

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 June 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") relating to the tendering process that resulted in Fit Test training collaboration with Respiratory Protective Assessment Limited. By the date of this notice NHS England had failed to provide a substantive response to this request.
2. The Commissioner's decision is that NHS England 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 England to take the following steps to ensure compliance with the legislation.
 - Respond to the complainant's request in accordance with 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 23 July 2020, the complainant wrote to NHS England and requested information in the following terms:

"Please can you provide me with full details of the following?

1 - The tendering process that resulted in the above collaboration with RPA Ltd. Please provide full details of the long list of potential fit testing companies, the shortlisting process, the shortlist of fit testing companies, and the final decision making process that resulted in RPA Ltd being selected.

2 - As this is a publicly funded arrangement, please give full details of the remuneration package/ business contractual arrangement, between NHSE/NHSI and RPA Ltd.

3 - Please give full details of the initially tendered contract cost from RPA Ltd, from all other shortlisted companies, and the final agreed contract cost and term.

4 - Please give full details of any written correspondence between NHSE/NHSI and the OCDO England regarding this collaboration or the tendering process as aforementioned.

5 - Please give full details of any conflict of interest identified between the OCDO and RPA Ltd. Please include whether any personal or professional relationship exists or existed between the owners of RPA Ltd and members of the OCDO England senior team.

6 - Please give your justification for providing free at point of use fit testing provision for NHS dental practices via the above collaboration, but not for private dental practices."

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

Scope of the case

7. The complainant contacted the Commissioner on 25 April 2021 to complain about the failure by NHS England to respond to his request.
8. The Commissioner has considered whether NHS England 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 21 May 2021, the Commissioner wrote to NHS England, 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 England has failed to respond to the complainant.
13. 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 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

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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
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Wilmslow
Cheshire
SK9 5AF