

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 March 2024

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

Decision (including any steps ordered)

1. The complainant requested information from NHS England (the public authority). By the date of this notice the public authority had not issued a substantive response to this request.
2. The Commissioner's decision is that the public authority 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 public authority to take the following step to ensure compliance with the legislation.
 - The public authority must provide a substantive response to the request in accordance with its obligations under FOIA.¹
4. The public authority 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.

¹ The Commissioner expects the public authority to take appropriate precautions to protect any personal data when disclosing information in a spreadsheet or similar format;
[Information Commissioner's Office - Advisory note to public authorities | ICO](#)

Request and response

5. On 3 August 2023, the complainant wrote to the public authority and requested information in the following terms:

“How many Serious incidents severe HARM status closed and Serious incidents patients deceased status closed in A/E (and) Emergency Medicine in these years please 2015-2016-2017-2018-2019. In The Hull University Teaching Hospital Anlaby Rd Hull. Previous name before March 2019 Hull and East Yorkshire Hospitals NHS”

Reasons for decision

6. 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.”

7. 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”.
8. On 5 December 2023 the Commissioner wrote to the public authority, reminding it of its responsibilities and asking it to provide a substantive response to the complainant’s request within 10 working days.
9. Despite this intervention the public authority has failed to provide the information requested.
10. The public authority explained that extracting the data would require creation of a bespoke code to interrogate its datasets. It was currently lacking the in-house expertise necessary to carry out such work and could not say when this was likely to be rectified. As such it was unable to confirm whether any information was held, let alone to provide any.

11. Whilst the Commissioner is sympathetic to the demands on public authorities, he must also balance this against the rights of their legal obligations. It would make a mockery of FOIA if a public authority was allowed to delay its response indefinitely due to resource issues. The public authority will need to think more creatively as to how it might extract this information.
12. From the evidence provided to the Commissioner in this case, it is clear that the public authority did not deal with the request for information in accordance with FOIA. The Commissioner finds that the public authority 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

13. 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

14. 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.
15. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Roger Cawthorne
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