

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 October 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") relating to NHS England's CMU Framework Agreement and the supply of human albumin. By the date of this notice, NHS England had not provided a substantive response to the request.
2. The Commissioner's decision is that NHS England has 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 Act and may be dealt with as a contempt of court.

Request and response

5. On 26 July 2021, the complainant wrote to NHS England and requested information in the following terms:

"In relation to the NHS CMU Framework Agreement for the supply of Human Albumin, Reference CM/PHS/5549, which commenced on 1 May 2021, please provide me with the following information:

- 1. Total amount of product ordered by NHS customers under Band 1 of the Framework, per month and per product, since 1 May 2021;*
- 2. The names of the NHS customers who have placed Band 1 orders, per product, since 1 May 2021.*
- 3. Amount of product ordered by NHS customers under Band 2 of the Framework, per month and per product, since 1 May 2021;*
- 4. The names of the NHS customers who have placed Band 2 orders, per product, since 1 May 2021.*

I do not consider the above information to be exempt from disclosure for reasons of commercial sensitivity. However, if, NHS England considers the above information to be commercially sensitive, I would accept the provision of the above information with all supplier names anonymised.

In case it assists, I attach a copy of equivalent data that was provided to me in November 2019 by NHS England in relation to the predecessor framework agreement for Human Albumin (reference: CM/PHS/14/5438). I would be happy to accept the requested information in a similar format to the attached document."

6. NHS England wrote to the complainant on 24 August 2021 to acknowledge the request.
7. On 31 August 2021, the complainant wrote to NHS England to complain about NHS England's delay in responding to his request.
8. By the date of this notice, NHS England had not provided the complainant with a substantive response to his request.

Scope of the case

9. The complainant contacted the Commissioner on 10 September 2021 to complain about NHS England's failure to respond to his request.
10. The Commissioner contacted NHS England on 1 October 2021 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
11. The Commissioner also contacted the complainant on 1 October 2021 to explain that NHS England had been given 10 working days from that date within which to provide a response to their request.
12. The complainant has provided evidence that he has received an acknowledgement from NHS England but, by the date of this notice, had not received a substantive response to his information request.
13. 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

14. Section 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.*
15. 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.*"
16. 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

17. 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

18. 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.
19. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF