

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 April 2013

Public Authority: University Hospital Southampton NHS Foundation Trust

Address: Southampton General Hospital
Tremona Road
Southampton
SO16 6YD

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 Hospital Southampton NHS Foundation Trust (UHS) does not hold the requested information. The Commissioner does not require any steps to be taken as a result of this decision notice.

Request and response

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

Over the last 12-15 months you have been the Review Committee Chair for the ICU Review of Critical Care Service at Great Ormond Street NHS Foundation Trust. I believe this report was made available to the Trust on 28th May 2012.

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 the initial 'draft report of December 2011' mentioned in the Time Line table within the Report.*
 - *I request to see all 'modifications to the report by Review Committee of January – April 2012'*
 - *I request to see the 'draft report circulated for review of factual accuracy'.*
 - *All dialogue regarding commissioning of the Review and around the terms of reference for the Review.*
4. UHS responded on 20 July 2012. It denied holding the requested information.
 5. Following an internal review UHS wrote to the complainant on 5 December 2012. It maintained its position that it did not hold the requested information by virtue of section 3(2) of the FOIA. It also provided the requestor with a copy of the "Rationale and terms of reference" for the PICU review to highlight that the review was not related to UHS or specifically to the individual as an employee of UHS.

Scope of the case

6. 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.
7. The complainant contacted the Commissioner again on 28 December 2012. He stated that: *"Southampton Hospital feel it not necessary to release information between their Medical Director and my Trust as it was 'outside of his role at the Trust. The PICU review was not related to Trust business. My only query is that this is a Medical Director responding to a request by another Medical Director to undertake and Chair a review of another Trust. So I am quite surprised this is not Trust related in any way."*
8. The complainant then asked for the Commissioner's thoughts on this matter and in particular whether there is any reason for the Commissioner to support his request for information, which he presumed was the intention of the FOIA.
9. The Commissioner considers the scope of this case to be to determine if UHS holds any of the information for the purposes of the FOIA relevant to the request under section 1(1)(a).

Reasons for decision

Section 1- General right of access

Section 3(2) – information held by a public authority

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 UHS 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. UHS advised the Commissioner that it had contacted the individual concerned to ask about the nature and existence of the documents requested. No one else at UHS was approached as no one else was involved.

15. It further explained that after the initial approach was made to the individual further searches were not carried out as it was not felt that any relevant information was held. UHS’s obligations under FOIA and the nature of the information requested were discussed with the individual and it was felt that no relevant information was held. UHS further stated that it had consulted the Commissioner’s guidance

"Information held by a public authority for the purposes of the Freedom of Information Act"

16. UHS has informed the Commissioner that no information falling within the scope of the request was found. UHS stated that if relevant information had been held it would be held electronically. However, information regarding the review was never relevant to UHS business and therefore even if such information did exist it would not be 'held' by UHS for the purposes of disclosure under FOIA.
17. UHS explained that it felt there was no business purpose for the information to be held by UHS. The review was carried out by the individual in his capacity as a leading PICU expert and not as an employee of UHS. Any information regarding the review had no relation to UHS business. Any business purpose related to the requested information would concern GOSH, who commissioned the report.
18. UHS stated that in its response to the complainant dated 5 December 2012, it further explained its rationale by quoting section 3(2) of the FOIA, and apologised that this reasoning was not made clear in its initial response.
19. The Commissioner understands the complainant's view that he is *"quite surprised this is not Trust related in any way"*. It is his view that as the individual concerned works for UHS and was approached in his capacity as a Medical Director for UHS that this would be Trust business.
20. 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.
21. 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}
22. In this case having viewed the Rationale and Terms of Reference and having considered the arguments presented by UHS the Commissioner is satisfied that this supports the position of the UHS. Because this

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

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.

23. 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 may not be agreed by mutual consent, or established custom and practice.
24. The Commissioner's position is that unless information in any emails or any other recorded form relates to Trust business, it is not held by the Trust in its own right, and there is no right of access under FOIA.
25. In conclusion, in this case having considered all of the points above the Commissioner is satisfied that UHS does not hold any information relevant to the request.

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

Website: 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

Pamela Clements
Group Manager, Complaints Resolution
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Wycliffe House
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