

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 February 2021

Public Authority: NHS Improvement
Address: Wellington House
133-155 Waterloo Road
London
SE1 8UG

Decision (including any steps ordered)

1. The complainant requested information from NHS Improvement (NHSI) relating to an independent review published in 2020. NHSI had failed to provide a substantive response by the date of this notice.
2. The Commissioner's decision is that NHSI failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner requires NHSI to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the FOIA, to the request.
4. NHSI 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 22 October 2020, the complainant wrote to NHSI and requested information in the following terms:

"Please accept this FOI request for the following information:

- The response from [Name] to Fiona Ritchie's questions regarding the Oliver McGowan LeDeR Independent Review. This should have been received by Fiona Ritchie in the August to September 2020 timeframe.*
- All email / written correspondences between Fiona Ritchie and [Name] or [Name]'s representative(s) (e.g. solicitor(s), North Bristol Trust) between September 2019 - September 2020.*
- The report produced following the interview and questions asked of [Name] (regional LeDeR lead from NHSEI) by Fiona Ritchie on or around Monday 3 August 2020.*

These documents will all be available from Fiona Ritchie (Mobile – [Redacted]. Email – [Redacted]) who lead the Oliver McGowan LeDeR Independent Review and / or [Name] (Contact: [Redacted]).

I am happy to receive all the information electronically."

6. NHSI acknowledged the request on 26 October 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 21 December 2020 to complain about the failure, by NHSI, to respond to the request.
8. In line with her usual practice, the Commissioner contacted NHSI on 18 January 2021 to highlight the outstanding response. She requested that NHSI respond to the request within 10 working days.
9. NHSI contacted the Commissioner on 1 February 2021 to advise that due to extended service pressures it had been unable to provide a response and requested an extension to the 10 working day deadline in the Commissioner's letter of 18 January 2021.
10. The Commissioner wrote to NHSI on 1 February 2021 to agree an extension of a further 5 working days for NHSI to provide a response.

NHSI had failed to provide a substantive response by the date of this notice.

11. The scope of this notice and the following analysis is to consider whether NHSI has complied with section 10 of the FOIA.

Reasons for decision

12. 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.*

13. 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.*

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

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. 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, NHSI 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: 0300 1234504

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

**Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF**