

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 May 2022

Public Authority: NHS Improvement
Address: Skipton House
80 London Road
London
SE1 6LH

Decision (including any steps ordered)

1. The complainant requested information from NHS Improvement (NHSI) relating to an EDI glossary. By the date of this notice NHSI had not issued a substantive response to this request.
2. The Commissioner's decision is that NHSI has breached section 10(1) of the FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires NHSI to take the following step to ensure compliance with the legislation.
 - NHSI must provide a substantive response to the request in accordance with its obligations under the FOIA.
4. NHSI must take this step 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 November 2021, the complainant wrote to NHSI and requested information in the following terms:

“This is a FOI request following up on my earlier request:

[Link redacted]

In the internal review of that request, you identified a key individual whom you named 'Employee A' who 'is a Senior Lead within our Equality & Inclusion Function of the National People Directorate.'

You conducted an exercise where you searched Employee A's NHS mail account for the term 'EDI Glossary' for the period February 2020 to present date. Please provide all emails returned by searching Employee A's NHS mail account for the term 'EDI Glossary' filtered for the year 2021. I am not asking you to review or categorise the emails in any way.”

6. NHSI wrote to the complainant on 16 December 2021 to inform them that their request was likely to be refused under section 14 (vexatious request) of the FOIA. NHSI advised the complainant to refine their request.
7. The complainant wrote to NHSI on 18 December 2021 and confirmed that they do not wish to refine their request.
8. By the date of this notice, NHSI has not provided the complainant with a substantive response to their request.

Scope of the case

9. The complainant contacted the Commissioner on 1 February 2022 to complain about NHSI's failure to respond to their request.
10. The Commissioner has considered whether NHSI has complied with its obligations in relation to the time for compliance at section 10(1) of the FOIA.

Reasons for decision

11. Section 1(1) 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."

12. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".
13. On 18 February 2022 the Commissioner wrote to NHSI, reminding it of its responsibilities and asking it to provide a substantive response to the complainant's request within 10 working days.
14. Despite this intervention, NHSI has failed to respond to the complainant.
15. From the evidence provided to the Commissioner in this case, it is clear that NHSI did not deal with the request for information in accordance with the FOIA. The Commissioner finds that NHSI has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the FOIA.

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: 0203 936 8963

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

Ben Tomes
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF