

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 25 March 2013

**Public Authority:** University Hospitals of Morecambe Bay  
NHS Foundation Trust

**Address:** Trust Headquarters  
Westmoreland General Hospital  
Burton Road  
Kendal LA9 7RG

#### **Decision (including any steps ordered)**

---

1. The complainant has requested from the University Hospitals of Morecambe Bay NHS Foundation Trust ("UHMB") detailed statistics about the number of maternal and infant/still born deaths in the past 10 years and details of the number of related civil cases against UHMB both settled and on-going. All requests concern the maternity services at Furness General Hospital (the "Hospital"). UHMB provided detailed information to the complainant. The complainant was satisfied with the response to the majority of his request but believed that further information was held relating to the total number of neonatal deaths of babies born at the Hospital.
2. UHMB sought further clinical evaluation of the statistics previously provided and as a consequence of reviewing individual case files amended one set of figures previously provided. It confirmed that no further information was held. The Commissioner's decision is that outstanding information is not held. He therefore does not require UHMB to take any steps to comply with the legislation.

## Request and response

---

3. On 20 June 2012 the complainant requested information of the following description:

*"For the years 2002 to present, relating the maternity services at FGH only, please can you provide the following information.*

- 1. The total number of still births each year.*
- 2. The total number of neonatal deaths each year.*
- 3. The total number of maternal deaths each year.*
- 4. The number of babies born who suffered serious harm during birth.*
- 5. The total number of births each year.*

*(Please note that item 2 must include the total number of babies born at FGH who died before they were 25 days old REGARDLESS of the eventual place of death. It is particularly important that figures provided include babies who were born at FGH but were transferred to different hospitals before they died (for example any baby transferred to a different hospital because level 3 intensive care was required).*

*For each year above (if possible subdivided into groups 1-4) please confirm:*

- 1. The total number of cases in which civil action was instigated against the trust.*
  - 2. The total number of cases for which the trust has settled (eg compensation has been paid to the family).*
  - 3. The total number of cases in which civil action has been instigated but currently (as of 20<sup>th</sup> June 2012) remain open.*
  - 4. In total, how many civil cases against the trust, involving only maternity services at FGH are currently ongoing?"*
4. On 11 July 2012 the complainant clarified the scope of his request as a result of further enquiries that had been made by UHMB. He confirmed that he was happy to be provided with the number of serious unreported incidents in relation to his queries concerning "serious harm" and required information relating to maternity services at Furness General Hospital only.

5. On 18 July 2012 UHMB provided the information requested in the second part of the request regarding civil action cases. In relation to the remaining information it indicated that it required a further 14 days to collate the information.
6. On 1 August 2012 UHMB provided further statistical information. One table provided the information requested for the years 2002 – June 2012 in respect of births, still births, neo natal deaths and maternal deaths. The second table dealt with incidents reported on Safeguard (system for monitoring issues concerning “harm”) for the years 2003 – 2012.
7. In respect of the second table it was explained to the complainant that prior to 2003 a manual system had been in place and the costs of checking and retrieving the information for 2002 exceeded the appropriate costs limit under section 12 of the FOIA. Accordingly, UHMB relied upon the section 12 exemption, in respect of this part of the request, which provides that a public authority does not have to comply with a request for information if the cost of retrieving it exceeds this limit.
8. On 13 September the complainant responded to UHMB and advised that he did not consider the information supplied to be complete as he believed there were inaccuracies in the information provided.
9. On 28 September UHMB provided its internal review of its handling of the request. It confirmed that it had provided such recorded information that it holds in respect of the request and also explained that there may be other requested information which is not held by UHMB. It also advised that where deaths occurred outside UHMB it would not be routinely advised of this. In relation to the information it provided it explained the context in which such information was provided and the fact that it may not include deaths that occurred outside of the trust. It also raised the issue of exemption under section 12 of the FOIA on the grounds of costs.

## **Scope of the case**

---

10. The complainant contacted the Commissioner on 30 September 2012 to complain about the way the request for information had been handled. He advised that the majority of the information he originally requested had been provided and that he was prepared to limit the scope of his complaint to the information relating to the total number of neo natal deaths of babies born at the Hospital. Specifically, the complainant did not accept the accuracy of the information supplied and believed there was further information held by UHMB.

11. Therefore the scope of this case has been to consider whether UHMB holds any further information in relation to the total number of neo natal deaths of babies born at the Hospital between 2002 and June 2012.

