

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 May 2023

Public Authority: NHS England
Address: Quarry House
Quarry Hill
Leeds
LS2 7UE

Decision (including any steps ordered)

1. The complainant has requested information from NHS England in relation to the number of places available for CT1 anaesthetics, along with the number of applicants. NHS England refused to provide the requested information, explaining that the information is published every year and cited section 22 of FOIA – information intended for future publication.
2. The Commissioner's decision is that NHS England has correctly applied section 22(1) of FOIA.
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

Request and response

4. On 15 February 2023, the complainant wrote to NHS England and requested information in the following terms:

"The number of places available for CT1 anaesthetics. As a total for the UK and divided by ACCS/Core and region (e.g. England and Wales, Scotland, Northern Ireland).

The number of applicants for CT1 anaesthetics. As a total for the UK and divided by region (e.g. England and Wales, Scotland, Northern Ireland).”

5. NHS England responded on 17 February 2023. It stated that the information would be available at the end of the recruitment year.
6. Following an internal review NHS England wrote to the complainant on 31 March 2023. It stated that it maintained its original position and that the information was withheld under section 22 of FOIA – information intended for future publication.

Scope of the case

7. The complainant contacted the Commissioner 3 April 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of the case is to determine if NHS England can rely on section 22 of FOIA to withhold the requested information.

Reasons for decision

Section 22 – information intended for future publication

9. Section 22(1) FOIA says that information is exempt if:
 - (a) The information is held by the e public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
 - (b) The information was already held with a view to such publication at the time when the request for information was made, and
 - (c) It is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).
10. Section 22 FOIA allows a public authority to withhold information that it is already intending to publish if it is reasonable in the circumstances to wait until the anticipated publication date.

11. In order to engage the exemption, the public authority does not need to have set a specific publication date, but it must have already had a settled intent to publish the information before the request was made and it must be intending to publish all the withheld information – not just parts of it.
12. NHS England has explained that it is standard practice for the requested information to be published on its website once the recruitment rounds are completed.
13. NHS England explained that recruitment is still ongoing and that it only adds the data when it knows the final numbers, so as to give a full and accurate picture.
14. The Commissioner accepts the arguments provided by NHS England and is satisfied that the exemption was applied correctly. He has gone on to consider the public interest test.

Public interest test

Arguments in favour of disclosure

15. The complainant has argued that it is in the public interest for the information to be released as soon as is practically possible for transparency reasons.
16. The complainant has also advised that it would assist other workforces who are involved in NHS workforce planning.
17. NHS England has stated that if the information were released, it would promote accountability and transparency of its work.
18. NHS England explained that it regularly provided recruitment information through publication and through FOI requests. It acknowledges that there is a strong public interest in medical recruitment given its implications for the current and future NHS workforce. NHS England explained that the above reasons are why the information is published at the end of every recruitment round when post numbers are finalised.

Arguments in favour of maintaining the exemption

19. NHS England explained that it considers that the public interest in permitting public authorities to publish information in a manner and form, along with within a time of their own choosing, is important.
20. NHS England went on to explain that it is part of the effective conduct of public affairs that the general publication of information is a

conveniently planned and managed activity within the reasonable control of public authorities.

21. NHS England stated that, where public authorities have taken the decision in principle to publish information, they have a reasonable entitlement to make their own arrangements to do so.
22. NHS England explained that it is its intention to publish post numbers when all normal channels for review have been completed and when the number of posts has been finalised.

Balance of the public interest test

23. The Commissioner considers that there is a public interest in NHS England publishing the information, as it would promote transparency.
24. Whilst the Commissioner accepts that there is a public interest in openness and transparency, he is satisfied that if the information were to be published before the end of the recruitment process/the numbers are finalised, it could cause distress to those involved in the process, as it could cause them to worry that they may have a reduced chance of obtaining a post.
25. The Commissioner is also satisfied that the figures are published once the recruitments have been finalised, as he has been provided with links by NHS England, which demonstrate that such information is posted annually. He is satisfied that when the request was made, there was an intention to publish the requested information.
26. The Commissioner is therefore satisfied that NHS England has correctly applied section 22 of FOIA to the requested information.

Right of appeal

27. 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

28. 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.
29. 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
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Wycliffe House
Water Lane
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