

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 August 2013

Public Authority: Gloucestershire Hospitals

NHS Foundation Trust

Address:

Trust Headquarters

Cheltenham General Hospital

Sandford Road

Cheltenham GL53 7AN

Decision (including any steps ordered)

1. The complainant has requested from the Gloucestershire Hospitals NHS Foundation Trust ("the Trust"), correspondence including emails between the Chief Executive and other persons in the Trust pertaining to any potential closure or reduction in services for Accident and Emergency services ("A&E"), or other related services at Cheltenham General Hospital ("the Hospital"). The Trust initially confirmed it did not hold any information in relation to the request. The complainant was not satisfied with the response and submitted a complaint to the Commissioner.
2. Following the Commissioner's involvement the scope of the request was broadened to include correspondence relating to matters pertaining to "*any changes*" in A&E services. As a result, information was provided. However the complainant believed more information was held. Additional enquiries were undertaken by the Trust but no further information was located. The Commissioner's decision is that further information is not held. He therefore does not require the Trust to take any steps to comply with the legislation.

Request and response

3. On 6 December 2012 the complainant made the following request:

"I would like to request, all correspondence, including emails, between Frank Harsent [Chief Executive of the Trust] and any other person, including both those sent and received by him, pertaining to any potential closure, or reduction in the services provided, for Accident and Emergency services, or any related services, at Cheltenham General Hospital. For efficiency, I am happy to restrict this to the previous 12 months."

4. On 18 December 2012 the Trust provided its response. It advised that it held no information in relation to the request.
5. On the same date the complainant requested an internal review of the response.
6. On 15 January 2013 the Trust provided its internal review of its handling of the request. It provided an overview of the steps it had taken to deal with the original request. It also confirmed that it did not hold any correspondence that related to *"the potential closure or reduction in services provided, for Accident and Emergency services, or any related services, at Cheltenham General Hospital"*. It also advised that the Trust was not planning to close any A&E services and that there were no final conclusions reached on any planned changes.

Scope of the case

7. The complainant contacted the Commissioner on 15 January 2013 to complain about the way the request for information had been handled. He advised that, given the local interest and debate on this particular issue, he believed relevant information was held by the Trust. He also provided evidence that information relating to planned changes to A&E services had been provided to local Members of Parliament early in 2013. The complainant believed there was further information held by the Trust.
8. During the investigation process the Commissioner established that the intent of the complainant had been to request information of a broader nature than that identified by the Trust. Therefore the scope of the request was amended to include correspondence relating to *"any changes"* to A&E or related services rather than just any *"potential closure, or reduction in services"*.

9. Subsequently the Trust provided further information to the complainant. However, the complainant has stated that he still believes that further relevant information is held. Therefore the scope of this case has been to consider whether any further relevant information is held.

Reasons for decision

10. 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."

11. 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.
12. In its initial response to the complainant the Trust had interpreted the request in a narrow way as it believed the request was very specific in its wording. Following the involvement of the Commissioner it was apparent that a broader intent had been intended by the complainant and as a result the scope was extended to include correspondence between the Chief Executive and others about "any changes" rather than being restricted to issues of "closure" and "reduction of services".
13. On 25 April 2013 the complainant was provided with a précis of emails concerning the timing of the proposals for the proposed reconfiguration. He also received feedback from the Strategic Health Authority together with briefing notes and a PowerPoint presentation about the proposed changes. He was also advised that the proposals were not presented to Board level until October 2012. The Trust advised the Commissioner that, in order to assist the complainant, it was prepared to go beyond the scope of the request by providing some general background information rather than just correspondence. This information also extended to documents beyond the original time period of the request. It felt by doing so it could provide context to the request to assist the

complainant and provide the rationale as to how its decision making process worked as regards proposed changes to services.

14. The complainant advised that he was not satisfied with this response. As a result the Trust reconsidered the information provided and agreed that the complainant should have been sent complete copies of the précised emails. These were provided to the complainant together with an additional PowerPoint presentation which again went beyond the scope of the request.
15. As part of the enquiries, the Trust has also provided the Commissioner with a detailed overview as to how the process of reviewing services within a hospital is undertaken and what level of involvement the Chief Executive is likely to have in this process. From the information provided it is clear that a considerable amount of the discussion about the options available is undertaken at a lower management and clinical level. The preferred options for any changes are only discussed at board level when there is a clear option and a decision has to be taken to put the matter out to public consultation.
16. It emphasised in its response to the Commissioner that the emails of the Chief Executive cannot be seen as representative of the amount of information that may be generated from a project such as this and that Trust business would not have focussed or been conducted through email and correspondence with the Chief Executive. It stated that as a reconfiguration would have involved continual review of risk most of the discussion would have been at a senior clinical level and would not have been recorded in email or correspondence.
17. The Trust advised that if the request had been broader in nature to include **all** information rather than specifically correspondence between the Chief Executive and others further information may well have come within scope. However, given the date of the request and the nature of the information itself the Trust advised that, if the request had been broader in scope, it may well have sought to apply one of the exemptions under the FOIA (section 36/section 22) as the reconfiguration plans were not finalised until the end of January 2013.
18. As part of his investigation the Commissioner has had to consider the nature and scope of the searches undertaken by the Trust. In its response the Trust advised that it had centred its searches upon the email account of the Chief Executive as directed by the request. Confirmation was provided by the Trust as to searches made initially and the further searches that were carried out as suggested by the Commissioner and the complainant.

19. The Trust has confirmed that the Chief Executive has made a physical search of his documents in hard copy and electronic searches of his email account both at the time of the request and subsequently following the involvement of the Commissioner. This has included searching all relevant folders generally and using specific search terms relating to the project involved, checking all folders and sub folders. As a result of these additional searches no further information was located.
20. The complainant maintains that he cannot be satisfied that sufficient searches have been carried out and is suggesting that the scope of the request be widened to include others who may have been involved in the discussions concerning the reconfiguration of services.
21. In an email dated 19 July 2013 the complainant advised the Trust that he wished to receive all correspondence that the Trust holds, including copies of emails sent to Dr Harsent from other senior staff, information held by relevant secretarial and administrative staff including any information held by Dr Harsent which included any folder on his email system.
22. The Trust maintain that it has conducted all possible searches it believes are within the scope of the original request as amended and no further information in relation to the request is held.
23. The Trust is also of the view that to extend the searches further as suggested in the recent communication from the complainant would broaden the scope of the request well beyond its original scope to the effect that it becomes a new request.
24. In considering the obligations of the Trust under the FOIA the Commissioner is mindful that the civil standard of the balance of probabilities has to be applied.
25. The Commissioner has taken into account the explanations provided by the Trust as to the searches it has conducted; the nature of the subject matter itself and how such information is likely to be recorded; the information provided to the complainant which went beyond the scope of the amended request; the further searches carried out and the broadening of the scope of the original request as a result of the complainant's suggestions. Having done so the Commissioner considers that on the balance of probabilities no further information is held.
26. The Commissioner is also satisfied that the further clarification to the request by the complainant in July 2013 goes beyond the scope of the original request and the Trust is not required to consider the same within the scope of the original request dated 6 December 2012.

27. The Commissioner is therefore satisfied that the Trust has met its obligations under the FOIA and requires no further action to be taken.

Other matters

28. The Commissioner notes that a particular feature of this matter has been the interpretation of the request by the Trust and the intended interpretation of the request by the complainant.
29. The Commissioner's guidance in respect of interpretation of requests states that a public authority should read a request objectively; that is, it should take care not to read into a request any meaning which is not in the plain wording. Where the request is not clear, or can be read in more than one way, the public authority will need to ask the requester for clarification. However, the authority should not try to guess what the requester might want. There is no requirement to seek clarification if the authority is able to comply with the request without further information. It should not provide the requester with the information it thinks they want rather than what the request asks for or try to guess the meaning of an ambiguous request, make assumptions, or attempt to work it out from background knowledge of the requester.
30. In this matter the Commissioner has concluded that whilst a literal interpretation of the request was within the requirements of the FOIA, given the current ICO guidance, it may have been of assistance to both parties if clarification of the complainant's intentions had been sought at an earlier stage given the nature of the subject matter concerned which would have been of local public interest.

Right of appeal

31. 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

32. 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.
33. 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