

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

### **Decision notice**

**Date:** 17 August 2023

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

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

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1. The complainant requested information from NHS England about a specific document, that is no longer available on the NHS England website, but is referred to by other documents.
2. The Commissioner's decision is that NHS England breached section 10(1) of FOIA by failing to provide a valid response to the request within the statutory timeframe of 20 working days.
3. The Commissioner requires NHS England to take the following steps to ensure compliance with the legislation.
  - NHS England must provide a substantive response to the request in accordance with its obligations under FOIA.
4. The public authority must take these steps 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**

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5. On 16 May 2023, the complainant wrote to NHS England and requested information in the following terms:

"I am writing to you to ask about a document called Health Building Note12 Supplement 3: Out-patients department - ENT and audiology clinics, hearing aid centres (HBN12 Supplement 3). This document is sometimes referred to in other documents as Supplement C instead of supplement 3.

This document is no longer available on the NHS England website and is shown as 'Not available – archived' in the file downloadable at <https://www.england.nhs.uk/publication/complete-list-of-nhs-estates-related-guidance/> and states that the latest document on this topic is 'No longer covered'

My information requests are:

1. When was this document withdrawn?
2. Who made the decision to withdraw the document and why. Please provide meeting minutes or correspondence that relate to the rationale behind the decision? Please include the results of any consultations that took place before withdrawal of the document or concerns that were submitted at the time or thereafter?
3. If the document on this topic is 'no longer covered', where is the guidance for the construction of new 'ENT and audiology clinics, hearing aid centres' to be found?
4. HBN 12 Supplement 3 is still referenced in the current document HBN12 Out-patients department (2004). Why is the reference still there if the document has been withdrawn?
5. In Health Technical Memorandum HTM 08-01 Acoustics, it is stated that 'detailed acoustic criteria for audiological testing rooms' is in HBN12 Supplement 3, and that it should be referred to. As well as advice on construction, HBN 12 Supplement 3, offers acoustic criteria for audiology rooms and guidance on room sizes and layouts. Where are these criteria and guidance to be found now the document is withdrawn? Why is HBN 12 Supplement 3 still referred to in HTM 08-01?
6. Was a risk impact assessment made before withdrawing this document and if so, what was the outcome?
7. Is HBN 12 Supplement 3 still current in Scotland, Wales and NI?
8. Are there any plans to provide equivalent, updated guidance of the sort found in HBN 12 Supplement 3?

9. Are there any current NHS hospitals, diagnostics centres, community hubs, or any other type of facility being built, or planned to be built, that have any type of new 'ENT and audiology clinics, hearing aid centres' and if so, what criteria are they being built to in regard to acoustics, vibration, noise, layout and any other type of audiological requirement mentioned in HBN12 Supplement 3? For facilities built since the withdrawal of HBN12 Supplement 3, what relevant criteria was adhered to any how do the NHS know that the facilities are fit for purpose?"
6. NHS England acknowledged the request on 19 June 2023. To date, a substantive response has not been provided.

### **Reasons for decision**

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7. Section 1(1) of FOIA states that:
- "Any person making a request for information to a public authority is entitled to-
- (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 31 July 2023, the Commissioner wrote to NHS England, reminding of its responsibilities and asking it to provide a substantive response to the complainant's request within 10 working days.
10. Despite this intervention, NHS England has failed to respond to the complainant.
11. 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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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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**