

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 April 2013

Public Authority: University Hospitals Bristol NHS
Foundation Trust

Address: Trust Headquarters, Marlborough Street
Bristol, BS1 3NU

Decision (including any steps ordered)

1. The complainant has requested information relating to a review of the paediatric intensive care unit (PICU) at Great Ormond Street Hospital (GOSH).
2. The Commissioner's decision is that University Hospitals Bristol NHS Foundation Trust (the Trust) does not hold the requested information for the purposes of FOIA by virtue of section 3(2).
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

Request and response

4. On 25 June 2012, the complainant wrote to the Trust and requested information in the following terms:

I am writing to make an open government request for all the information to which I am entitled under the freedom of information act. In order to assist you with this request, I am outlining my query as specifically as possible. If however this request is too wide or too unclear, I would be grateful if you could contact me as I understand that under the act, you are required to advise and assist requesters.

- *I request to see all early draft versions of the report sent to the Trust.*
- *I request to see all dialogue between with the Trust and the Committee concerning the report and the review process that you have been involved in.*

- *I request to see all dialogue with Chief Nursing Officer, concerning the report and the review process.*
5. The Trust responded on 6 July 2012. It explained that any information that the individual created for the review has no connection with the Trust and therefore the Trust holds no information disclosable under FOIA.
 6. Following an internal review the Trust wrote to the complainant on 6 December 2012. It maintained its original position.

Scope of the case

7. The complainant originally contacted the Commissioner on 27 July 2012 to complain about the way his request for information had been handled. The complainant was provided with advice regarding the next steps of the process and to request an internal review.
8. The complainant contacted the Commissioner again on 28 December 2012. He stated that: *Bristol Children's Hospital, appear to have email dialogue but do not wish to release them. The Trust Secretary has contacted the ICO and received advice that makes him reticent to deviate from this advice. I would like to confirm this as I am just so surprised that information does exist, generated by employees in three majors Trust and in the Trust's time and yet none of it is disclosable.*
9. The Commissioner considers the scope of this case to be to determine if the Trust holds any of the information for the purposes of the FOIA relevant to the request under section 1(1)(a).

Reasons for decision

10. Section 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 the requested information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

11. Section 3(2) sets out two legal principles that establish whether information is held for the purposes of FOIA:

"For the purposes of this Act, information is held by a public authority if-

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority".

12. In determining whether a public authority holds the requested information the Commissioner considers the standard of proof to apply is the civil standard of the balance of probabilities.
13. As part of his investigation the Commissioner took into account the complainant's comments and asked the Trust a number of questions, as well as to provide an explanation of the searches it had carried out to locate recorded information within the scope of the request.
14. In response to the complainant's request the Trust confirmed that a named individual had used the Trust email with regards to the review. It stated that the individual had been given approval by their manager to take part in the review in their personal time. The Trust explained that it allowed staff at the Trust to have a reasonable and acceptable personal use of Trust email. It believed that any emails sent from the Trust email account were personal in this context, and as they contain no information about, or would be used by the Trust, they were therefore not disclosable under FOIA.
15. The Trust advised the Commissioner that the individual involved in the review had been approached and advised that any documents they held should be sent to the FOI Officer so that it could determine if they should be disclosed. The Trust informed the Commissioner that it was supplied with three documents from the individual concerned which clearly related to the individual's involvement in the review and was considered private information belonging to the individual as was agreed with her local managers at the outset and therefore not held by the Trust under FOIA.
16. The Commissioner has viewed the three documents retrieved by the Trust and has determined that they relate solely to the review and are not related to Trust business.
17. The Trust explained that the review was commissioned by GOSH and the Trust did not have any participation in the review. It further explained that the individual involved had obtained permission from their manager to take part in the review and to use the Trust computer to work on the review in the free time they had available.

18. The Trust acknowledges that some documents were created using the Trust's computer. However, as the documents were in no way connected with the Trust or its specified business, it was concluded that the documents did not constitute data/information formally held by the Trust.
19. The Trust then went on to explain that the member of staff involved held the documents in their computer's files and could easily locate them. No further searches were required.
20. The Trust confirmed that there was no business purpose for which the requested information should be held. The data requested was not commissioned by the Trust nor did the information serve any business purpose of the Trust.
21. The Commissioner understands the complainant's view that he is *"surprised that information does exist, generated by employees in three major Trusts and in the Trust's time and yet none of it is disclosable"*. It is his view that as the individual concerned works for the Trust and was approached in their capacity as an employee of the Trust that this would be Trust business.
22. When information is solely held by a public authority on behalf of another person, it is not held for the purposes of FOIA. However, the information will be held by a public authority if the authority is holding that information for someone else but also holding it to any extent for its own purposes.
23. In essence this means that it may be possible for a public authority employee to have information that they are using for their own private purposes, that is not related to their role as an employee^{1,2}.
24. Because this particular information is not Trust business, it cannot be argued to be held by the individual on behalf of the Trust. It may instead be considered to be held by the Trust, on behalf of the individual, solely by virtue of being hosted on the Trust's email systems.
25. Whether or not the use of a Trust email address for non-Trust business is appropriate is not a matter for the Commissioner to determine. It seems to him that there is no obvious reason why such arrangements

¹ http://www.ico.org.uk/~/media/documents/decisionnotices/2010/fs_50254399.ashx

² http://www.ico.org.uk/~/media/documents/decisionnotices/2010/FS_50245527.ashx

may not be agreed by mutual consent, or established custom and practice.

26. The Commissioner's position is that unless the information in the documents relates to Trust business, it is not held by the Trust in its own right, and there is no right of access under FOIA. In this case having considered the Trust's responses he is satisfied that the Trust does not hold any requested information under FOIA.

Right of appeal

27. 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

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

28. 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.
29. 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

Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
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