

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 7 September 2022

**Public Authority:** NHS England  
**Address:** PO Box 16738  
Redditch  
B97 9PT

#### **Decision (including any steps ordered)**

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1. The complainant requested copies of any correspondence that NHS England had inherited from a predecessor body and a particular NHS Trust about approval of 'Campus and Collaborative' agreements. By the date of this notice, NHS England had not issued a substantive response to this request.
2. The Commissioner's decision is that NHS England has breached section 10(1) of 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 NHS England to take the following step to ensure compliance with the legislation.
  - NHS England must provide a substantive response to the request in accordance with its obligations under FOIA.
4. NHS England 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 FOIA and may be dealt with as a contempt of court.

## Request and response

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5. On 18 February 2022, the complainant wrote to NHS England and requested information in the following terms:

“Under the provisions of the Freedom of Information Act, I am seeking details of correspondence between one of your predecessor bodies (NHS TDA) and a non-Foundation NHS Trust.

I am contacting you as the successor organisation to NHS TDA and wish to point out that I have already sought the information from the relevant Trust but, as the attached responses demonstrate, it has no extant record of such information.

My request to you is, therefore, for sight of all correspondence between NHS TDA and West Hertfordshire Hospitals NHS Trust in the matter of TDA approval for the Trust to enter and/or subsequently validate in law the legal agreements known as Campus and Collaborative which were initially signed by the Trust in June 2013.

There is documentary evidence that the Trust was still seeking TDA approval as late as May 2015, which suggests that there were ongoing discussions between NHS TDA and the Trust after the Agreements had been signed. (The attached responses seem to explain why it was possible for the Trust to sign the Agreements prior to receiving TDA approval or being informed that approval was not required)

As the Trust is unable to provide any documentary details of those discussions or any written evidence of any final ruling from the TDA, I am hereby requesting such under this application.”

6. On 19 May 2022, NHS England emailed the complainant to advise that “... Due to a highly unusual technical error, the NHS England Freedom of Information (FOI) Team was not made aware of your request until this week. We will strive to respond to your request in full as soon as possible ...”. To date, a substantive response has not been issued.

## Scope of the case

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7. The complainant contacted the Commissioner on 2 August 2022 to complain about NHS England’s failure to respond to their request.
8. The Commissioner has considered whether NHS England has complied with its obligations in relation to the time for compliance at section 10(1) of FOIA.

## Reasons for decision

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9. Section 1(1) of 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.”

10. Section 10(1) of 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”.

11. On 9 August 2022, the Commissioner wrote to NHS England, reminding it of its responsibilities and asking it to provide a substantive response to the complainant’s request within 10 working days.

12. Despite this intervention, NHS England has failed to respond to the complainant.

13. From the evidence provided to the Commissioner in this case, it is clear that NHS England did not deal with the request for information in accordance with FOIA. The Commissioner finds that NHS England 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 FOIA.

## Right of appeal

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14. 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)

15. 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.
16. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**