

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 May 2021

Public Authority: The NHS Commissioning Board

Address: Quarry House
Quarry Hill
Leeds
LS2 7UE

Complainant:

Address:

Decision (including any steps ordered)

1. The complainant requested information from the NHS Commissioning Board (NHS England) relating to the issuing of DNACPR (do not attempt cardiopulmonary resuscitation) notices for Covid-19 patients with learning difficulties.
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 (time for compliance with the request) of the FOIA.
3. The Commissioner is satisfied that NHS England has now provided a response to the request. Therefore the Commissioner does not require NHS England to take any further steps in relation to this request for information.

Request and response

4. On 13 February 2021, the complainant wrote to NHS England and requested information in the following terms:

'Dear NHS England, Background: Mencap said it had received reports in January from people with learning disabilities that they had been told they would not be resuscitated if they were taken ill with Covid-19. FoI: If you hold the information, please kindly provide the name(s) of those

who signed off on creating "Do Not Attempt Cardiopulmonary Resuscitation (DNACPR) notices" for Covid-19 patients with learning difficulties.'

5. NHS England acknowledged receipt of the request for information on 16 February 2021.
6. On 17 March 2021 the complainant requested an internal review into the way that their request for information had been handled, citing a breach of section 10 of the FOIA.
7. NHS England responded to the complainant on 19 March 2021 and explained that the complainant could request an internal review at the point at which a substantive response to their request for information had been provided.

Scope of the case

8. The complainant contacted the Commissioner on 19 March 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 the public authority.
9. Therefore, the Commissioner considers the scope of this notice is to determine whether NHS England has complied with section 10 of the FOIA.

Reasons for decision

10. 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.

11. Section 10 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."

12. The request was made on 13 February 2021 and therefore a response should have been provided to the complainant no later than 12 March 2021.
13. In line with her established processes, the Commissioner contacted NHS England on 1 April 2021 to highlight the outstanding response. Taking into account the front-line pressures that NHS England is facing during the coronavirus pandemic, the Commissioner requested that NHS England 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.
14. On 10 May 2021 NHS England provided the Commissioner with a copy of the response that it had provided to the complainant on the same day.
15. 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 1 April 2021.

Right of appeal

16. 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

17. 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.
18. 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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