## Reasons for decision

---

12. Section 1(1) 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."*

13. In situations where there is a dispute between a public authority and a complainant about whether the requested information is held, the Commissioner applies the civil standard of the balance of probabilities. The Commissioner must therefore decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches and other explanations offered as to why the information is not held.
14. As part of the enquiries UHMB has provided the Commissioner with a detailed response as to how information is recorded within the Hospital in respect of all maternity events including neo natal deaths. It advised that it followed protocols on the recording of infant deaths as it had clear guidance as to the medical definitions to be attributed in different circumstances.
15. It also set out in detail the systems which were in place to retrieve the information requested by the complainant. These include details of the electronic process used to identify neo natal deaths in UHMB and the cross checking mechanism that exists. The Commissioner was advised that the Mother's data was extracted using clinical coded data from the maternity "Evolution" system and then reviewed against UHMB's patient administration system (PAS). The first check established whether there was a live birth or a still birth and then the live births were cross checked with baby records to check for dates of death within 28 days of birth.
16. UHMB advised that where a baby was born at the Hospital but was transferred to another Trust and subsequently died the hospital where the death occurred would record the death, not the hospital where the

baby was born. In some cases the hospital would be advised as to the death of the baby but that this was not standard practice. Only in cases where this notification took place would the Hospital be aware of a subsequent death at a different hospital. UHMB stated that it could not be certain that it would be advised of all neo natal deaths following transfer but where it was advised there were systems in place to mark the relevant maternity files. However these deaths would not be included as part of the figures showing total deaths for the Hospital as these would be included in the figures for another Trust.

17. Following enquiries by the Commissioner about the searches carried out for information about neo natal deaths and the accuracy and stringency of such searches, UHMB has revisited all of its case files for stillborn/neo natal deaths for the relevant period. As a result of this manual check against the relevant individual case records further queries were raised about one case record. Further clinical evaluation was undertaken in this case to check the definition as to type of death to be assigned for statistical purposes.
18. As a result of this further evaluation it was concluded that this case had previously been recorded as a still birth when it should have been recorded as a neo natal death. Accordingly the figures were changed for the relevant period from 2 to 3 neo natal deaths in 2008 with a corresponding adjustment for the figures for stillbirths for the same year. The complainant was advised of this additional information. UHMB also advised that with hindsight a manual comparison of records could have been done at the time of the original request.
19. The complainant maintains that he believes there is a 4<sup>th</sup> neo natal death that is not included in the statistics for the year 2008 and states that neo natal deaths of babies born at the Hospital but who died following transfer to another hospital should be included in the statistics. He states that he believes that there is further information held by UHMB. UHMB maintain that it has conducted all possible searches and no further information in relation to the request is held.
20. The Commissioner is aware that the complainant's view that information is being withheld stems from the fact that he believes the deaths of babies born at the Hospital but who subsequently die at other hospitals should be included in the statistics for the Hospital. UHMB has provided detailed information as to how its statistics are compiled and the difficulties presented if a death occurs outside the Trust.
21. In addition UHMB has relied on section 12 of the FOIA and advised that to search all maternity files manually for the relevant period and cross check against transfers to other Trusts would exceed the costs limit as

during the 10 year period which forms part of the request there were over 11,000 births at the Hospital.

22. In considering the obligations of UHMB under the FOIA the Commissioner is mindful that the FOIA is concerned with the provision of recorded information which is held by a public authority; it is not concerned with the accuracy of the information which is held. The approach of the Information Tribunal in the case of Home Office v ICO (EA/2008/0027) is relevant here. The Tribunal in that case found that "...if the records are faulty or inadequate and the information therefore turns out to be inaccurate that is irrelevant: the right under the Act is to information which is held, not information which is accurate" (paragraph 15)
23. In this matter the complainant is concerned with the accuracy of the information provided as he believes deaths of babies who are born at the Hospital and who subsequently die following transfer should be included in the Hospital's statistics.
24. As stated above the issue of accuracy is not a matter for consideration under the FOIA unless it would indicate the existence of information that is being withheld. Having considered the explanations provided by UHMB as to the systems in place for recording and retrieval of patient data including maternity information, the further searches carried out and the further clinical evaluation of the relevant case files, the Commissioner considers that on the balance of probabilities, no further information is held.

## **Other matters**

---

25. UHMB has advised that as a result of difficulties arising following the transfer of babies to different hospitals it has now registered with the national data centre in order to allow comparison of data of babies born within the UHMB hospitals against all deaths in the UK. This will enable a more complete record as to deaths following transfer to be available in the future.

## Right of appeal

---

26. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

27. 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.
28. 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 .....**

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