

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 April 2021

Public Authority: The NHS Commissioning Board

Address: Quarry House
Quarry Hill
Leeds
LS2 7UE

Decision (including any steps ordered)

1. The complainant requested information from the NHS Commissioning Board (NHS England) regarding Individual Funding Request applications determined by NHS England from 1 January 2013 to the date of the request. NHS England had failed to provide a substantive response by the date of this notice.
2. The Commissioner's decision is that NHS England failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner requires NHS England to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, in accordance with its obligations under the FOIA, to the request.
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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 17 December 2020, the complainant wrote to NHS England and requested information in the following terms:

*"1. The number of IFR applications determined by NHS England by calendar year since 1st Jan 2013 to date
2. The number of applications declined/granted for each calendar year since 1st Jan 2013 to date
3. In respect of those applications in #2 above declined in each of those calendar years, the number of applications on which the Patient & Public Voice designated panel member voted in favour of funding notwithstanding the majority against
4. The number of applications made in each calendar year since 1st January 2013 to date for a) Sapropterin b) Pegvaliase c) Sodium Oxybate d) Pitolisant
5. The number of applications declined/granted from #4 above in each calendar year since 1st January 2013 to date for each of the 4 compounds."*

6. NHS England acknowledged the request on 18 December 2020 but had failed to provide a substantive response by the date of this notice.

Scope of the case

7. The complainant contacted the Commissioner on 10 March 2021 to complain about the failure of NHS England, to respond to the request.
8. In line with her usual practice, the Commissioner contacted NHS England on 25 March 2021 to highlight the outstanding response. She requested that NHS England respond to the request within 10 working days. The correspondence was neither acknowledged nor responded to.
9. The scope of this notice and the following analysis is to consider whether NHS England has complied with section 10 of the FOIA.

Reasons for decision

10. 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.*

11. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*
 - (b) states the name of the applicant and an address for correspondence, and*
 - (c) describes the information requested.*
12. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.
13. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
14. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, NHS England has breached section 10 of the FOIA.

Other matters

15. The Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA.

Right of appeal

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@justice.gov.uk
Website: 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF