

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 September 2013

Public Authority: Monitor

Address: 4 Matthew Parker St.
London
SW1H 9NP

Decision (including any steps ordered)

The complainant has requested information relating to reports held by Monitor. Monitor has disclosed some of the requested information, however it refused to disclose the remainder, citing sections 31, 33, 40 and 41 of FOIA as a basis for non-disclosure. The Commissioner's decision is that section 31(1)(g) by virtue of section 31(2)(c) of FOIA is engaged in relation to the entirety of the withheld information and that the public interest in all the circumstances of the cases favours maintaining the exemption. Therefore the Commissioner requires no steps to be taken.

Request and response

1. On 4 August 2012, the complainant wrote to Monitor and made the following request:-

"1. New operational policy for Avon Breast Screening - Document 15.

2. The report of the review commissioned October 2010 from Professor William Roche of likelihood of harm to the 26 cases of concern that were reviewed by the Mishcon Inquiry - Documents 31 and 11.

3. The minutes of the 15th November 2010 Trust Board Meeting at which item 2 was discussed - Documents 31 and 11.

4. The report of additional diagnosis commissioned November 2010 from Source BioScience of 17 gynaecology cases identified as B1 errors in the 3,508 case review performed by Source BioScience - Document 32.

2. Monitor provided a response to the complainant on 22 August 2012 in which it stated that the requested information fell within the scope of an earlier request for information made by the complainant on 23 January 2012 and that the exemptions under sections 31, 33(1)(b), 40 and 41 of FOIA applied as a basis for non-disclosure. That correspondence also stated that the decision made on internal review of her previous complaint, which was to uphold the use of the above exemptions, remained the same.

Scope of the case

3. The complainant contacted the Commissioner on 20 January 2013 to complain about the way her request for information had been handled.
4. The complainant specifically asked the Commissioner to consider whether the above sections of FOIA had been correctly applied to the withheld information.
5. Following the Commissioner's intervention, Monitor informed the Commissioner on 27 June 2013 that it could now disclose information to the complainant in response to part 1 of her request, as the relevant Trust has now indicated that it is content for Monitor to disclose that information. Monitor stated that it was still refusing to disclose the remaining requested information ("the withheld information") as the relevant exemptions still applied.
6. Monitor's position is that the withheld information falls within the scope of the complainant's previous request (as set out in Decision Notice FS50460738). The complainant does not accept this and has asked the Commissioner to separately investigate Monitor's handling of this particular request.
7. The Commissioner, having examined the withheld information, is satisfied that the information requested by the complainant on 4 August 2012 falls within the scope of her previous request of 19 January 2012. The complainant's previous request related to an inquiry carried out by Monitor into an NHS Foundation Trust. The Commissioner is satisfied that all documents which make up the withheld information are relevant to that inquiry and fall within the scope of the questions asked in the complainant's previous request, which relate to good practice, governance and policies and processes in place within the Trust in question. Therefore, the Commissioner has not detailed in this Notice the arguments for and against the application of the relevant exemptions under FOIA.
8. The Commissioner asked Monitor to reconsider whether, in light of the passage of time, the public interest arguments in favour of disclosure still applied. Monitor informed the Commissioner that it remains of the view that the public interest factors in favour of maintaining the exemptions

considered by it previously are still pertinent and outweigh the factors in favour of disclosure in respect of parts 2 to 4 of the complainant's request.

9. Therefore, the Commissioner has not detailed in this Notice the arguments for and against the application of the relevant exemptions under FOIA, nor the public interest arguments in favour of and against disclosure, as these are the same as those set out in his previous Decision Notice as referenced in paragraph 6.

Right of appeal

10. 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

11. 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.

12. 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
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