

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

### **Decision notice**

**Date:** 11 March 2019

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

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

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1. The complainant requested information from NHS England about the NHS Capacity Tracker as referenced on HM Government website.
2. The Commissioner's decision is that NHS England has breached section 10(1) of the 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 steps to ensure compliance with the legislation.
  - Respond to the complainant's request in accordance with the FOIA
4. NHS England 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 4 December 2018, the complainant wrote to NHS England and requested information in the following terms:

*"I respectfully ask for information regarding the NHS Capacity Tracker as referenced on HM Gov website here in Case Study 8:*

<https://www.gov.uk/government/publications/the-future-of-healthcare-our-vision-for-digital-data-and-technology-in-health-and-care/the-future-of-healthcare-our-vision-for-digital-data-and-technology-in-health-and-care>

*My questions are:*

- *What was the inception date for this initiative?*
- *How long did it take for NHS to develop this solution and what teams were involved?*
- *How much did development, testing and deployment of this solution cost in total?*
- *Who were the project sponsors and projects leads?*
- *What evidence was there and what evidence was used to support this project and the unmet need?*
- *Who conducted the research for such evidence?*
- *Who conducted the research to establish whether existing solutions were available and what were the findings?*
- *Was any form of integration involved?*
- *Who authorised this project?*
- *Where did the funding /budget from the project come from?*
- *Who in CCG/STP was involved?*
- *Who in AHSN was involved?*
- *Who in Social Care was involved?*
- *Which Care homes were involved?*
- *Were any patients or carers involved?"*

6. On 3 January 2019, NHS England wrote to the complainant to request clarification of the request.

7. On 3 January 2019, the complainant wrote back to NHS England and clarified his request for information in the following terms:

*"You asked for clarification on my point - Was any form of integration involved?"*

*For clarity - Was there any technological integration required between 'any' IT systems in NHS, Social Care, Care homes or any other organisation or entity whereby data is/was shared, transferred held or otherwise exchanged between NHS Capacity Tracker?*

*Hope that this clarifies sufficiently and look forward to your future response."*

8. To date, a substantive response has not been issued.

## Scope of the case

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9. The complainant contacted the Commissioner on 6 February 2019 to complain about the failure by NHS England to respond to his request.
10. The Commissioner has considered whether NHS England has complied with its obligations in relation to the time for compliance at section 10 (1) of the FOIA.

## Reasons for decision

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11. Section 1(1) of the 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.*

12. Section 10(1) of the 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.*"
13. On 18 January 2019 the Commissioner wrote to NHS England, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
14. Despite this intervention NHS England has failed to respond to the complainant.
15. 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 the 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 the FOIA.

## Right of appeal

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16. 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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

17. 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.
18. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**