

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **8 March 2023**

Public Authority: **NHS Bedfordshire, Luton and Milton Keynes
Integrated Care Board**

Address: **3rd Floor
Arndale House
The Mall
Luton
LU1 2LJ**

Decision (including any steps ordered)

1. The complainant requested information about the performance criteria used to assess Circle MSK and about guidance that NHS Bedfordshire, Luton and Milton Keynes Integrated Care Board ("the ICB") provides to Circle MSK on booking consultants and managing consultant contracts.
2. The Commissioner's decision is that the ICB 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 the ICB to take the following step to ensure compliance with the legislation.
 - The ICB must provide a substantive response to the request in accordance with its obligations under FOIA.
4. The ICB 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

5. On 22 December 2022 the complainant wrote to the ICB and requested information in the following terms:

"[...] Please can you also provide me with information on the performance criteria used to assess Circle MSK and either provide or direct me to the performance breakdown for Circle MSK for the last three accounting years to date (ie from 2020). If you do not hold this information please can you advise me where it might be obtained from.

Can you please tell me if the Integrated Care Board provides guidance to Circle MSK on booking consultants and managing consultant contracts, and if so can you please provide me with this information. My reason for asking is that Circle MSK have told me that they do not have consultant dates for NHS patients in 2023. [...]"

6. The ICB acknowledged the request on 30 December 2022. To date, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 12 February 2023 to complain about the ICB's failure to respond to their request.
8. The Commissioner has considered whether the ICB has complied with its obligations in relation to the time for compliance at section 10(1) of FOIA.

Reasons for decision

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 17 February 2023 the Commissioner wrote to the ICB to provide a substantive response to the complainant's request within 10 working days.
12. Despite this intervention the ICB has failed to respond to the complainant.
13. From the evidence provided to the Commissioner in this case, it is clear that the ICB did not deal with the request for information in accordance with FOIA. The Commissioner finds that the ICB 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.

Other matters

14. In correspondence with the ICO on 6 March 2023 the ICB stated that it had not been aware that the requestor:

"wanted any part of [redacted pronoun] complaint treated as an FOI, as [redacted pronoun] request for information was to be responded to as part of [redacted pronoun] complaint response."
15. To be valid under the FOIA, a request must fulfil the criteria set out in Section 8 of the Act:

"8.—(1) In this Act any reference to a "request for information" is a reference to such a request which—

 - (a) is in writing,
 - (b) states the name of the applicant and an address for correspondence, and
 - (c) describes the information requested.

(2) For the purposes of subsection (1)(a), a request is to be treated as made in writing where the text of the request—

 - (a) is transmitted by electronic means,

(b) is received in legible form, and

(c) is capable of being used for subsequent reference.”

16. Public authorities should note that this is not a hard test to satisfy; the vast majority of written requests for information will be valid. The Act contains other provisions to deal with requests which are too broad, unclear or unreasonable. However, there are some circumstances where, despite the validity of a request, it may be more appropriate to deal with it outside of the Act:
- If the requested information can be quickly and easily sent to the requester then it may be better dealt with in 'the normal course of business', for example, a request for a current leaflet.
 - If the request is for the requester's own personal data, then it should be dealt with as a subject access request under the Data Protection Act.
 - If the request is for environmental information, then it should be dealt with under the Environmental Information Regulations.
17. If none of the above points apply, and a request is valid under section 8, it should be treated as a request for information under FOIA. A complainant does not have to mention the legislation under which they are requesting information; it is the public authority's duty to recognise a request for information and state the legislation under which the request has been considered. For this reason, the ICB's argument for not treating the request under FOIA is not upheld.

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

Website: www.justice.gov.uk/tribunals/general-regulatorychamber

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.....

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