

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 July 2022

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 relating to the commissioning of specialised metabolic services. By the date of this notice the NHS Commissioning Board ("the NHS") had not issued a substantive response to this request.
2. The Commissioner's decision is that the NHS has breached section 10(1) of FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires the NHS to take the following step to ensure compliance with the legislation.
 - The NHS must provide a substantive response to the request in accordance with its obligations under FOIA.
4. The NHS must take this step 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 3 March 2022, the complainant wrote to the NHS and requested information in the following terms:

"I am writing to you under the Freedom of Information Act 2000 to request the following information from NHS England relating to the commissioning of specialised metabolic services.

Please can you provide the following information-

- A list of which services are currently funded to provide specialised clinic care to people with inherited metabolic diseases by NHS England.
- Any peer review or assessments of whether organisations funded by NHS England meet the core standards of the service specification Metabolic Services (Adult) Metabolic Disorders (Children) and Lysosomal storage disorders (Children). This request relates to the period 2018 to the present and to documents held, received or created by staff employed by NHS England.
- Any assessments of geographical inequalities in service provision within metabolic services conducted by NHS England in the period 2018 to the present. This request relates to the period 2018 to the present and to documents held, received or created by staff employed by NHS England.
- Correspondence between NHS England Commissioners and staff working on behalf of NHS England and the regional team NHS England and NHS England South West and/or North Bristol NHS Trust with regard to the roll-out of sapropterin for pat North Bristol NHS Trust.
- Minutes of the NHS England Clinical Reference Group for Metabolic Disorders from 2017 to the present.

If it is not possible to provide the information requested due to the information exceeding the cost of compliance limits identified in Section 12, please provide advice and assistance, under the Section 16 obligations of the Act, as to how I can refine my request.

If you have any queries please don't hesitate to contact me via email or phone and I will be very happy to clarify what I am asking for and discuss the request."

6. The NHS acknowledged the request on 7 March 2022. To date, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 21 June 2022 to complain about the NHS's failure to respond to their request.
8. The Commissioner has considered whether the NHS has complied with its obligations in relation to the time for compliance at section 10(1) of FOIA.

Reasons for decision

9. Section 1(1) of 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.”
10. Section 10(1) of FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt”.
11. On 29 June 2022 the Commissioner wrote to the NHS, reminding it of its responsibilities and asking it to provide a substantive response to the complainant's request within 10 working days.
12. Despite this intervention the NHS has failed to respond to the complainant.
13. From the evidence provided to the Commissioner in this case, it is clear that the NHS did not deal with the request for information in accordance with FOIA. The Commissioner finds that the NHS has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with FOIA.

Right of appeal

14. 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

15. 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.
16. 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
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