

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 November 2016

Public Authority: NHS Commissioning Board (NHS England)
Address: 4N22 Quarry House
Quarry Hill
Leeds
LS2 7UE

Decision (including any steps ordered)

1. The complainant has requested information relating to information withheld in response to a previous request (NHS England reference number FOI010698). NHS England has failed to respond to this request for information.
2. The Commissioner considers that NHS England breached section 10(1) FOIA in the handling of this request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - NHS England must provide the complainant with a response to this request in accordance with its obligations under FOIA.
4. The public authority 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 6 September 2016 the complainant made the following request to NHS England:

"I would like to make one new, very short FOI request. Given the brevity of the request I hope it can be dealt with within expected timeframes.

I recently heard back from you about my FOI request FOI010698, in which I asked for attachments to emails containing work from Deloitte. You withheld these documents under an exemption.

My new FOI Request:

For the withheld documents in FOI010698: has there been any calculations done in any of these documents to estimate an absolute number of increased/excess deaths due to an increased/excess weekend death rate? [Yes/No]

If there has:

a) do these calculations come up with a number between 5800 and 7000 deaths per year? [Yes/No]

b) does the calculation use a value of increased mortality rate of 15% (includes the range 14.5-15.5%) on a Sunday compared with a Wednesday? [Yes/No]

Because of the simplicity of these questions, I do not believe that any exemption will apply. I hope you are able to answer them: the response to this FOI will also affect how vigorously I pursue other requests with you and I do not want to needlessly waste your or my time with requests that the answers to these questions will tell me do not need to be pursued."

6. NHS England has not provided a response to this request.

Scope of the case

7. The complainant contacted the Commissioner on 5 October 2016 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether NHS England dealt with this request in accordance with its obligations under section 10(1) FOIA.

Reasons for decision

9. Section 10(1) provides that:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

10. Section 1(1) provides 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."

11. The request was made on 6 September 2016 and a response is yet to be provided. The Commissioner therefore finds that NHS England breached section 10(1) in failing to respond within 20 working days.

Right of appeal

12. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

13. 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.
14. 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

**Gemma Garvey
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**