

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 March 2017

Public Authority: West Hampshire Clinical Commissioning Group
Address: Omega House
112 Southampton Road
Eastleigh
Hampshire SO50 5BP

Decision (including any steps ordered)

1. The complainant has requested information relating to continuing care funding assessments.
2. The Commissioner's decision is that West Hampshire Clinical Commissioning Group (the CCG) has breached section 10 (time for compliance) of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide a response to the complainant.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 28 September 2016, the complainant wrote to the CCG and requested information in the following terms:

"we would like under the Freedom of Information Act to be advised;

We insist under the FOIR that you advise that apart from [redacted] assessment on the 25th November 2015 how many other claims were assessed on the same day by the same panel members (without a LA's representative or LA's own case history)."

6. The CCG did not provide a response.

Scope of the case

7. The complainant contacted the Commissioner on 23 November 2016 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of this case to be to determine if the CCG has complied with its obligations under the FOIA.

Reasons for decision

Section 10 – time for compliance

9. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
10. Section 8(1) of the FOIA states that requests for information should be in writing, bear the name and address of the applicant, and describe the information requested. The Commissioner considers that the request in this case fulfilled these criteria, and therefore constituted a valid request under the FOIA for recorded information.
11. Section 10(1) of the FOIA provides that 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. From the information provided to the Commissioner it is evident that the CCG has not responded to the complainant within the statutory timeframe in respect of this request.

Conclusion

12. The Commissioner's decision is that the CCG did not deal with the request for information in accordance with the FOIA. In this case the CCG has breached sections 1(1) and 10(1) by failing to respond to the request within 20 working days. The CCG is now required to respond to the request of 28 September 2016 in accordance with the FOIA

Other matters

13. The Commissioner notes that at one point in the correspondence the complainant is advised that the request has been forwarded to the FOI team. However, it does not appear that any contact details or advice was provided should the complainant need to contact the team. The Commissioner considers it would have been helpful to have provided some this to the complainant.

14. The complainant also asked

"We would also like to confirm with the ICO if [redacted] is the registered Data Controller for WHCCG as we are concerned of his deliberate input, possible delay into the content of the FOI Request, when surely it should have been passed to the FOI team in good time and collated and responded by them."

15. The Commissioner can advise that the Data Protection Act (DPA) 1998 states:

"data controller" means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;

16. A data controller must be a "person" recognised in law, that is to say:

individuals; organisations; and other corporate and unincorporated bodies of persons.

17. Data controllers will usually be organisations, but can be individuals, for example self-employed consultants. Even if an individual is given responsibility for data protection in an organisation, they will be acting on behalf of the organisation, which will be the data controller.

18. In this case the data controller is the organisation and not a specific individual.

Right of appeal

19. 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

20. 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.
21. 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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