

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 October 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 further information relating to a figure of an estimate of additional deaths provided in an email. 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 4 August 2016 the complainant made the following request to NHS England:

"On 16/7/15 at 18:05, NHS England's Deborah Williams wrote via email to Nick Freemantle at UCL:

"Thanks very much for your advice today. In the end we managed to supply our press / media teams with the simplest possible statement, as follows. [FYI the "estimate" was made by Deloitte, and was actually 6700]

"The 6,000 figure is an estimate of additional deaths in hospital, based on an analysis of 2013/14 HES data that is due to be published in the BMJ shortly."

Please provide the emails/documents which detail Deloitte's calculation which come up with the figure of 6700.

Please provide all attachments with emails.

Please state how this figure was given to the secretary of state or Department of Health.

Please provide the email/letter chain giving the figure to the Department of health/secretary of state, with attachments."

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

Scope of the case

7. The complainant contacted the Commissioner on 10 September 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 4 August 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
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SK9 5AF