

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 18 December 2007

Public Authority: National Patient Safety Agency
Address: 4-8 Maple Street
London
W1T 5HD

Summary

The complainant requested a copy of a report regarding a critical incident which occurred at a Paediatric High Dependency Unit on 07 January 2003 and copies of similar incidents reported to the public authority between 2000 and 2003. The public authority responded in accordance with its duty under section 1 of the Freedom of Information and denied it held the information requested. After considering the case the Commissioner is satisfied that the information requested is not held by the public authority and that the request was dealt with in accordance with section 1(1)(a) of the Act.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant in a letter dated 21 January 2007 made a request in accordance with section 1 of the Act for;

'an anonymised report....sent to you by Dr [name withheld].....regarding a critical incident which occurred in the Paediatric High Dependency Unit at Hull Royal Infirmary on 7th January 2003, during which a patient died.'

'how many similar incidents were reported to the NPSA as having taken place in the PHDU at Hull Royal Infirmary between 2000 and 2003 (without necessarily

seeing copies of such documents, in the event that doing so would compromise patient confidentiality)'

4. The public authority responded on 13 February 2007 and stated that the information requested was not held. It advised the complainant that the information she had requested would normally be collated within the National Reporting & Learning System (NRLS). It explained to the complainant that the NRLS was set up as part of its statutory functions to collect reports of patient safety incidents and to learn from them.
5. However, it also explained that the NRLS was not operational until November 2003 onwards and not all health organisations were connected until January 2005. The public authority added, *'The critical incident you described took place before the NRLS was functional and is not included in our database. We are unable to provide figures for incidents between 2000 and 2003 for the same reasons.'*
6. The complainant was dissatisfied with the public authority's response and expressed this in a letter dated 25 February 2007.
7. Having not received a response from the public authority to her letter of 25 February 2007, the complainant wrote again to the public authority on 16 April 2007 and stated; *'.....after an interval of two months you have not replied to my letter of 25 February 2007 regarding my request for information first received at NPSA on 24th January 2007....(I) have advised the Information Commissioner's Office accordingly.'*

The Investigation

Scope of the case

8. On 16 April 2007 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to investigate why the public authority did not conduct an internal review of its response to her information request and reiterated her wish to be provided with the information requested. The complainant also subsequently alleged that she was sure the first report referred to in her first information request was sent to the public authority shortly after the incident which occurred in January 2003 because this was confirmed to her by the Doctor in question.

Chronology

9. The Commissioner contacted the public authority on 25 July 2007.
10. On 24 August 2007 the public authority responded to the Commissioner's letter.

Investigation

11. In the Commissioner's letter of 25 July 2007 he asked the public authority for detailed explanations on the following observations;
 - Whether any reports were made to the NRLS in 2003 when it became operational.
 - Whether reports on patient safety incidents were being made and collated by the public authority prior to establishing the NRLS.
12. Finally, the Commissioner also asked for an explanation as to why the public authority did not respond to the complainant's letter of 25 February 2007.
13. In its response of 24 August 2007 the public authority stated that the NRLS received its first report in November 2003. Following a telephone conversation on 06 September 2007 the public authority confirmed that Trusts only started connecting to the NRLS when it became operational in 2003 and prior to that the NPSA did not receive reports on patient safety incidents.
14. The public authority also stated that patient safety incidents are reported on a voluntary and confidential basis.
15. The public authority added since the Commissioner's letter it has revisited its search of the NRLS and also went through its past records to see if the first information request or any other reports from the Doctor in question had been received prior to the NRLS through the Joint Executive's office.
16. The public authority again concluded after these searches that it still did not hold the information requested in either the first or second request.
17. With respect to the complainant's letter of 25 February 2007 the public authority explained that it did not receive that letter hence the lack of response.
18. The Commissioner notes that on the public authority's website the Patient Safety Division is responsible for receiving and collating reports on patient safety incidents from staff and patients via the NRLS. It also states that by 31 December 2004 the public authority was able to meet its deadline to put a system in place to allow all 607 NHS organisations the capability to report safety incidents to the NRLS.
19. The Commissioner notes that the capability of all NHS organisations to use the NRLS was only achieved in 2004 even though according to the public authority it became operational in November 2003.
20. The Information Tribunal upheld the Commissioner's view in the Information Commissioner v Environment Agency EA/2006/0072 that the test to be applied in establishing if information is held is not certainty, rather it should be based on the balance of probabilities. The application of that test required a consideration of a number of factors including the quality of the public authority's final analysis of the

request, the scope of the search it made on the basis of that analysis and the rigour and efficiency with which the search was then conducted.

21. The Commissioner is therefore satisfied that on the balance of probabilities the information requested is not held by the public authority and therefore concludes that the request was dealt with in accordance with section 1(1)(a) of the Act.
22. A full text of section 1(1)(a) can be found in the Legal Annex at the end of this Notice.
23. The Commissioner has also concluded the public authority did not have an opportunity to conduct a review of its initial response because it did not receive the complainant's letter of 25 February 2007.

The Decision

26. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

27. The Commissioner requires no steps to be taken.

Right of Appeal

28. Either party has the right to appeal against this Decision Notice to the Information 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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

Dated the 18th day of December 2007

Signed

**Jane Durkin
Assistant Commissioner**

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

LEGAL ANNEX

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,…”