he was conscious of the pressure on the NHS during the current coronavirus pandemic and was therefore allowing it extra time to provide a response.
12. The Commissioner notes that NHS England failed to include its process for requesting an internal review in its initial response, that the complainant did not seek an internal review of its handling of his initial request and that 12 months have passed since then. She also notes his reason (of not wanting to add extra pressure to the public authority) for allowing it extra time to provide a response to his second request. She has therefore considered whether NHS England dealt with the request of 28 July 2020 in accordance with its obligations under section 10(1) of the FOIA. The complainant has agreed the scope of the Commissioner's investigation.

Reasons for decision

Section 10 of the FOIA – time for compliance

13. Section 1(1) of the FOIA states that any person making a request for information is entitled to be told whether the information they have asked for is held and, if so, to have that information communicated to them, subject to the application of any exemptions that are appropriate.
14. Section 10(1) of the FOIA states that a public authority shall respond to information requests promptly and in any event no later than 20 working days from receipt.
15. The Commissioner notes that the request was made on 28 July 2020 and a response should have been provided no later than 26 August 2020.

16. The Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA. The Commissioner has made it clear that she will allow flexibility where this is required by public authorities in order to respond to the pandemic.
17. However, in this case, the complainant submitted the request to NHS England on 28 July 2020 and to date has not received a response. The Commissioner therefore finds that NHS England has breached section 10(1) of the FOIA in failing to respond to the request within 20 working days.

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: 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

Pamela Clements
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