

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 23 August 2011

Public Authority: NHS Yorkshire and the Humber Strategic Health Authority
Address: Blenheim House
West One
Duncombe Street
Leeds
LS1 4PL

Summary

The complainant asked the NHS Yorkshire and the Humber Strategic Health Authority (the 'SHA') for information regarding the decision of the Leeds East Research Ethics Committee not to reappointment him to that committee. Of the six questions asked, two were considered under the Data Protection Act 1998 and two have been answered to the satisfaction of the complainant. The SHA has explained that it does not hold any information with respect to the remaining two questions and has explained why. The Commissioner is satisfied that the SHA has provided all the information that it holds with respect to that part of the request which falls under the Freedom of Information Act 2000. He does not require any further steps to be taken.

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.

Background

2. The complainant was appointed to the Leeds East Research Ethics Committee in December 2004. In July 2009 he was informed that he was not to be reappointed to the committee. The complainant questioned this decision and has requested further information regarding his non-reappointment. This has resulted in the current freedom of information request which assumes that the SHA was involved in the decision not to reappoint him.
3. The SHA has confirmed that it is the statutory body with responsibility for approving appointments to Local Research Ethics Committees (the 'LREC' or 'REC').
4. As part of this request, the complainant argued that the SHA had collaborated with the National Research Ethics Service (the 'NRES') in this matter. He required information and documents regarding their decision.
5. In his request the complainant has referenced the Governance Arrangements for NHS Research Ethics Committees (the 'GAfREC').

The Request

6. On 14 April 2010 the complainant requested that the SHA should provide him with information under the Act:
 1. *On the basis that RECs "...may only be established and governed by Health Authorities..." (GAfREC 4.1) what action has the SHA taken regarding the NRES decision not to recommend the continuation of my membership of Leeds (East) REC?*
 2. *Who is the named officer who has "lead responsibility for the governance" of RECs (GAfREC 4.2)?*
 3. *What documents were used and what was the role played by the SHA in collaboration with NRES in this matter to terminate my membership?*
 4. *How does the SHA understand the requirement that "As appointing Authority you take full responsibility for all the actions of a member...of a REC" (GAfREC 4.14) in this matter?*
 5. *On your current "rotation system for membership" (GAfREC 5.11)*

6. *Given that the "appointment may be terminated by the Appointing Authority" (Terms and Conditions of Membership of a REC section 15) what information is the SHA using to demonstrate that NRES acted reasonably in reaching its decision?'*
7. On 4 May 2010 the SHA provided the following answers. It explained that questions 1 and 3 related to personal information and were exempt under section 40 of the Act. Its response to these questions was therefore provided under the Data Protection Act 1998 (the 'DPA').

- (1) It is dependent upon the local REC to recommend the appointment and reappointment of members. As no recommendation was received, no reappointment was made.
- (2) It provided the name requested in question 2.
- (3) Following the complainant's representations, an officer of the SHA had worked through the documentation available concerning this matter and had held discussions with the NRES officers involved. The officer had concluded that the committee had acted reasonably in not recommending reappointment.

The documentation included the notes of the meeting held between the complainant and the then chair of the REC and the letter from [name redacted] to the complainant on 30 August 2009. (The complainant has a copy of these).

- (4) Under GAfREC, the SHA indemnifies the members of the RECs in respect of decisions made if those decisions were made in good faith and were not negligent.
- (5) A rotation system is required to allow for continuity, development, maintenance of expertise and input of fresh ideas to a committee. To allow for continuity the SHA explained that it tried to avoid recruiting all members on one date or close to each other, which would lead to significant loss of expertise at the end of their terms in office.

It understood he had been encouraged to apply for an alternative committee. (The complainant has since denied this).

- (6) Section 15 of the terms and conditions of membership relate to disqualification. It clarified that the complainant's appointment was not terminated on grounds of disqualification. He was simply not reappointed.

8. The complainant requested an internal review on 7 May 2010.
9. On 19 May 2010 the SHA informed the complainant that it considered it had provided all the information he required.
10. On 25 May 2010 the complainant informed the SHA that he would like to know what stages were undertaken in the procedures adopted by the SHA to arrive at its decision and what method and criteria were used. He did not consider that the SHA had fulfilled its obligations under the Act as it had not confirmed what information it held.
11. The complainant asked the SHA to explain whether it had acted on the 'omission' of the REC and to explain its criteria for not reappointing. He wanted to know which documents were used with respect to point 3 of his list of questions and he wanted evidence that the NRES had 'acted reasonably'. He also asked the SHA to address point 5 on his list.
12. On 1 July 2010 the SHA provided its internal review. It explained that personal information is exempt from disclosure under section 40(1) of the Act. It listed the complainant's personal information which it held in relation to this matter and confirmed that it had provided this to him.
13. The SHA explained that there is no automatic right to the continuation of appointment after the end of the initial term. A recommendation is made by the Chair of the local REC on the appointment of a member at the end of their tenure. The SHA informed the complainant that it was documented in his terms and conditions of appointment that reappointment is not automatic.
14. It did not 'act on omission' and does not hold a policy or procedure regarding the non-reappointment of REC members. The SHA therefore did not act upon or query the complainant's non-appointment.
15. The SHA reviewed the documentation that it held with regard to the complainant's non-reappointment and confirmed that he had been sent all of the personal information it held under the DPA. It does not have a policy for 'acting reasonably'. The SHA considered that the Chair and the Co-ordinator acted within their implicit powers. With respect to point 5, the SHA confirmed it did not hold a rotation list.
16. The SHA considered it had fully responded to the complainant's questions.
17. The correspondence between the complainant and the SHA continued until 9 August 2010 when the complainant wrote to the Chief Executive of the SHA and asked him to review the matter.

