

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 August 2023

Public Authority: NHS England
Address: Quarry House
Quarry Hill
Leeds
LS2 7UE

Decision (including any steps ordered)

1. The complainant requested information about NHS England's annual accounts. By the date of this notice NHS England (NHSE) had not issued a substantive response to this request.
2. The Commissioner's decision is that NHSE 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 NHSE to take the following step to ensure compliance with the legislation.
 - NHSE must provide a substantive response to the request in accordance with its obligations under FOIA.
4. NHSE 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 23 February 2023, the complainant wrote to NHSE and requested information in the following terms:
- “Please could this be treated as an FOI request. NHS England’s annual accounts include the following excerpt in the ‘cash losses’ section:
- “£1 million relates to an overpayment made on a contract with an independent sector service provider in response to the COVID pandemic. NHS England has reached an agreement to recover the full amount in due course. Having made this agreement, the service provider made a repayment of £82.5k and went into administration by October 2022. Measures have been implemented within NHS England to prevent recurrence of such cases.”
- Please could you provide a) the identity of the service provider and b) a copy of any policies and/or measures introduced to prevent such cases reoccurring.”
6. NHSE acknowledged the request on 2 June 2023. To date, a substantive response has not been issued.

Reasons for decision

7. 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.”
8. 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”.
9. On 13 July 2023 the Commissioner wrote to NHSE, reminding it of its responsibilities and asking it to provide a substantive response to the complainant’s request within 10 working days.
10. Despite this intervention NHSE has failed to respond to the complainant.

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

12. 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

13. 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.
14. 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
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Wycliffe House
Water Lane
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Cheshire
SK9 5AF