

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 9 December 2010

Public Authority: East Lancashire Hospitals NHS Trust
Address: Royal Blackburn Hospital
Haslingden Road
Blackburn
BB2 3HH

Summary

On 25 August 2010 the complainant requested that the East Lancashire Hospitals NHS Trust (the 'Trust') should provide him with information concerning knee arthroscopy procedures which had been carried out between 2004 and 2009 and had resulted in complications. The complainant has received no substantive response. The Commissioner therefore finds the public authority to be in breach of section 10(1) of the Act and instructs the Trust to provide a substantive response or issue a valid refusal notice in accordance with section 17 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. On 25 August 2010 the complainant asked East Lancashire Hospitals NHS Trust (the 'Trust') to answer the following:
 - i. *'How many knee arthroscopy procedures has the Trust carried out in each of these years: 2004, 2005, 2006, 2007, 2008, 2009?'*
 - ii. *How many of these procedures have resulted in complications in theatre in each of the years above?'*

- iii. How many of these complications are the result of the meniscus cutters or similar surgical instrument breaking during the procedure in each of the years above?*
3. This was acknowledged on 25 August 2010 by the Trust but the complainant has not received a response.

The Investigation

Scope of the case

4. On 30 September 2010 the complainant contacted the Commissioner to complain about the lack of response to his information request.

Chronology

5. On 12 October 2010 and 16 November 2010 the Commissioner wrote to the Trust and asked it to respond within 10 working days of receipt of each letter. The Trust was asked to either provide the information to the complainant or issue a valid refusal notice in accordance with section 17 of the Act.
6. Between 17 November 2010 and 2 December 2010, the Commissioner rang the Trust on five different occasions and left messages for a member of staff to ring back to discuss this matter. No discussion was held.
7. On 2 December 2010 the complainant confirmed that he had still not received a response.

Analysis

Procedural Requirements

8. Section 10(1) (full wording in legal annex) of the Act states the following:

"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."

9. By the date of this notice the Trust has failed to provide a substantive response to the complainant within the statutory time period contained within the provisions set out in section 10(1).

The Decision

10. The Commissioner's decision is that the Trust did not deal with the request for information in accordance with the Act. The Commissioner finds the Trust to be in breach of section 10(1) of the Act.

Steps Required

11. The Commissioner requires the Trust to take the following steps to ensure compliance with the Act:
 - Provide a substantive response to the complainant or
 - Issue a valid refusal notice in accordance with the requirements of section 17 of the Act.
12. The Trust must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

13. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Dated the 9th day of December 2010

Signed

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

Legal Annex

Time for Compliance

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.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied, the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”