

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 September 2020

Public Authority: The NHS Commissioning Board (NHS England)

Address: Quarry House
Quarry Hill
Leeds
LS2 7UE

Decision (including any steps ordered)

1. The complainant has made a request for information relating to the data anonymisation method used for providing data to Palantir and Faculty AI. Despite the intervention of the Commissioner, the NHS Commissioning Board (NHS England) has not provided a response to the request in accordance with the FOIA.
2. The Commissioner's decision is that NHS England has failed to respond to the complainant's request within 20 working days of receipt and has therefore breached section 10(1) of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - NHS England must provide the complainant with a response to the request in accordance with its obligations under the 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

5. On 7 June 2020, the complainant wrote to NHS England and requested information in the following terms:

"I am writing to you under the Freedom of Information Act 2000 to request the following information from NHS England and NHS Improvement:

- 1. What personal information are provided to Palantir and Faculty AI, and which of these are anonymised;*
- 2. The exact technical method used to anonymise personal information prior to providing them to Palantir and Faculty AI;*
- 3. The name of the entity responsible for performing such data anonymisation;*
- 4. If the NHS has created automated methods for data anonymisation, or has contracted third parties to create automated methods for data anonymisation, please provide their source code. This includes but not limited to the source code of computer programs, instructions (query statements) given to database management systems, and macros used in data manipulation software such as Microsoft Office.*

Please provide point 4 in their original computer file formats, preferably in zipped archives.

If it is not possible to provide the information requested due to the information exceeding the cost of compliance limits identified in Section 12, please provide advice and assistance, under the Section 16 obligations of the Act, as to how I can refine my request.

If you can identify any ways that my request could be refined I would be grateful for any further advice and assistance.

If you have any queries please don't hesitate to contact me via email and I will be very happy to clarify what I am asking for and discuss the request, my details are outlined below."

6. NHS England acknowledged receipt of the information request on 10 June 2020.
7. The complainant followed up his request with NHS England on 14 July 2020.
8. To date, the complainant has not received a response to his request for information.

Scope of the case

9. The complainant contacted the Commissioner on 25 August 2020 to complain about the way his request for information had been handled.
10. The Commissioner has considered whether NHS England dealt with the request in accordance with its obligations under section 10(1) of the FOIA.

Reasons for decision

Section 10 – time for compliance

11. Section 1(1) of FOIA states any person making a request is entitled to be told whether the information they have asked for is held and, if so, to have that information communicated to them, subject to the application of any exemptions that are appropriate.
12. Section 10(1) states that a public authority shall respond to information requests promptly and in any event no later than 20 working days from receipt.
13. The request was made on 7 June 2020 and a response should have been provided no later than 3 July 2020.
14. On 8 September 2020, the Commissioner wrote to NHS England advising it to provide the complainant with a response that complies with the FOIA within 10 working days. She provided NHS England with a link to the request on the WhatDoTheyKnow website. She also provided links to her guidance on the timescales for responding to a request for information and on refusing a request.
15. On 23 September 2020, the complainant confirmed to the Commissioner that he has still not received a response to the request.
16. Despite the Commissioner's intervention, NHS England has failed to respond to the complainant's request. It has failed to confirm or deny that it holds the requested information, and has neither disclosed the requested information nor provided a valid refusal notice.
17. The Commissioner recognises that as a result of the Covid-19 pandemic, many public authorities have faced severe front line pressures and have had to re-deploy resources to meet those demands. The Commissioner has made it clear that she will allow flexibility where this is required by public authorities in order to respond to the pandemic

18. However, in this case, NHS England has failed to respond to the request in accordance with the legislation. The Commissioner therefore finds that NHS England breached section 10(1) of the FOIA in failing to respond to the request within 20 working days.

Right of appeal

19. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

20. 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.
21. 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

Pamela Clements
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