

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 September 2015

Public Authority: Ipswich Hospital NHS Trust
Address: Heath Road
Ipswich
Suffolk
IP4 5PD

Decision (including any steps ordered)

1. The complainant has requested information about research records, which Ipswich Hospital NHS Trust ('the Trust') says it does not hold.
2. The Commissioner's decision is that, on the balance of probabilities, the Trust does not hold the requested information. He considers that the Trust has met its obligations under section 1(1) of the FOIA and does not require it to take any steps.

Request and response

3. On 14 December 2014, the complainant contacted the Trust through the 'What do they know' website and requested information in the following terms:

"The director was [Person 1] on a research contract (four days per week) from Cambridge University. Because of the research element (in what may have been presented as conventional or approved treatment) you have to preserve records ? Please confirm that this is so.

[Person 1] published a book based on his study of 1000 Suffolk families in pursuit of his theory of "Vector Therapy" Did the 1000 families know ? is there a consent history on record from them ?

Please disclose if his records still exist.

In 1998 you claimed to have destroyed all the records of another "Psychopathology" researcher [Person 2] who also ran Ipswich Vocational training Scheme for GPs. The scheme itself a subject of psychology research on GPs ? Why did you destroy [Person 2's] patient research records. The research was concealed from patients but it was research and the records should have been maintained.

Were [Person 1], [Person 3], [Person 4] and [Person 2] collaborative in their various research at Ipswich ?

[Person 2] published a book jointly with a [Person 5]? Was this the research physio at Ipswich [Person 5]?"

4. The Trust responded on 14 January 2015. It said that it does not hold the information that has been requested.
5. Following an internal review, the Trust wrote to the complainant on 12 February. It maintained its original position and suggested that the complainant could contact its Patient Advice and Liaison Service about his concerns.
6. Further correspondence with the complainant followed in which the complainant said that the Trust had told him it had destroyed Person 2's patient records in 1998. In correspondence dated 11 May 2015 the Trust confirmed that, as it had already advised him, it had no record of the research to which he refers. It said it also has no record of the destruction, in 1998, of any records concerning this research. The Trust reiterated that it holds no records of Person 2 or Person 1's participating research, affiliated with the Ipswich Hospital NHS Trust.
7. Finally, and in the same correspondence, the Trust told the complainant that, because it has told the complainant on numerous occasions that it does not hold the requested information, it had now categorized the request as vexatious under section 14(1) of the FOIA and would treat future requests for the same information as vexatious.

Scope of the case

8. The complainant contacted the Commissioner on 12 May to complain about the way his request for information had been handled. On 3 July the complainant told the Commissioner that he had also requested from the Trust the records or audit trail of the information's destruction. He considers that the Trust should keep a record of its destruction of any information and that it has breached NHS guidelines by not doing so. The complainant has a particular interest in information relating to one of the doctors referenced in his complaint – Person 2.

9. The Commissioner notes that, having received further correspondence from the complainant on the same subject matter, the Trust finally categorized the request as vexatious. However, at the point that it did this, the Trust had already provided the complainant with a response explaining that it did not hold the information. The Commissioner therefore explained to the Trust that his investigation would consider whether or not the information was held and the Trust did not object to this approach.
10. Irrespective of whether or not any guidelines have been breached, if the Commissioner finds that, as it maintains, the Trust has never held the information, it would not have a record of its destruction.

Reasons for decision

11. Section 1(1) of the FOIA says that anyone making a request for information to a public authority is entitled to be informed whether the public authority holds the information and, if so, to have that information communicated to them.
12. The complainant appears to believe that, in the early 1990s, the Trust became aware that litigation was possible regarding research and treatment practices that particular doctors had been involved with decades previously. He maintains that the Trust therefore destroyed records relating to this research and treatment. The complainant says that he had received treatment from one or more of these doctors. He considers that the Trust has held the information he has requested, and if it has destroyed it, then it should still hold a record of its destruction.
13. The Trust has told the Commissioner that it has had previous correspondence with the complainant about the matters covered in his request more broadly and has told him a number of times that it does not hold any relevant information.
14. The Trust says that Person 2 had worked at Ipswich Hospital – at a different site and before it became Ipswich Hospital NHS Trust – but had left many years previously and has subsequently died.
15. It says that, if it did hold any information it would be held electronically on a research database that the Trust created in 2001. All the research that had been undertaken from 1992 has been collated on to this database. The Trust has confirmed that it has searched this database – using the names of the doctors referenced in the complainant's request as search terms. It has not found any information related to any research carried out by the doctor who is of particular interest to the

complainant or any information within the scope of the request more widely.

16. The Trust confirmed to the Commissioner that it has no record of ever having held the requested information and no record of its destruction or deletion.
17. At this point, being satisfied on the balance of probabilities that the Trust does not hold the information the complainant has requested, the Commissioner invited the complainant to informally withdraw his complaint. The complainant preferred to progress to a decision notice.
18. Following further contact from the Commissioner, the Trust confirmed that, regarding an audit trail or records of the information's destruction, the Trust does not hold an audit trail of the destruction of patient treatment records relating to any research the doctors in question may have carried out. This is because it does not keep a record of all destroyed files and moreover in this case, has never held the information requested and so would not hold a record of its destruction.
19. The complainant maintains that the Trust destroyed the patient records of the doctor who is his principal concern in 1998. The Trust disputes this and reiterated to the Commissioner that it has never held these records. The Commissioner asked the Trust whether it might have been the doctor's own personnel records that were destroyed. The Trust confirmed that it does not have a record of this doctor's personnel file as the doctor left the Hospital more than seven years ago and his file would have been destroyed. It once again told the Commissioner that even if it had held this personnel file and destroyed it, it would not hold an audit trail of its destruction because the Trust does not keep a record of these destroyed files.
20. The complainant has repeated his belief that the Trust has destroyed the information it held within the scope of his request but will not admit it because the destruction breached NHS rules.
21. Having considered the submissions he has received from the complainant and the Trust, the Commissioner is prepared to accept that, on the balance of probabilities, the Trust does not hold information on the doctors and research that are of interest to the complainant, or an audit trail of this information's destruction. Although the complainant has told the Commissioner that the Trust told him that it had destroyed Person 2's patient records in 1998, he has not submitted any evidence that would confirm this.
22. The Commissioner's investigation has been concerned with whether or not the Trust holds information within the scope of the complainant's

request. He has not considered whether the Trust breached any guidelines regarding any records' destruction. First, this is because he is satisfied that the Trust has not held the requested information and therefore could not have destroyed it – no breach of any guidelines could therefore have taken place with respect to this information.

23. Second, however, the complaint that is the subject of this notice appears to be the only FOIA complaint that the Commissioner has received about this Trust. He therefore does not consider that there is evidence of any wide and systemic failure regarding the Trust's governance of its information that would warrant the Commissioner's intervention in this respect.

Other matters

24. The Commissioner notes that the complainant continued to correspond with the Trust until May, after he had received the outcome of the internal review in February. The Commissioner reminds the Trust that, once a public authority has responded to a request and reviewed its response, it has met its obligations under the FOIA. While it is sometimes appropriate and good customer service to do so, authorities are not obliged to maintain correspondence with an applicant about the request once it has reviewed its response. An authority can simply direct the applicant to the Commissioner if the applicant remains dissatisfied following the review.

Right of appeal

25. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

26. 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.
27. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF