

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 February 2021

**Public Authority:** NHS Commissioning Board (NHS England)

**Address:** Quarry House  
Quarry Hill  
Leeds  
LS2 7UE

#### Decision (including any steps ordered)

---

1. The complainant requested information from the NHS Commissioning Board (NHS England) about the postponing and cancelling of operations by NHS England during the Covid-19 pandemic. By the date of this notice NHS England had failed to provide a substantive response to this request.
2. The Commissioner's decision is that NHS England has breached section 10(1) of the 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 NHS England to take the following steps to ensure compliance with the legislation.
  - Respond to the complainant's request in accordance with the FOIA.
4. NHS England 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 3 October 2020, the complainant wrote to NHS England 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:*

*Documents relating to the instructions on postponing/cancelling of operations by NHS England during the Covid-19/Coronavirus Crisis March 2020 – Current time.*

*Documents relating to deaths/serious health issues caused by the postponing/cancelling of operations by NHS England during the Covid-19/Coronavirus Crisis March 2020 – Current time.*

*Please provide the information in electronic form.*

*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 can identify any ways that my request could be refined I would be grateful for any further advice and assistance.*

*If you have any queries please don't hesitate to contact me via email and I will be very happy to clarify what I am asking for and discuss the request, my details are outlined below.*

*If my request is denied in whole or in part I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all non-exempt material. I reserve the right to appeal your decision to withhold any information or to charge excessive fees.*

*I would be grateful if you could confirm via email that you have received this request. I look forward to your response within 20 working days as outlined by the statute."*

6. To date, a substantive response has not been issued.

## Scope of the case

---

7. The complainant contacted the Commissioner on 5 December 2020 to complain about the failure by NHS England to respond to his request.
8. The Commissioner has considered whether NHS England has complied with its obligations in relation to the time for compliance at section 10(1) of the FOIA.

## Reasons for decision

---

9. 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.*

10. Section 10(1) of the 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 7 January 2021 the Commissioner wrote to NHS England, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
12. Despite this intervention NHS England has failed to respond to the complainant.
13. From the evidence provided to the Commissioner in this case, it is clear that NHS England did not deal with the request for information in accordance with the FOIA. The Commissioner finds that NHS England 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 the 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: 0300 1234504  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

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