

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 September 2020

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 concerning any responses to the findings of Exercise Cygnus, including correspondence between The NHS Commissioning Board (NHS England) and the Department of Health and Social Care relating to Exercise Cygnus between October 2016 and 24 May 2020.
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, under the FOIA, to the request.
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.

Background

5. Exercise Cygnus was a three-day multi-agency simulation exercise which took place in October 2016.

6. The exercise, which NHS England participated in, aimed to look at:

*"the impact of a pandemic influenza outbreak, and the significant impacts on health delivery a widespread pandemic in the UK would trigger."*¹

Request and response

7. On 24 May 2020, the complainant wrote to NHS England and requested information in the following terms:

"Please could you send me the following information:

1. Copies of any reports submitted to the Emergency Preparedness, Resilience and Response (EPRR) Oversight Group on responses to the findings of Exercise Cygnus.

2. Copies of correspondence about the responses to Exercise Cygnus between the chair of the EPRR oversight group and civil servants at the Department of Health and Social Care.

3. Copies of correspondence about the responses to Exercise Cygnus between the chair of the EPRR oversight group and Special Advisers at the Department of Health and Social Care.

4. Copies of any spreadsheet or 'dashboard' document that has been created in or communicated with NHS England to show progress on implementing recommendations based on the findings of Exercise Cygnus (e.g. the 'lessons identified' which are listed in Annex A of the 2017 report 'Exercise Cygnus Report Tier One Command Post Exercise Pandemic Influenza').

¹ <https://www.england.nhs.uk/wp-content/uploads/2017/03/board-paper-300317-item-10.pdf>

The time period for the information I am seeking is between October 2016 and 24th May 2020."

8. NHS England acknowledged the request on 8 July 2020 but had failed to provide a substantive response by the date of this notice.

Scope of the case

9. The complainant contacted the Commissioner on 21 July 2020 to complain about the failure, by NHS England, to respond to the request.
10. In line with her usual practice, the Commissioner contacted NHS England on 25 August 2020 to highlight the outstanding response. She requested that NHS England respond to the request within 10 working days. The correspondence was neither acknowledged nor responded to.
11. The complainant contacted the Commissioner on 11 September 2020 to request a decision notice considering NHS England's compliance with the FOIA.
12. 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

13. 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.*

14. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

15. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.
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 presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, NHS England has breached section 10 of 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: 0300 1234504

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

Ben Tomes
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SK9 5AF