18. The Chief Executive responded on 18 August 2010 and explained that having reviewed the correspondence, he was satisfied that the complainant's queries had been addressed appropriately. He suggested that the complainant contact the Information Commissioner's Office if he remained dissatisfied.

The Investigation

Scope of the case

19. On 24 August 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. On 25 October 2010 the complainant explained to the Commissioner why he remained dissatisfied with the responses he had received:
- With respect to his request of 14 April 2010, he considered questions 2 and 5 had not been answered and question 6 had been avoided.
 - With respect to his letter of 12 May 2010 he considered that his request for the current rotation list had been ignored. He believed the list is an ongoing and updated description of vacancies at certain RECs.
 - He argued that the SHA had refused to provide the necessary rotation list.
 - When the SHA informed him that it does not have a rotation list he considered it should have either confirmed or denied that it held the information, in accordance with its legal obligations under the Act.
20. During the course of the Commissioner's investigation the complainant confirmed that he was content that questions 2 and 4 should be removed from the scope of the case. These are therefore not addressed in this Notice.
21. With respect to question 1 and 3, the SHA informed the complainant that these fall under the scope of the DPA and are exempt from disclosure under section 40(1) of the Act. The Commissioner also considers this information falls under the DPA. However, the complainant has argued that some falls under the Act.
22. As part of this case, the Commissioner will therefore consider the SHA's response to questions 1, 3, 5 and 6.

Chronology

23. On 24 November 2010 the SHA provided the Commissioner with further detail to explain its position.
24. On 23 February 2011 the Commissioner gave his preliminary view to the complainant that questions 1 and 3 fell under the DPA and that the SHA had provided an answer to questions 2, 4, 5 and 6. As the SHA said it had provided all the information it holds with respect to these, he asked the complainant to clarify what he remained dissatisfied with.
25. On 1 March 2011 the complainant explained why he remained dissatisfied. The Commissioner asked the SHA to clarify its position regarding some of the complainant's points and the SHA did so.
26. On 29 March 2011 the Commissioner informed the complainant that his view was unchanged. On 3 April 2011 the complainant explained why he remained dissatisfied.

Analysis

27. The full text of section 1(1)(a) and (b) and section 40(1) of the Act is available in the Legal Annex at the end of this Notice.

Substantive Procedural Matters

Section 1

28. 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.”*

Question 5: ***“Information on your current “rotation system for membership” (GAfREC 5.11)”***

29. At internal review the SHA informed the complainant that it does not hold a rotation list for new REC members.

30. The Commissioner specifically asked the SHA to confirm that it does not hold any rotation list for old or existing members or a list which specifies vacancies at certain RECs.
31. The SHA confirmed that it does not hold a rotation list of any kind. Once a year it is informed of the number of people on each committee and this information is included in the LREC Annual Reports. This would identify committees which are not at full membership. However this information is not used by the SHA to rotate members through different committees. It is the Regional Manager of the NRES who is responsible for recruitment to committees.
32. The complainant has argued that he understands there is a rotation list of some sort indicating vacancies in particular RECs. He has argued that there must be a set of documents describing the system and a set of letters with references to vacancies which the SHA use. He has argued that the SHA itself has stated that a rotation system is in place to allow for continuity. He has also pointed out that the SHA does take responsibility for appointing to the REC committees.
33. However, the Commissioner is satisfied that the SHA has explained its position regarding the membership of committees. It has described the process of identifying the number of people on each committee. It has explained that to allow for continuity it tries to avoid recruiting all members on one date or close to each other leading to significant loss of expertise at the end of their terms in office. The Commissioner is satisfied that this does not amount to a rotation system.
34. The Commissioner is therefore satisfied that the SHA does not hold any information concerning a rotation list or a rotation system. It has therefore answered question 5 in accordance with its obligations under the Act.

Question 6: ***“Given that the “appointment may be terminated by the Appointing Authority” (Terms and Conditions of Membership of a REC section 15) what information is the SHA using to demonstrate that NRES acted reasonably in reaching its decision?”***

35. With respect to question 6, the SHA explained that section 15 of the terms and conditions of membership relate to disqualification. It explained that the complainant's appointment was not terminated on the grounds of disqualification. His term of office came to an end and he was not reappointed.

36. In its initial response the SHA explained that following the complainant's representations, an officer of the SHA had worked through the documentation available concerning this matter and had held discussions with the NRES officers involved. The officer had concluded that the committee had 'acted reasonably' in not recommending reappointment.
37. The complainant does not accept that the SHA had any grounds for concluding that the committee had 'acted reasonably' when it came to its decision not to reappoint in 2009. He wrote his own report of the meeting in which he was not reappointed (held on 30 July 2009) and he does not believe this was taken into account in the review.
38. The documentation held by the SHA regarding this matter has been provided to the complainant under the DPA. The SHA has confirmed that the complainant has been provided with all the personal data the SHA holds with respect to the NRES advice.
39. The SHA is satisfied that the REC Chair and Co-ordinator acted within their powers. However it has explained that there is no document which lays down the procedure regarding decisions to reappoint members.
40. The SHA explained that it does not have a procedure in place with a methodology for 'acting reasonably'. It therefore does not hold any further information which is relevant to this part of the request.
41. The Commissioner is satisfied that the SHA has answered question 6 in accordance with its obligations under the Act. It has clearly stated that it has provided the relevant information that it holds under the DPA and that does not hold any further information which could be provided under the Act.

Exemptions

Section 40(1)

42. Section 40(1) provides that –

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject."

Question 1: ***"On the basis that RECs "...may only be established and governed by Health Authorities..." (GafREC 4.1) what action has the SHA taken regarding the NRES decision not to recommend the continuation of my membership of Leeds (East) REC?"***

Question 3: ***"What documents were used and what was the role***

played by the SHA in collaboration with NRES in this matter to terminate my membership?"

43. With respect to questions 1 and 3, the SHA informed the complainant that advice sought by the SHA from the NRES about his reappointment to the LREC falls under the DPA as it is his personal data.
44. The Commissioner also considers questions 1 and 3 fall under the DPA. They are requests for information about action taken by the SHA in response to the decision not to reappoint the complainant to the relevant committee and for the documents used and the role played by the SHA in collaboration with NRES in this matter.
45. This information is the complainant's personal data. On 18 February 2011, the Commissioner explained to the complainant that he was satisfied that the SHA had provided him with all his personal data regarding this request (a matter he assessed separately under the DPA).
46. The complainant has argued that there is an element to questions 1 and 3 which falls under the Act. He has argued that the SHA is not dependent upon the LREC to recommend the appointment and reappointment of members. He has argued that the SHA did seek and receive advice from the NRES on the matter. He requested any part of that advice which falls under the Act.
47. However, the SHA has confirmed that all the requested information that it holds which falls under the scope of the Act has been provided to the complainant. It confirmed that it would assume any advice obtained by the SHA from NRES in respect of his case would be his personal data.
48. The SHA has confirmed that its consideration of the complainant's case is recorded only in the documents he has been given under the DPA. It has confirmed that there is no further information which can be provided under the Act with respect to the advice obtained by the SHA from the NRES concerning this case.
49. On 18 February 2011, in the conclusion to his DPA assessment regarding this request, the Commissioner suggested that the complainant might make a further DPA request for a full copy of the personal data the SHA holds about him.
50. On 22 February 2011 the complainant requested a copy of all his personal data held by the SHA. On 21 March 2011, the SHA confirmed it was currently reviewing its files to identify any personal data it had not previously provided to the complainant in response to this request.
51. The Commissioner is satisfied that questions 1 and 3 are exempt under section 40(1) of the Act as they are requests for the personal data of the

complainant. The Commissioner is satisfied that the SHA does not hold any information covered by these questions which should be provided under the Act.

The Decision

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

Steps Required

53. The Commissioner requires no steps to be taken.

Other Matters

54. Although it does not form part of this Decision Notice the Commissioner wishes to highlight the following:
55. Part VI of the section 45 Code of Practice also makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. In this case an internal review was requested on 7 May 2010 and it was provided on 1 July 2010. The Commissioner is concerned that it took 40 days for the review to be completed by the SHA as he does not consider that there were exceptional circumstances to justify the delay.
56. The Commissioner also notes that the initial response of the SHA (dated 4 May 2010) and the internal review (dated 1 July 2010) were provided by the same individual at the SHA. Part VI of the section 45 Code of Practice states that a review should be taken by someone senior to the person who took the original decision, where this is reasonably practicable.

Right of Appeal

57. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

58. 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.

59. 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 23rd day of August 2011

Signed

**Faye Spencer
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

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.”

Personal Information

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”