

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 October 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 about the process behind The NHS Commissioning Board (NHS England)'s decision to update their public guidance relating to gender dysphoria on 28 May 2020. NHS England had failed to provide a substantive response by the date of this notice.
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.

Request and response

5. On 8 July 2020, the complainant wrote to NHS England and requested information in the following terms:

"On 28 May 2020 the NHS guidance relating to gender dysphoria was seemingly updated without any public engagement with the affected communities. From what we can see, the material changes (see here: <https://www.nhs.uk/conditions/gender-dysphoria/treatment/>) appear to be:

<p><i>Children and Young People</i></p>	<p><i>Added assessment is 3 to 6 appointments over several months.</i></p> <p><i>Added referral to CYPMHS for more serious emotional issues.</i></p>
<p><i>Children and Young People Hormone Therapy</i></p>	<p><i>Reached puberty changed to lasting signs.</i></p> <p><i>Delete: example of testosterone, suppress child's hormones, suppress puberty and delay distressing changes, GnRH analogues considered to be completely reversible.</i></p> <p><i>Add: Long term side effects, psychological effects if stopped, possible effect on brain & bones, side effects (hot flushes, fatigue & mood).</i></p> <p><i>Add: from 16 and been on hormones blockers can move to hormones plus statement about side-effects, contraception, uncertainty about risks AND NHS reviewing evidence.</i></p>

In light of the above changes to the pages dealing with treatment of gender dysphoria, please provide us with the following information:

- 1) Confirmation of who was responsible for updating the guidance and when the decision to update the guidance was taken;*
- 2) All correspondence between NHS England and any / all relevant government departments including the Government Equalities*

Office, the Department of Health and Social Care and the Cabinet Office.

3) All internal correspondence relating to the decision to update the guidance and the extent of the proposed changes.

In respect of (2) and (3), please provide all correspondence (internal and external) from the date that the decision was first made to update the guidance to the date of this request."

6. NHS England acknowledged the request on 8 July 2020 and apologised for the delay in responding on 7 August 2020 but had failed to provide a substantive response by the date of this notice.

Scope of the case

7. The complainant contacted the Commissioner on 9 September 2020 to complain about the failure, by NHS England, to respond to the request.
8. In line with her usual practice, the Commissioner contacted NHS England on 16 September 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.
9. The complainant contacted the Commissioner on 30 September 2020 to request a decision notice considering NHS England's compliance with the FOIA.
10. 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

11. 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.*

12. 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.*
13. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.
14. 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."*
15. 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

16. 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

17. 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.
18. 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
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