



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 18 May 2006

Public Authority: Northern Lincolnshire and Goole Hospitals NHS Trust
Address: Scunthorpe General Hospital
Cliff Gardens
North Lincolnshire
DN15 7BH

Summary Decision and Action Required

The Commissioner's decision in this matter is that the public authority has dealt with the complainant's request in accordance with Part I of the Act.

In the light of this decision, the Notice specifies no remedial steps to be taken by the public authority.

- 1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner**
 - 1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').
 - 1.2 Where a complainant has made an application for a decision, unless:
 - a complainant has failed to exhaust a local complaints procedure, or
 - the application is frivolous or vexatious, or
 - the application has been subject to undue delay, or
 - the application has been withdrawn or abandoned,the Commissioner is under a duty to make a decision.
 - 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

2.1 The complainant has advised that on 16 February 2005 the following information was requested from the public authority in accordance with section 1 of the Act:

'I require a copy of the specific "zero-tolerance and or withdrawal of treatment policy/s" in use by your Trust (and therefore applicable to me at that time, as your then patient) and referred to by your Divisional Manager of Medicine, [*Redacted Name*] in his Media Release of Thursday, 17 January 2002.

It is the specific "step by step" process stated within the applicable procedure, that would, as of the above date, have been used to "withdraw treatment" from any and all patients, that I require'

2.2 In response, the public authority supplied the complainant with several pieces of information relating to his request. The complete list of the information provided is contained in Annex 1.

The public authority explained that Northern Lincolnshire and Goole NHS Trust (the Trust) did not hold a 'an explicit policy for the Management of Violent and Aggressive Behavior ratified by Northern Lincolnshire and Goole Hospitals NHS Trust during the year 2002' but went on to explain and provide other documents referring to the withdrawal of treatment.

The complainant was dissatisfied with the responses received by the Trust and on 22 April 2005 made a complaint to the Commissioner.

The complainant argued 'The Trust have written and admitted they did have a specific policy and failed to produce it via my Freedom of Information request, and have only done so now as it is the subject of an NHS formal complaint I have made about this very issue'

Following the complaint, the Commissioner undertook an investigation in order to ascertain whether the Trust had responded to the complainant's request in accordance with the Act.

Throughout the investigation of this complaint, it has been necessary to bear the following in mind:

- Northern Lincolnshire and Goole Hospitals NHS Trust was formed in April 2001
- Northern Lincolnshire and Goole Hospitals NHS Trust formed as a result of a merger between two separate Trusts, namely North East Lincolnshire NHS Trust and Scunthorpe and Goole Hospitals NHS Trust
- The complainant's treatment was withdrawn in June 2002
- The complainant's information request was made on the 16 February 2005, more than two years after the treatment was withdrawn.

The complainant's concerns relate to the applicability of certain policies associated with the withdrawal of his treatment in 2002.

2.3 The issue of section 10, which stipulates the time for compliance with section 1, has not been considered for the purpose of this complaint on the basis that a response date exceeding 20 working days had been arranged with the complainant. Therefore the focus of this decision is on section 1 of the Act (General right of access to information held by public authorities)

3. Relevant Statutory Obligations under the Act

3.1 **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.’

4. Review of the case

4.1 A member of the Commissioner’s staff commenced an investigation into whether a policy on the withdrawal of treatment from violent and aggressive patients, specific to the complainants request was held by the public authority.

4.2 The Commissioner put the following questions to the public authority:

- Can you confirm that Northern Lincolnshire and Goole Hospitals NHS Trust did not hold a specific policy?
- Can you provide copies of the correspondence in which the complainant details his concerns about the perceived failure of the Trust to supply him with ‘a full and complete copy of the one specific individually named actual policy that was referred to and strictly adhered to and used by your Trust to withdraw my treatment (date)’
- Can you categorically state which policies were applicable (to the complainant) national to otherwise, and ideally provide a timeframe of when the policies were applicable.
- Additionally, if possible please indicate which policies were of personal relevance to the complainant.
- Can you confirm that the government policy referred to in the paragraphs 1 and 4 of the Trust News Media Release of the 17 January 2002 is Health Service Circular HSC 2001/18? If this is not the policy please confirm which circular or policy the media release is referring to.
- Please confirm which policy [*Redacted Name*] is referring to paragraph 2 of the media release above.
- Please confirm which policy [*Redacted Name*] is referring to in paragraph 3 above.

