

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 June 2014

Public Authority: Department of Health
Address: Richmond House
79 Whitehall
London
SW1A 2NS

Decision (including any steps ordered)

1. The complainant has requested information about who, at the former Stockport NHS PCT, was responsible for writing references together with the policies and procedures followed when writing such references. The Department of Health (DoH), which inherited some of the PCT's records following its abolition, responded by informing the complainant that it did hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the DoH does not hold the requested information.
3. The Commissioner does not require the public authority to take any further action in this matter.

Request and response

4. On 22 November 2013, the complainant submitted a four part request to the DoH. The second and third parts of the request were as follows:
 - "2) Who, or what designated level of Human Resources personnel, usually writes references for current and ex, Stockport PCT employees?
 - 3) In accordance with the Data Protection Act 1998 and the Department of Health's Data Protection/Retention Policy and Procedure, what are the, manually, and electronically, recorded optional and mandatory pieces of information that are kept in,

and used, by the HR personnel office when/in writing a job reference about a current, and ex, employee?"

5. By way of background, all Primary Care Trusts (PCTs), including Stockport's, were abolished on 1 April 2013. As a consequence many of the records held by these PCTs were transferred to the DoH.
6. Under section 1(3) of FOIA a public authority is not obliged to comply with a request if it reasonably needs further information in order to identify what is being sought. This is dependent on the public authority informing the applicant that further clarification is required.
7. The DoH was unclear whether the complainant was interested in who at the DoH was now responsible for writing references for former employees of Stockport PCT, or whether she was interested in who at Stockport PCT had been responsible for writing such references before it was abolished. Therefore on the 20 December 2013 the DoH explained that following its abolition no one was employed by Stockport PCT to write references and asked the complainant to clarify what information she was seeking as follows:

" Part two of your request asks for information on whom, or what designated level of Human Resources personnel usually writes references for current and ex, Stockport PCT employees. As stated in the second paragraph of this email, PCTs were abolished on 1 April 2013. Therefore no one is currently employed at Stockport PCT including the staff who would previously have provided employment references. In order to provide you with a response, I require further information from you to clarify whether you are requesting this information prior to 1 April 2013, when the PCT was in existence (if so, please also specify for which years), or whether you are requesting information about who writes references post PCT closure.

Part three of your request asks for details about what information is kept and used by the HR personnel office when writing a job reference. Again, please clarify whether this request relates to information held by Stockport PCT before it closed, or to information currently held by the Department."

8. The complainant responded on the 21 December 2013. She provided the following clarification:

"My answer to your seeking clarification to my questions 2] & 3], is that I am requesting this information prior to 1 April 2013, when the PCT was in existence (specifically for the time period of November and December 2010), and I am also requesting

information about who writes references post PCT closure. Part three of my request asks for details about what information is kept and used by the HR personnel office when writing a job reference; my request relates to information held by Stockport PCT before it closed [that is in July 2005, July 2006, December 2010]."

9. The DoH is entitled to treat the clarified request of the 21 December 2013 as a fresh request.
10. The DoH responded to the new, clarified, request on the 22 January 2014. It informed the complainant who within the DoH was currently responsible for writing references for the former employees of Stockport PCT and provided an outline of the points that were taken into consideration when writing such references. It went on to explain that having searched the records it had inherited from Stockport PCT, together with any publicly available material, it had been unable to find any information relating to how Stockport PCT had provided references for employees.
11. An internal review was conducted and in a letter, simply dated February 2014, the DoH informed the complainant that it maintained its position that it did not hold the requested information.

Scope of the case

12. The complainant contacted the Commissioner on 17 February 2014 to complain about the way her request for information had been handled. In particular she was concerned that the DoH had only sent her some of the information she requested. The Commissioner wrote to the complainant on 27 March 2014 and explained he understood that she did not accept that the information she had requested about references was not held by the DoH.
13. The matter to be decided is whether the DoH holds information about who at Stockport PCT had been responsible for writing references and what information they relied on to do so. This relates to the DoH's obligations under section 1 of FOIA.

Reasons for decision

14. Section 1 of FOIA requires a public authority to inform a person making a request for information whether it holds the information and, if so, to communicate that information to the applicant.

15. Where there is a dispute about whether the requested information is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the proof, which is the balance of probabilities. In other words, the Commissioner must determine whether, on the balance of probabilities, the DoH held the information at the time of the request. This involves consideration of what searches the public authority has conducted for the information and any other relevant explanations as to why it does not hold the information.
16. The Commissioner considered the scope, quality and thoroughness of the search conducted by the DoH. If the information was held it would form part of the records inherited by the DoH following the abolition of Stockport PCT. It should be noted that this would not be a full set of records. Some records would have been transferred to those bodies within the new health care system that took over other responsibilities from the PCT.
17. The DoH has searched the electronic and hard copy records transferred from the PCT for any Human Resource (HR) policies that would have been in place in July 2005, July 2006 and December 2010. The Commissioner considers that it is reasonable for the DoH to assume that such policies, if they existed, would not just set out what matters references should address, but who was responsible for writing such references. The electronic records, of which there are 100,500, were searched using the terms:
 - Policy or policies,
 - HR or Human Resources.
18. The DOH explained that the PCT's policies were written on standard templates which, where relevant, contained these key words. Therefore the DoH is confident that these key words would have found all of PCT's HR policies that it held. This search returned 30 HR policies which were then reviewed. However none of them were found to relate to the provision of references.
19. Normally the Commissioner would expect a public authority to check the personal drives of relevant staff when searching for information. In this case the DoH has explained that the personal drives of the PCT's staff were not transferred to the DoH. However prior to its abolition, the PCT's staff would have uploaded any information which needed to be transferred onto a central networked system which was then provided to the DoH. This means the DoH is confident that it has searched all the electronic records it holds.

20. The search of the hard copies did not identify any relevant documents. The DoH has pointed out that if there were policies on writing references, a very wide range of staff could have required access to them. Therefore if they had existed, it is most likely that they would have been held electronically.
21. The DoH also conducted an internet search to establish whether there were any national NHS policies on writing references which the PCT would have been subject to. Again the DoH was unable to locate any relevant information.
22. The DoH informed the Commissioner that it had itself published guidance on records management which it would have expected the PCT to follow. The DoH is of the opinion that had the PCT ever produced guidance on writing references it would have fallen within a category of information which the DoH would have expected the PCT to retain for 10 years after it had been superseded. The DoH has found other HR policies that have been retained in accordance with that guidance. This leads the DoH to think it is possible that the PCT never issued HR policies on the writing of references.
23. The DoH has confirmed to the Commissioner that it has not destroyed any of the records it has inherited from the PCT.
24. The Commissioner is unable to say whether the PCT did ever issue policies setting out who should provide references or what information should be used when producing them. Nor is it clear whether references could have been written by a number of people or whether the function was carried out centrally by the HR department. However the Commissioner is satisfied that the DoH has carefully considered what searches are most likely to locate the information and that those searches were then conducted thoroughly. The Commissioner is satisfied that if the information did ever exist and was subsequently passed to the DoH, the searches it conducted were very likely to have found it. The Commissioner finds that, on the balance of probabilities, the DoH does not hold the information relating to who within Stockport PCT would have been responsible for writing references or any guidance on producing such references. It follows that the DoH has complied with its responsibilities under section 1 of FOIA by informing the complainant that the information is not held.
25. The Commissioner does not require the public authority to take any further action in this matter.

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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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
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