

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 June 2021

Public Authority: The 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") relating to a grant of £540,000 made to the Apperta Foundation CIC by NHS England. By the date of this notice NHS England had not provided a substantive response to this request.
2. The Commissioner's decision is that NHS England has failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner requires NHS England to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response to the request in accordance with its obligations under 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 27 January 2021, the complainant wrote to NHS England and requested information in the following terms:

"NHS England made a grant of £540,000 to The Apperta Foundation CIC in financial year 2015/16. (Evidence of this grant is attached. I draw your attention to page 8, item 2.)

Please provide me with copies of any and all documents relating to this grant award, including, but not limited to, contracts, Service Level Agreements, grant applications, risk assessment, ethics assessments, memoranda of understanding, invoices, emails and informal notes. This request includes all formats of documentation, including but not limited to, electronic, hard copy, and audio.

The Apperta Foundation trades using the following names, therefore this Freedom of Information Request is regarding the £540,000 grant to The Apperta Foundation CIC trading under any of the following names :

The Apperta Foundation, The Apperta Foundation C.I.C, The Apperta Foundation CIC, Open Source Software Foundation for Health and Care C.I.C.

6. On 26 February 2021, as the complainant had not received a response, she wrote to NHS England to ask for an update on the status of her request.
7. The complainant wrote to NHS England again on 10 March 2021, 17 March 2021 and 24 March 2021 to ask for an update on the status of her request.
8. On 25 March 2021 NHS England wrote to the complainant to acknowledge the request.
9. On 27 March 2021, 7 April 2021, 13 April 2021 and 14 April 2021, as the complainant had not received a response, she wrote to NHS England to ask for a further update on the status of her request. By the date of this notice NHS England had not responded to the complainant.

Scope of the case

10. The complainant contacted the Commissioner on 15 April 2021 to complain about NHS England's failure to respond to her request.

11. The Commissioner contacted NHS England on 12 May 2021 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
12. The Commissioner also contacted the complainant on 12 May 2021 to explain that NHS England had been given 10 working days from that date within which to provide a response to her request.
13. The complainant has provided evidence that she has received an acknowledgement from NHS England but, by the date of this notice, had not received a substantive response to her information request.
14. The scope of this notice and the following analysis is to consider whether NHS England has complied with section 10 of the FOIA.

Reasons for decision

15. Section 10 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.*

16. Section 10 of the FOIA states that responses to requests made under the Act must be provided, "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
17. NHS England did not provide a substantive response to the request within 20 working days of receipt. Therefore, the Commissioner's decision is that NHS England has breached section 10 of the FOIA.

Right of appeal

18. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

19. 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.
20. 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.
21. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF