

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

### **Decision notice**

**Date:** 25 June 2014

**Public Authority:** Barts Health NHS Trust

**Address:** Trust Executive Offices  
Pathology and Pharmacy Building  
The Royal London Hospital  
80 Newark Street  
London E1 2ES

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

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1. The complainant has requested from Barts Health NHS Trust (the "Trust") information in relation to the tendering and awarding of a contract for the management of Whipps Cross Emergency and Urgent Care Centre to the Partnership of East London Collaboratives ("PELC"), information relating to the recruitment, skills and training of staff particularly in relation to language competency of doctors employed by the Trust, complaints made to the Trust that mention poor communication skills/lack of understanding, inspection reports by the CQC and documentation in relation to complaints reviews that had been undertaken. The Trust provided some of the information requested and confirmed that it did not hold any further information in relation to the request. The complainant was not satisfied with the response received or the length of time taken to respond.
2. Following additional enquiries the Commissioner's decision is that further information is not held. In relation to the breach of section 10 of the FOIA the Commissioner's decision is that the Trust has failed to provide a full response to the request within the statutory time frame of 20 working days. However he does not require the Trust to take any further steps to comply with the legislation.

## **Background**

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3. The complainant made two FOIA requests to the Trust dated 22 August 2013 and 28 September 2013. In addition a subject access request was made under the Data Protection Act 1998 (the "DPA") which related to both the complainant and his wife.
4. During the course of this investigation the complainant has confirmed that he only wishes to pursue matters in relation to the request dated 22 August 2013. The subject access request was dealt with separately by the Trust and has been dealt with by way of a separate complaint to the Commissioner which does not form part of this decision notice.
5. Both the FOIA requests and the subject access request arise out of issues identified by the complainant and his wife following the admission of the complainant's wife to Whipps Cross Emergency and Urgent Care Centre in London.

## **Request and Response**

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6. On 22 August 2013 the complainant wrote to the Trust and requested information. The wording of this request can be found in Appendix A. The complainant also raised issues in relation to data protection matters which have been considered separately by the Commissioner.
7. On 2 September 2013 the Trust confirmed that the parts of the request relating to personal data would be dealt with as a DPA subject access request. It identified questions 1,2,3,4, and 7 as those matters to be dealt with under the DPA. All other matters were to be dealt with under the FOIA.
8. On 24 September 2013 the Trust wrote to the complainant to advise as to the progress in respect of his FOIA request and outlining the Trust's complaints procedures.
9. On 28 September 2013 the complainant contacted the Trust and expressed his dissatisfaction about the delay. He also submitted a further request for information which does not form part of the scope of this complaint.
10. On 4 October 2014 the Trust wrote to the complainant to advise as to progress in respect of his FOIA request dated 22 August 2013 and acknowledged receipt of the email dated 28 September 2013.
11. On 23 October 2013 the Trust provided a response in respect of both requests. The relevant questions were identified as questions 5 and 6,

questions 8-13 inclusive and supplementary questions 1-6 of the letter dated 22 August 2013 and questions i)-iv) of the letter dated 28 September 2013. It provided some of the information requested including details of complaints made, CQC inspections and a NHS complaints review and advised that it did not hold information in relation to other parts. It also advised that another public authority (PELC) may hold some of the requested information and provided contact details.

12. On 11 November 2013 the complainant lodged a complaint with the Information Commissioner's Office stating that he was not satisfied with the response he had received to his subject access request and his FOIA request.
13. On the same date the complainant expressed his dissatisfaction with the response he had received to his request to the Trust.
14. On 21 February 2014 the Trust provided a response to the matters raised in the letter dated 11 November 2013 which outlined the complainant's concerns about the way his request for information had been handled.

## **Scope of the case**

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15. The complainant has advised that he is not satisfied with the response he has received to his request dated 22 August 2013 in so far as it relates to questions 5,6,9,10 and parts 1-6. These remain within the scope of the complaint. He contends that further information is held by the Trust and does not accept that the responsibility for the information he is requesting lies with another organisation.
16. The complainant is also concerned about the length of time it took the trust to deal with his FOIA request dated 22 August 2013.
17. The scope of this case has been to consider whether any further relevant information is held and whether the Trust has complied with its obligations under the FOIA.

## **Reasons for decision**

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### **Section 1**

18. 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."*

19. 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.
20. The complainant has sought from the Trust information which he believes would verify or otherwise the safeguards that are in place to check the language skills and competency of staff employed at the Whipps Cross Emergency and Urgent Care Centre. He does not accept that the Trust does not hold information and believes because of the close physical proximity of the separate health organisations within the same building there will be a working arrangement between them which means information is held on behalf of each other. He believes this is evidenced as the computer systems in the A & E department appear to be co-ordinated.
21. In its response to the Commissioner the Trust has maintained that no further information is held other than that which was provided in response to the original request. In support of its position it explains that it provides the A&E department at Whipps Cross Hospital whilst the Emergency and Urgent Care Centre ("EUCC) is managed and administered by the partnership of East London Co-operative (PELC).
22. As part of the investigations the Commissioner has clarified the position as to managerial responsibility for the EUCC. The Trust has provided evidence that although the EUCC is located on the Whipps Cross hospital site it is not managed or administered by the Trust but by PELC who employ and are responsible for their own staff.
23. In addition, that the triage and urgent care service provided by PELC was commissioned by Waltham Forest Clinical Commissioning Group who had awarded the tender for these services to PELC. It confirmed that PELC was a completely separate organisation over which the Trust had no governance or control.
24. As part of its response the Trust has also provided evidence of the advice and assistance given to the complainant suggesting that information should be sought from the relevant organisation (PELC),

providing contact details of the same and also making initial approaches to PELC Head of Services to facilitate any approach made by the complainant.

25. In relation to points 5 and 6 of the request dated 22 August 2013 the Trust maintain that it does not hold any information relating to the awarding of a contract to PELC or the recruitment and training of PELC staff as it has no formal involvement with this organisation.
26. In relation to points 8 and 9 of the request dealing with PLAB training the Trust has confirmed that although the PLAB course is hosted on its site and is offered on its website it is only available to external candidates as its own staff have this qualification, if required, prior to employment. It provided evidence that the course is not run by, or on behalf of the Trust and that, as a consequence, training material would be held by those delivering the course.
27. As part of the evidence provided the Trust provided the Commissioner with a detailed overview of its records management systems and documentation retention policy. It explained the way in which members of the public are dealt with by the two organisations that provide urgent care services at Whipps Cross Hospital. The explanation provided outlined the triage and urgent care service and the way in which information was recorded on two separate record systems. It was clear from the information provided that although the organisations operated separately because of the fact that the same triage system was used by two different organisations the process could appear as though the same records system was used by both.
28. In relation to the supplemental questions numbered 1-6 the complainant has contended that he believes further information is held by the Trust about the systems in place to check the language skills and competency of staff employed by the Trust.
29. The Trust has provided evidence that it provided information in so far as it related to its own staff but was unable to provide information in relation to PELC employees as this was not held by the Trust. Having considered the same and the detail provided by the Trust as to searches it made and why the information is not held by the Trust the Commissioner is satisfied that no further information is held.
30. 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.
31. The Commissioner has taken into account the information already provided to the complainant; the explanations provided by the Trust as

to the further searches it has conducted; the way in which A&E provision is set up at Whipps Cross Hospital; the nature of the relationship or otherwise between the Trust and PELC and the way the records management systems operate within this environment. Having done so the Commissioner considers that on the balance of probabilities no further information is held.

32. The Commissioner is therefore satisfied that the Trust has met its obligations under the FOIA in relation to the information held by the Trust and requires no further action to be taken.

### **Section 10 – Time for compliance**

33. Section 10 of the FOIA states that:

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

34. The Trust should therefore have issued a full refusal notice, issued a notice under section 17(3) or disclosed the requested information within 20 working days.
35. The Trust provided a response to the request for information on 23 October 2013. It therefore did not respond to the complainant within 20 working days breaching section 10 of the FOIA,
36. The Commissioner’s decision therefore is that the Trust’s response breached section 10 of the Act.

### **Other matters**

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37. Part IV of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his ‘Guide to Freedom of Information’, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing a review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
38. The Commissioner is concerned that in this case the complainant submitted his concerns to the Trust about its response to his request on

11 November 2013. Instead of treating this as a request for an internal review the Trust dealt with it as a new FOIA request, despite an indication to the contrary by the complainant, and did not respond until 21 February 2014. (71 days)

## Right of appeal

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39. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

40. 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.
41. 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**



## Appendix A

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### Request for information dated 22 August 2013

*"I request the following information:*

- 1. All correspondence, electronic or other, within Barts Health and between and among Barts Health and all other organisations and individuals related to Ms Pauline Boyle from 1<sup>st</sup> March 2013 to date.*
- 2. Transcripts and logs of all telephone calls within Barts Health and between Barts Health and other organisations and individuals related to Ms Pauline Boyle.*
- 3. For ease of reference, in relation to (1) and (2) above, communications may, but not necessarily, contain my or Ms Boyle's name. They may refer to the Ms Boyle's matter without directly naming her.*
- 4. All documentation under the broad categories of (1) and (2) above that refers to me, Martin Boyle.*
- 5. All documentation related to the tendering and awarding of the contract for the management of the Whipps Cross Emergency and Urgent Care Centre to PELC.*
- 6. All internal PELC documentation and correspondence between Barts and PELC relating to skills, recruitment, training and language skills.*
- 7. Mrs Boyle's medical notes.*
- 8. A list of all clinical staff at Barts showing when and where they did their medical training, where and when they sat the IELTS and PLAB tests and their scores. This may be anonymised.*
- 9. All Barts PLAB course documentation, including the full syllabus and language training and testing materials.*
- 10. All quality assurance documentation for all English-language components in Barts medical education.*
- 11. A list of all complaints made to Barts that mention language problems, lack of understanding, poor staff communication skills or problems in A&E and Maternity.*
- 12. All Barts documentation, internal and external, that refers to this year's CQC inspections and reports. This should include the steps that Barts is taking to rectify the issues highlighted in the report.*
- 13. All Barts documentation, internal and external, that refers to the NHS Complaints Review headed by the Rt Hon Ann Clwyd, MP.*

**Please provide written answers to the following:**

1. *When a doctor, nurse or midwife who has done his/ her medical training in another language within the EEA applies to work for Barts, how does Barts assess that doctor's English language proficiency?*
2. *When a doctor, nurse or midwife who has done his/ her medical training in another language outside the EEA applies to work for Barts, how does Barts assess that doctor's English language competence? Is a distinction made between native speakers of English and non-native speakers of English or doctors from countries where English is either an official language or the medium of education?*
3. *When a doctor, nurse or midwife who is not a native-speaker of English has done his/ her medical training in another language outside the EEA applies to work for Barts, how is that doctor's English language competence assessed?*
4. *When a doctor, nurse or midwife who has done his/ her medical training outside the EEA and holds a passport from an EEA country applies to work at Barts, is that doctor's English-language competence assessed?*
5. *How did Barts go about identifying the staff members involved in the incidents that my wife and I complained about?*
6. *How are the English-language skills of PELC staff assessed? If a staff member is not a native speaker of English, how does (a) PELC and (b) the hospital ensure that he/ she has communicative competence in English?"*