

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 August 2021

Public Authority: The NHS Commissioning Board

Address: Quarry House
Quarry Hill
Leeds
LS2 7UE

Decision (including any steps ordered)

1. The complainant requested from the NHS Commissioning Board ("NHS England") information relating to the cost associated with providing additional healthcare resources from the private sector during the COVID-19 pandemic. By the date of this notice, NHS England had not provided a substantive response to the request.
2. The Commissioner's decision is that NHS England has 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 Act and may be dealt with as a contempt of court.

Request and response

5. On 6 April 2021, the complainant wrote to NHS England and requested information in the following terms:

"I'm writing from the [name redacted], to request information on the costs of additional healthcare capacity bought from the private sector during the pandemic.

The Request

1. Invoicing documents

In relation to the national contracts with the private hospital sector for the provision of additional healthcare capacity, in the period March 2020 to the date of receipt of this request, could I be provided with:

A) invoices,

B) 'reconciliation/validation reports', and

C) payments made;

To and from Circle Health and Spire Healthcare.

In effect, I would like to receive the costs submitted to NHSE by these providers (the invoices), information on how that figure was adjusted based on private activity or other parameters (reconciliation reports) and the sums of money that were ultimately paid out (payments made).

I would expect to receive the original documents or datasets, rather than figures extracted from them.

I would expect the information to be provided in the form of machine-readable digital documents, i.e. word documents or searchable PDF. I would prefer not to receive scanned or photocopied documents, even in digital form, that cannot be searched, but would accept an alternative format if this would incur significant processing time or costs.

2. Cost-benefit analysis dataset/s

Could I also be provided data on the financial impact and value for money of these contracts, in relation to all providers on the national contract for the period March 2020 and the date of

receipt of this request. At minimum, this should record the payments made to each provider each month or week.

I would prefer to receive the information in its natural format, i.e. a full copy of whatever dataset the department itself uses to track and analyse the financial impact and value for money on these contracts.

This could be in the form of a curated spreadsheet, an export from financial management software, exports from internal databases or reports prepared for internal consumption. And while I would expect the minimum dataset to record amounts paid to each provider, when the department carries out an analysis of the cost-benefit of these contracts I might also expect to see other fields of data such as: amounts billed, amounts paid, data on provider capacity, provider activity etc.

I appreciate that some of this data may be incomplete in light of the fact contracts are only recently terminated, and in particular the validated final payments. If this is the case, I would like to receive whatever is available on the date of receipt this request.

In summary, I would like to receive the same dataset that the authority uses to analyse the financial impact of these contracts. I cannot be more precise, because the department hasn't furnished the public in general, or me personally with the information to do so."

6. The complainant wrote to NHS England on 19 April 2021 to ask NHS England to acknowledge his request.
7. On 17 May 2021, as the complainant had not received a response, he wrote to NHS England to request an internal review.
8. NHS England wrote to the complainant on 18 May 2021 to provide him with an update on the status of his request. On 19 May 2021, the complainant wrote to NHS England to complain about NHS England handling of his information request.
9. On 24 May 2021, as the complainant had not received a response, he wrote to NHS England to ask for an update on the status of his request.
10. The complainant contacted the Commissioner on 25 May 2021 to complain about NHS England's failure to respond to his request.
11. NHS England wrote to the complainant on 27 May 2021 to provide him with an update on the status of his request.

12. On 27 May 2021, the complainant wrote to NHS England to complain about NHS England's handling of his request.
13. The complainant wrote to NHS England on 3 June 2021 to ask for an update on the status of his request. The complainant also submitted a complaint to NHS England on the same date. NHS England wrote to the complainant on 21 June 2021 to acknowledge his complaint.

Scope of the case

14. The Commissioner contacted NHS England on 23 June 2021 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
15. The Commissioner also contacted the complainant on 23 June 2021 to explain that NHS England had been given 10 working days from that date within which to provide a response to their request.
16. On 22 July 2021, NHS England wrote to the Commissioner to acknowledge her correspondence.
17. The complainant has provided evidence that he has received an acknowledgement from NHS England but, by the date of this notice, had not received a substantive response to his information request.
18. 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

19. Section 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.

20. 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.*"

21. 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

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.

Signed

Phillip Angell
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