

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 October 2021

Public Authority: The NHS Commissioning Board

Address: Quarry House
Quarry Hill
Leeds
LS2 7UE

Decision (including any steps ordered)

1. The complainant has requested information from the NHS Commissioning Board ("NHS England") relating to the effectiveness of the National Genomic Information System within the NHS.
2. The Commissioner's decision is that NHS England failed to respond to the request within 20 working days and therefore breached Section 10 of the Freedom of Information Act ("the FOIA").
3. The Commissioner requires NHS England to take the following steps to ensure compliance with the legislation:
 - NHS England must provide the complainant with a response to their 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 16 June 2021, the complainant wrote to NHS England and requested information in the following terms:

"I am sending this request under the Freedom of Information Act. Please provide any internal analysis or assessment reports held on the effectiveness of the National Genomic Information System produced from 1st January 2017 to date.

Please send me this information by e-mail to [email address redacted], in a machine readable format such as .csv or .xlsx where appropriate.

If you have any queries about this request please contact me on [telephone number redacted].

If you are encountering practical difficulties complying with this request, please contact me so that we can discuss the matter and if necessary I can modify the request"

6. NHS England contacted the complainant on 29 July 2021, apologising for their delay in responding to the information request and advising that although they were not in the position to respond, they would do so as soon as possible. They also informed the complainant about their right to complain to the ICO.
7. On 13 August 2021, the complainant sent a follow-up email chasing a response to their information request. NHS England responded on the same day, repeating the contents of their email to the complainant of 29 July 2021.
8. The complainant had still not received a response to their request for information and therefore on 2 September 2021, the complainant contacted NHS England informing them that they had breached the statutory timescales under the FOIA and to provide the requested documents without further unreasonable delay.
9. On 17 September 2021, as a result of still not receiving a response, the complainant contacted NHS England informing them that they were going to make a complaint to the Information Commissioner's Office.

Scope of the case

10. On 17 September 2021, the complainant contacted the Commissioner to complain about NHS England's delay in responding to his request for information.
11. On 7 October 2021, the Commissioner contacted NHS England and requested that the Council respond to the request within 10 working days.
12. NHS England wrote to the Commissioner on 19 October 2021 informing that it would be unlikely that they would be in the position to issue a response to the complainant within the required 10 working days and they were aiming to resolve it as soon as possible.
13. To date, a substantive response has not been issued in accordance with the FOIA.
14. The scope of this notice and the following analysis is to consider whether the Council has complied with section 10 of the FOIA.

Reasons for decision

15. 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.*

16. 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.*"
17. From the evidence provided to the Commissioner in this case, it is clear that NHS England did not deal with the request for information in accordance with the FOIA. The Commissioner finds that NHS England 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

18. 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

19. 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.
20. 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

Catherine Fletcher
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