

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 28 January 2021

**Public Authority:** NHS Commissioning Board (NHS England)

**Address:** Quarry House  
Quarry Hill  
Leeds  
LS2 7UE

#### Decision (including any steps ordered)

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1. The complainant requested information from the NHS Commissioning Board (NHS England) about the Specialised Commissioning Standard Operating Procedure for the Annual Assessment Quality Assurance Process. 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

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5. On 27 October 2020, the complainant wrote to NHS England via the WDTK website and requested information in the following terms:

*"Dear NHS England,*

*On the 22 August 2019 I made an FOI (your Ref: FOI-060054) request regarding the 'Specialised Vascular Services (Adults) specifications 17004/S' which you kindly processed and provided all of the information requested.*

*You can view this request at the following:*

*[https://www.whatdotheyknow.com/request/revised\\_questions\\_specialised\\_va](https://www.whatdotheyknow.com/request/revised_questions_specialised_va)*

*In this request there was a question about Trusts without the appropriate documentation and protocols in place regarding specification 17004/S which would make them non-compliant to which you started your response by stating:*

*'NHS England holds information relevant to this question.*

*The action taken by NHS England regional teams when a Trust has been found to be non-compliant with the requirements of the indicators described above is set out in the "Specialised Commissioning Standard Operating Procedure for the Annual Assessment Quality Assurance Process" and is summarised below.'*

*1. I would like to request an electronic copy of the document regarding actions taken by NHS England regional teams when a Trust has been found to be non-compliant with the requirements which you stated was entitled the 'Specialised Commissioning Standard Operating Procedure for the Annual Assessment Quality Assurance Process'.*

*Yours faithfully*

*[redacted]"*

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

## Scope of the case

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7. The complainant contacted the Commissioner on 5 December 2020 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

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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 7 January 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. On 12 January 2021, NHS England responded to the Commissioner’s instruction to respond to the request for information, by requesting the email address and full name of the requester. The Commissioner responded to this by directing NHS England to the relevant page on the website [whatdotheyknow.com](http://whatdotheyknow.com), through which the request was made.
13. Despite this intervention NHS England has failed to respond to the complainant.
14. 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

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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: 0300 1234504

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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** .....

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**