

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 August 2021

Public Authority: The NHS Commissioning Board (NHS England)

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") about Covid vaccination appointments and vaccine doses that may have been disposed of.
2. The Commissioner's decision is that NHS England 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 9 January 2021, the complainant wrote to NHS England and requested information in the following terms:

"Under the freedom of information provisions I would be grateful if you could provide answers to the following:

1. How many covid vaccination appointments have been offered to date

2. How many covid vaccination appointments have been missed to date

3. How many covid vaccine doses have been disposed of in the event of not being administered

If there is any geographic breakdown with this data that would be appreciated."

6. NHS England wrote to the complainant and acknowledged the request on 11 January 2021.
7. The complainant wrote to NHS England on 6 February 2021 to request an update as they had not received a response to the request. On 8 February 2021 NHS England wrote to the complainant and apologised for the delay in its response.
8. The complainant wrote to NHS England again on 19 February 2021 to request an update as no response had been issued.
9. By the date of this notice NHS England had not provided a substantive response to the request.

Scope of the case

10. The complainant contacted the Commissioner on 14 March 2021 to complain about NHS England's failure to respond to the request.
11. The Commissioner contacted NHS England on 28 June 2021 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days. The Commissioner's correspondence was neither acknowledged nor responded to.

12. The Commissioner also contacted the complainant on 28 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.
13. The Commissioner contacted NHS England again on 16 July 2021 via an alternative email address and asked if it had received her correspondence of 28 June 2021. The Commissioner provided NHS England with a copy of her previous correspondence. On 21 July 2021, NHS England confirmed that it had not seen the Commissioner's original correspondence of 28 June 2021, however it confirmed receipt of the correspondence of 16 July 2021. It stated that this was because the email address that was originally contacted was an automated address for its FOI case management system. On 21 July 2021 NHS England confirmed the correct email address to use. It also stated that it would issue a response to the complainant's request as soon as possible.
14. As NHS England stated that it did not see the Commissioner's initial correspondence, she considered it reasonable to allow NHS England 10 working days from 16 July 2021 within which to provide its response to the request.
15. The complainant has provided evidence that they have received an acknowledgement from NHS England but, by the date of this notice, had not received a substantive response to their information request.
16. 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

17. 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.*

18. Section 10(1) 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.*"

19. 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

20. 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

21. 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.
22. 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

Sarah Clouston
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