- In response to the list of documents the Trust has provided to the complainant please confirm-
 - This is an accurate record of relevant documents, applicable to the complainant.
 - The information has been provided to the complainant and whether the documents are of relevance to his original request.
 - That there are no outstanding policies/circulars or documents of relevance.
- Can you confirm which new policy was issued in 2002 in regard to your correspondence dated the 23 March 2005 in which an 'Accident/Untoward Incident Reporting Procedure Policy' is referred and whether this has been provided to the complainant? Could you also confirm that this document does not refer to the withdrawal of treatment?
- Can you confirm whether Northern Lincolnshire and Goole NHS Trust policy on the management of violence and aggression was:
 - Available to the complainant at the time of his request
 - Whether it has subsequently been provided
 - Whether the policy was non-existent, in draft or in completed form at the time of the withdrawal of the complainant's treatment
- Please confirm which policy is referred to in respect of 'current policy' in the Trust's letter to the complainant dated the 6 May 2005.

4.3 These questions were put to the public authority by letter on the 6th September 2005, the 17 January 2006 and the 17 March 2006. The issues were also discussed verbally by way of telephone contact dated the 20 September 2005, the 9 February 2006 and the 17 March 2006. The investigation itself is explored in more detail below.

4.4 The public authority acknowledged the complainant's request on the 4 March 2005. On the 21 of March the public authority responded substantively to the request providing the documents detailed in Annex 1. Amongst this information was the current policy for the Management of Violent and Aggressive Behaviour, which included the Zero Tolerance and Withdrawal of Treatment Policy, adopted in 2003. As this policy was adopted in 2003, it could not have been applicable to the complainant at the time of the withdrawal of his treatment in 2002 as stated within the terms of the request.

On receipt of the information, the complainant made further enquiries concerning the explicit policy for the Management of Violent and Aggressive behavior in June 2002. The Trust responded on the 23 March 2005. In this response the Trust stated:

'I can confirm there is no record of an explicit policy for the Management of Violent and Aggressive Behavior ratified by Northern Lincolnshire and Goole Hospitals NHS Trust in the year 2002'

The letter went on to explain that staff members were working under the policies of previous organisations. A copy of Scunthorpe and Goole Hospitals NHS Trust's (the previous organisation) policy on 'Harassment and Bullying' was provided. In addition, the letter referred to a number of other documents of relevance to the withdrawal of treatment and provided hard copies of these to the complainant. The complainant was also provided with a health circular HSC 2001/18 entitled 'Withholding Treatment from Violent and Abusive Patients in NHS Trusts-NHS Zero Tolerance Zone'. It has subsequently been confirmed that this is the policy referred to by [Redacted Name] in the media release of the 17 January 2002.

4.5 On the 29 March 2005 the complainant contacted the public authority to submit 21 formal complaints. This correspondence made it clear that the complainant considered the public authority to have failed to provide a copy of the specific policy he had requested. The Commissioner is satisfied that this amounts to a request for an internal review of the public authority's initial handling of the complaint.

4.6 The public authority acknowledged the complaint on the 30 March and responded substantively on the 21 April 2005. Within this response, the Trust directly addressed the complainant's concerns regarding the provision of the specific policy. The public authority acknowledged that a copy of the specific guidance had not been provided but went on to explain that this was because no such policy existed for the merged Trust in 2002.

The public authority explained that guidance issued by the Department of Health, entitled 'Withholding Treatment from Violent and Abusive Patients in NHS Trusts-NHS Zero Tolerance Zone' was available to the senior management of the Trust and that this would have been available and referred to at the time of the withdrawal (of the complainant's) treatment'. The Trust also explained that a policy for Northern Lincolnshire and Goole Hospitals NHS Trust was being drafted at the time of the complainant's withdrawal from treatment.

The letter of the 21 April summed up by stating:

'Therefore, whilst no specific policy existed for Northern Lincolnshire and Goole Hospitals NHS Trust, there was in fact National NHS Policy on the withdrawal of treatment available to Trusts covering the period in question'.

4.7 The Trust wrote to the complainant on the 6 May 2005. This letter addressed additional aspects of the complainant's formal complaints, including those concerning the Freedom of Information request.

Within this correspondence, it was stated

'Under the Trust's current policy, informal and formal warnings would be issued prior to any decision to withdraw treatment. Please be assured that appropriate reminders will be issued as part of the proposed review and re-issue of the Trust's Policy for the Management of Violent & Aggressive Behaviour'.

After further investigation, the Commissioner is satisfied that the current policy (as held at the time of the complainant's request on the 16 February 2005) was provided to the complainant on the 21 March 2005. It is understood that this policy was in the early stages of formulation at the time of the withdrawal of the complainant's treatment (which took place during June 2002), and therefore could not be supplied to him as the 'specific policy' under the terms of his request as it was not held in a tangible format at the time his treatment was withdrawn.

