

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 August 2021

Public Authority: NHS Commissioning Board (NHS England)

Address: Quarry House
Quarry Hill
Leeds
LS2 7UE

Decision (including any steps ordered)

1. The complainant requested information from NHS England about the numbers of Covid-19 vaccines delivered by type (Astra Zeneca, Pfizer, Moderna) and by ethnicity between 1 December 2020 and 1 March 2021.
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 to the request in accordance with its obligations under 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 28 February 2021, the complainant wrote to NHS England and requested information in the following terms:

"I would like to request, in either CSV or Excel form, a breakdown of Covid vaccine types delivered (Pfizer, Astrazeneca, Moderna) by ethnicity (for all those who consented to ethnicity data collection) between December 1, 2020 and March 1, 2021.

I would also like to request, for the same data set, information on how many of the total vaccinated declined to have ethnicity recorded at the time of vaccine administration."

6. The complainant wrote to NHS England for an update on their request on 30 March 2021, 28 April 2021 and 20 May 2021.
7. By the date of this notice, NHS England had not provided a substantive response to the request.

Scope of the case

8. The complainant contacted the Commissioner on 12 July 2021 to complain about NHS England's failure to respond to the request.
9. The Commissioner contacted NHS England on 23 July 2021 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days. The correspondence was neither acknowledged nor responded to.
10. The Commissioner also contacted the complainant on 23 July 2021 to explain that NHS England had been given 10 working days from that date within which to provide a response to their request.
11. 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

12. 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.*
- 13. Section 10(1) 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. NHS England did not provide a substantive response to the request within 20 working days of receipt. Therefore, the Commissioner's decision is that NHS England has breached section 10 of the FOIA.

Right of appeal

15. 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

16. 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.
17. 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