

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** **5 October 2017**

**Public Authority:** **NHS Commissioning Board (NHS England)**  
**Address:** **4N22 Quarry House**  
**Quarry Hill**  
**Leeds**  
**LS2 7UE**

### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to the handling of private and confidential personal data. NHS England failed to respond to this request within the statutory time for compliance.
2. The Commissioner considers that NHS England breached section 10(1) FOIA in the handling of this request.
3. The Commissioner requires no steps to be taken.

### **Request and response**

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4. On 2 November 2016 the complainant made a request to NHS England, this is attached to this Notice in Annex A.
5. NHS England responded to this request on 7 August 2017.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 6 July 2017 to complain about the way his request for information had been handled.
7. The Commissioner has considered whether NHS England dealt with this request in accordance with its obligations under section 10(1) FOIA.

## Reasons for decision

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8. Section 10(1) provides that:

*"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."*

9. Section 1(1) provides 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. The request was made on 2 November 2016 and a response was provided on 7 August 2017. The Commissioner therefore finds that NHS England breached section 10(1) in failing to respond within 20 working days.

## Right of appeal

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11. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

12. 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.
13. 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 .....**

**Gemma Garvey**  
**Senior Case Officer**

**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## **Annex A**

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### Part 1 NHS England's Preparing and Posting/Sending of 'Private & Confidential' Personal Data up to and including 28 April 2016

Firstly I request. If there are any, copies of NHS England's policies, procedures, guidance etc. that's been issued to NHS staff explaining and detailing the following:

1. How NHS England requires – if it does – its staff to post/send 'Private & Confidential' personal data through the postal service, i.e. by use of the Post Office and/or Royal Mail?
2. How NHS England requires – if it does – packages of Private & Confidential' personal data to be prepared for posting to ensure, or at least mitigate the risk of, the package of 'Private & Confidential' personal data from opening in the post at any point in time before it's finally delivered to the recipient the data subject/NHS patient?
3. If there are any, the contractual obligations and requirements that NHS England's staff involved in the collating, preparing and sending/posting of 'Private & Confidential' personal data to NHS patients/data subjects are obliged and required to follow and comply with.
4. Further to 3 above, if there are any obligations and requirements etc imposed by NHS England upon its employees involved in the collating, preparing and sending/posting of 'Private & Confidential' personal data, then I also request information that explains the disciplinary action and/or sanctions NHS England (the organisation) have at their disposal for dealing with and/or disposing of employees failure in complying with and/or non compliance with any obligations and requirements etc. imposed upon them.

### Loss and/or Potential Loss of 'Private & Confidential' Personal Data

For the second part of this request I have used the term 'potential loss' in reference to incidents where a package of 'Private & Confidential' personal data has evidently burst open in the post and the contents, or what remains of them, have been repackaged into a clear plastic bag by the Royal Mail.

Where the pages have not been in any way numbered, without them for example being numbers 1 of 'X' etc. the data subject/NHS patient cannot know they have received all of the copies of their 'Private & Confidential' personal data. Whereas had the pages been numbers 1 of 'X' etc and the data subject/NHS patient received 1 of 'X' through to 'X' of 'X' they would at least have known they had received all of the copies of 'Private & Confidential' personal data.

The result of which is clearly that the data subject/NHS patient has, and can have no way of knowing what 'Private & Confidential' personal data was in the envelope, nor whether what the repackaged package they finally received is in fact all of what was sent/posted.

Additionally and irrespective of the issue of numbering the pages, the data subject/NHS patient clearly cannot know who else may have found, read through or possibly copied some or all of their 'Private & Confidential' personal data.

Nor do I see anyway that can NHS England can, once a package of someone's a data subject's/NHS patients 'Private & Confidential' personal data has opened in the post, know that no one else has not in fact found, read through or possibly copied some or all of the data subject's/NHS patients 'Private & Confidential' personal data.

With reference to the above explanation I request, the following information;

5. Information that explains what NHS England (the organisation) are, if they are, as an organisation required and obliged to do once a loss or potential loss of 'Private & Confidential' personal data has been reported to NHS England/its staff
  - a. Verbally, by phone, by the data subject/NHS patient.
  - b. In writing by the data subject/NHS patient.
  