- 4.8 The Commissioner is satisfied that the explanations provided by the Trust in their letters of the 23 March and subsequent letters, notably the 21 April and the 6 May 2005 made it clear that the public authority did not hold a specific policy which the Trust alone followed. Rather the Trust was in possession of national and historical policy documentation of relevance to the complainant's request and this has been provided to him.

The Trust has demonstrated its adherence to the duty to provide advice and assistance under section 16 of the Act by providing the complainant with a number of other policies and documents and explanations of how the policies were applicable to the Trust, and therefore the Trust's patients.

- 4.9 Additionally, the Commissioner is satisfied that a policy specific to the trust was under consideration at the time of the complainant's withdrawal of treatment. The Trust has been unable to confirm the stage of the policy at the time of the withdrawal but have informed the complainant that in any case, HSC 2001/18 was applicable.
- 4.10 To summarise, following a comprehensive investigation the Commissioner is satisfied that:

- The Trust supplied information relevant to the complainant's request on the 21 March 2005. The information provided is listed in Annex 1.
- The Trust provided additional explanation of the nature and background of the policies on the 23 March 2005.
- On the 21 April 2005, following further dialogue with the complainant, and the initiation of an internal review, the Trust provided a copy of the detailed guidance enclosed with Health Circular HSC 2001/18, as referred to by [Redacted Name] in the media release of the 17 January 2002. The complainant had previously been advised that this document was available from the Department of Health, and supplied with a copy of the Circular on the 23 March 2005.
- The Trust have confirmed that prior to the issue of the 'Policy for the Management of Violent and Aggressive Behavior' in 2003 the policies issued by the predecessor Trusts would have been applicable to the complainant and that the Health Circular HSC 2001/18 would be of relevance to him. These have been provided to the complainant.

- That the Trust did not hold a policy specific applicable only to itself as 'Northern Lincolnshire and Goole Hospitals NHS Trust' at the time of the withdrawal of the complainants treatment in 2002.
- That there was no single policy 'specific' to the complainant's withdrawal of treatment in 2002. Rather a host of national and historical guidance and policy was of relevance and this has been provided. In the absence of a 'specific' policy, Health Circular HSC 2001/18, is the closest document the Trust have been able supply of relevance to the complainant's circumstances at the relevant time. Correspondence dated the 21 April and the 6th May 2005 confirms this.

5. The Commissioner's Decision

- 5.1 On the basis of the evidence provided by both the Trust and the complainant, the Commissioner is satisfied that Northern Lincolnshire and Goole Hospitals NHS Trust has complied with Section 1 of the Act, despite the initial confusion in the provision of the current policy which was not adopted until 2003.

By the complainant's own admission the Trust did provide the requested information but failed to identify which was specifically applicable to him.

The complainant continues to contend that by failing to point to a specific policy, from the host of policies provided, the Trust has failed to comply with his request. Whilst the applicability of the various pieces of guidance could have been better explained to the complainant, there is no clear evidence to suggest that the Trust have failed to comply with the Act. As a result, the Commissioner has not upheld the complaint.

6. Action Required

- 6.1 In the light of the matters set out above, the Commissioner requires no remedial steps to be taken by the public authority.

7. Right of Appeal

- 7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 18th day of May 2006

Signed

**Phil Boyd
Assistant Commissioner**

**Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Annex 1**Information provided to the Complainant**

Document	Date Provided
Incident Form 427/02	21/03/2005
Policy for the Management of Violent and Aggressive Behaviour 2003	21/03/2005
Checklist and Guidance for Dealing with Aggression in the Workplace and a Personal Safety and Security Guide	21/03/2005
Incident Report no. 03928	21/03/2005
Incident Reporting Policy	21/03/2005
Blank Reporting Form	21/03/2005
Memo explaining numbering of forms	21/03/2005
Audit Trail of Clinical Note Movement	21/03/2005
Nature and Date of Complaints	21/03/2005
Nature and Date of Complaints concerning [Redacted Name]	21/03/2005
Other Information held concerning the Complainant	21/03/2005
Letter from [Redacted Name]	21/03/2005
Letter from [Redacted Name]	21/03/2005
Accident/Untoward Reporting Policy	23/03/2005
HSC 2001/18 Withholding Treatment from Violent and Abusive Patients in NHS Trusts	23/03/2005
Good Medical Practice – Guidance from the General Medical Council-	23/03/2005
Four pages of incident report 03928	23/03/2005
Figures provided in response to a request of the 29 th March 2005	26/03/2005
Information Leaflet on the Trust's complaints process	21/04/2005
Complete detailed Guidance for NHS Trusts enclosed with circular 2001/018	21/04/2005