

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 September 2021

Public Authority: NHS Improvement
Address: Wellington House
133-155 Waterloo Road
London
SE1 8UG

Decision (including any steps ordered)

1. The complainant requested information from NHS Improvement relating to the work undertaken to assess the impact of the CQC 'Requires Improvement' rating. By the date of this notice NHS Improvement had failed to provide a substantive response to this request.
2. The Commissioner's decision is that NHS Improvement 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 Improvement to take the following steps to ensure compliance with the legislation.
 - Respond to the complainant's request in accordance with the FOIA.
4. NHS Improvement 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 May 2021, the complainant wrote to NHS Improvement and requested information in the following terms:

"Thank you for the NHSE&I response dated 15 April, regarding the pausing of the transaction of services from Liverpool Community Healthcare NHS Trust to Bridgewater Community Healthcare NHS Foundation Trust on 7 February 2017. This is an issue of public interest and I believe the issues surrounding the aborted transaction should be scrutinised.

Your response to my initial request, disappointingly, fails to answer the questions I posed or provide any of the information that I requested.

The response does, however, refer to work that was 'undertaken to assess the impact of the CQC Requires Improvement rating on the transaction as had been proposed, alongside considering other options for how the transaction might move forward in a way most beneficial for patients'.

Freedom of Information Request:

Please provide to me any and all information that NHS England & Improvement holds relating to the work that was undertaken to assess the impact of the CQC 'Requires Improvement' rating on the transaction as had been proposed, alongside considering other options for how the transaction might move forward in a way most beneficial for patients.

Although the response refers to the Transaction Guidance 2017 document, it is not clear how, if at all, the LCH transfer was considered in the creation of this guidance. I would therefore be grateful if you could clarify exactly how this case was considered, and provide any documents relating to this guidance that discuss Bridgewater or LCH."

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

Scope of the case

7. The complainant contacted the Commissioner on 28 July 2021 to complain about the failure by NHS Improvement to respond to her request.
8. The Commissioner has considered whether NHS Improvement has complied with its obligations in relation to the time for compliance at section 10 (1) of the FOIA.

Reasons for decision

9. 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.*

10. 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.”
11. On 31 August 2021, the Commissioner wrote to NHS Improvement, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
12. Despite this intervention NHS Improvement has failed to respond to the complainant.
13. From the evidence provided to the Commissioner in this case, it is clear that NHS Improvement did not deal with the request for information in accordance with the FOIA. The Commissioner finds NHS Improvement 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

14. 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

15. 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.
16. 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

Michael Lea
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