

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 2 December 2024

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

Decision (including any steps ordered)

1. The complainant has requested copies of central risk assessments for flooding and heatwaves in hospitals. NHS England ('NHSE') stated that it did not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, NHSE does not hold the requested information. The Commissioner also finds that the NHSE breached regulation 11 of the EIR as it failed to carry out its internal review within 40 working days.
3. The Commissioner does not require further steps.

Request and response

4. On 31 January 2024, the complainant wrote to NHSE and requested information in the following terms:

"Can I please make a Freedom of Information request for the following information on NHS England's risk assessment for flooding for each hospitals in the country.

1. Can I please request the latest version of this risk assessment, including the names of each sites in each relevant 'risk' category. Can you please share the month/year this information was collated

2. Can I please request details of the flooding risk assessment in 2022, including the name of each site in each relevant 'risk' category. More information can be found here.

Can I also please request information on NHSE England's risk assessment for heatwaves - if held - for each hospital in the country.

3. Can I please request the latest version of this risk assessment, including the name of each site in each relevant 'risk' category, and the month/year this assessment was completed

4. Can I please request the same details for any assessment - if different - from both 2022 and 2023."

5. NHSE responded on 2 February 2024. It stated that it did not hold the requested information.
6. Following an internal review, NHSE wrote to the complainant on 21 June 2024. It maintained its position.

Scope of the case

7. The complainant contacted the Commissioner on 17 July 2024 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine whether, on the balance of probabilities, NHSE holds the requested information.

Reasons for decision

Would the requested information be environmental?

9. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other

releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
10. As the requested information relates to flooding and heatwave risk assessment, the Commissioner believes that the requested information is likely to be information relating to the state of human health and safety falling within regulation 2(1)(f). He has therefore assessed this case under the EIR. Though he notes that this makes it no more, or less, likely that information is held.

Regulation 5 – duty to make environmental information available on request

- 11. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
- 12. Where there is a dispute between a public authority and a complainant as to whether all requested information falling within the scope of a request has been provided, the Commissioner, following the lead of a number of First-tier Tribunal decisions, must decide the matter based on the civil standard of on the balance of probabilities.
- 13. NHSE has explained that it does not hold the requested information because it does not gather or collate information on flood risk assessments from individual hospital trusts.
- 14. In their request for an internal review, the complainant pointed NHSE to a Health Services Journal ('HSJ') article that suggested that NHSE did hold a centralised assessment of the flooding risk for each hospital. In

its internal review response, NHSE explained that the article referred to a Flood Risk Toolkit, which is designed for individual NHS Trusts to use to evaluate their own risks. NHSE explained that it does not collate or assess the information which is put into the Toolkit.

15. In its submission to the Commissioner, NHSE explained that it conducted searches for information within scope of the request in three specific teams: its national Emergency Preparedness, Resilience and Response (EPRR) team, its Greener NHS team and its Estates and Facilities team. It explained that it is unlikely information relating to the request would be held by other teams within NHSE.
16. NHSE considers that it has no business purposes to hold the requested information. It explained that, while it does not hold a central record of risk assessments for each hospital, it does collect data on the number of flood occurrences that trigger a risk assessment, and the number of overheating occurrences that trigger a risk assessment. It advised that these figures could be found on its website through its Estates Returns Information Collection ('ERIC') reports.
17. The Commissioner asked NHSE to provide more information about the Flood Risk Toolkit mentioned in its internal review response. NHSE explained that the toolkit was developed by the Environment Agency and it is freely available to NHS Trusts through the NHS Apps page. The toolkit can be accessed by anyone in the NHS with a responsibility for flooding or emergency preparedness. Individual trusts can input their own information into the toolkit. NHSE has confirmed that it does not collate this. Instead, trusts are required to report any flooding or heatwave incidents that require risk assessment. The toolkit is not provided to organisations outside of the NHS.
18. The Commissioner has reviewed the article signposted by the complainant and he can see why they would think the requested information would be held by NHSE, by the way the article is written. However, the Commissioner is satisfied that NHSE has carried out reasonable searches for the requested information, and that it has provided adequate explanations as to why the requested information is not held.
19. The Commissioner's decision therefore is that, on the balance of probabilities, NHSE does not hold the requested information.

Procedural matters

20. The Commissioner notes that the complainant requested an internal review on 8 February 2024, and again on 5 April 2024. NHSE provided its internal review response on 21 June 2024.
21. The Commissioner finds that the NHSE breached regulation 11 of the EIR as it failed to carry out its internal review within 40 working days.

Right of appeal

22. 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

23. 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.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Keeley Christine
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