6. If there are any, copies of NHS England's policies, procedures guidance to staff etc. that explains NHS England's actions – and/or where applicable inactions – in relation to the issue of loss or potential loss of personal data once it has been reported to NHS England;
  - a. Verbally, by phone, by the data subject/NHS patient.
  - b. In writing by the data subject/NHS patient.

7. Information that explains NHS England's process(es) of assessing the following:
  - a. The data subject's/the NHS patient's confidentiality/privacy etc as a result and/or consequence of the loss or potential loss of their 'Private & Confidential' personal data.
  - b. The detriment and damage to the data subjects and health, wellbeing life etc.
  - c. The consequences to the data subjects health, wellbeing life and life expectancy etc. as a result of any detriment and damage resulting from NHS England's actions/inaction.
  - d. The costs (health and financially) the data subject had already incurred and sustained, is going to continue to incur or sustain and/or is likely to incur or sustain as a result of NHS England's actions/inactions.
8. Information that explains the ways NHS England can recklessly, willfully, knowingly, maliciously and/or with malevolence add to, compound and exacerbate any of the above points;
  - a. To the continued/further damage and/or detriment of the data subject/NHS patient
  - b. To and/or for the advantage of NHS England and/or its staff

Part 2 NHS England's Preparing and Posting/Sending of 'Private & Confidential' Personal Data on and after 28 April 2016

To assist with the second part of this FOIA I have copies the following section from Gwen Kennedy's (Interim Director of Nursing (South London) within her/[named individual] and NHS England's eventual (18 August 2016) response to my 26 April 2016 formal complaint

*Please be assured that we have treated this matter with the seriousness that it deserves As a direct result of your complaint, the Information Governance (IG) team has reviewed and updated their local Subject Access Request procedure. Under the new procedure, all sets of documents are now numbered to avoid any confusion about the information contained in a package. The IG team has also reviewed their stationary supplier to ensure that all envelopes used to convey confidential information are sturdy and fit for purpose.*

*Regrettably, we have no control over the way that packages are handled by the Royal Mail once they leave our offices. However, I accept that we should take all reasonable steps to minimize the risks by numbering documents and using suitable stationary.*

In light of the statements and claims made within Gwen Kennedy, [named individual] and NHS England's eventual response and with reference once again to the points numbers 1-8 above I request;

9. Copies, if there are any, of NHS England's updated policies, procedures, guidance etc. that's been issued to NHS England staff explaining and detailing the issues identified in points 1-8 above

On the basis that NHS England are responsible for in excess of 50 million NHS patients/data subjects confidential personal data within England and I have reason to believe in excess of 10 million within the London/Greater London area alone, it seems unlikely that Gwen Kennedy and [named individual] would, could or should have been able to make any, let alone all of the alleged changes to NHS England's policies, procedures and guidance to staff on their own, or done so without the involvement of other staff and NHS employees and all other relevant (e.g. those involved in NHS patient information governance, patient data protection, patient confidentiality etc) staff being informed of any changes to the protocols.

10. Therefore as it took NHS England 3 months and 3 weeks to respond I also request a detailed chronology that explains the various reviews (e.g. updating of local Subject Access Request procedures and supply of stationary to convey/spew confidential personal data) referred to by Gwen Kennedy within her, [named individual] and NHS England's eventual response.
11. Finally I also request copies of the communications (e.g. letters, emails, and facsimiles) created and circulated by all NHS England staff involved in the claimed/alleged reviewing processes.

Finally to reiterate the point, on the basis that the NHS have spent millions, possibly billions, of pounds of public money on IT

(Information Technology) over the years I don't believe it will or should need or require anything like or approaching 20 working days for you or someone appointed/nominated by you to find the requested information, press print and/or copy and post the evidence to substantiate the claims made by and within Gwen

Reference: FS50689631

Kennedy's etc NHS England's 18 August 2016 response to my formal complaint in a durable and securely sealed envelope.

I would prefer that any documents, information, policies, procedures, guidance and any support/substantiating evidence etc are provided to me as hard/paper copy.