

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 05 February 2018

Public Authority: Plymouth Hospitals NHS Trust
Address: Derriford Hospital
Derriford Road
Plymouth
Devon
PL6 8DH

Decision (including any steps ordered)

1. The complainant requested information on PALS department policies. The Plymouth Hospitals NHS Trust (the Trust) confirmed that they did not hold any further information. The complainant considered that more information must be held. The Commissioner's decision is that the Trust does not hold any further information in this case. The Commissioner found that the Trust failed to provide a response to the request within the statutory time frame of 20 working days and therefore breached section 10(1) of FOIA. The Commissioner does not require the Trust to take any steps.

Request and response

2. On 5 October 2017 the complainant requested the following information:
*'PHNT PALS policies, procedures, standards and guidelines
PHNT Complaints policies, procedures, standards and guidelines'*
3. On 3 November, the complainant requested a review as there had been no response.
4. On 7 November the Trust apologised for the delay in the response and confirmed that it held the information requested. This was provided:
'1. PHNT PALS policies, procedures, standards and guidelines.'
*You can view the Trust's **PALS Policy** on Plymouth Hospitals NHS Trust Website see link below:*

<https://www.plymouthhospitals.nhs.uk/download.cfm?doc=docm93jjm4n2838.pdf&ver=3570>

2. PHNT Complaints policies, procedures, standards and guidelines.

Please find a copy of the Trust's Complaints Standard Operating Procedure attached to this letter. This incorporates our policies, procedures, standards and guidelines.'

5. On 10 November 2017, the complainant requested a second internal review as the information was incomplete:

'I received:

- 1. **PHNT PALS Policy** (this doesn't cover the complete request)*
- 2. **PHNT Complaints Standard Operating Procedure that incorporates policies, procedures, standards and guidelines** (the document refers to a complaints management guidance pack that falls within the scope of this request that's not included)'*

6. On 30 November 2017, the Trust provided the outcome of a second internal review on the completeness of the information provided and confirmed:

'For point 1, the Trust supplied the PHNT PALS Policy which covers all of the elements requested; the Trust does not have any other PALS policies, procedures, standards or guidelines documents. There is a PALS leaflet and poster which I have attached.

For point 2, the Trust provided the PHNT Managing & Responding to Formal Complaints Standard Operating Procedure (SOP). The complaints management guidance pack referred to in the SOP is no longer in use. During the development of the SOP a decision was taken to incorporate the guidance into the main document as appendices, unfortunately the reference to the guidance was inadvertently left in the list of links to other policies. Reference to this guidance will be removed.'

Scope of the case

7. On 23 November and 15 December 2017 the complainant contacted the Commissioner as she considered that more information must exist:

'1. PHNT PALS policies, procedures, standards and guidelines

I've been provided with a PALS Policy and advised that this covers all of the elements requested; the Trust does not have any other PALS policies, procedures, standards or guidelines documents.

This 13-page policy document does not cover policies, procedures, standards and guidelines. If this 13-page document covers the hospital's PALS policies, procedures, standards and guidelines, it indicates a lack of standards for the hospital PALS department.

2. PHNT Complaints Standard Operating Procedure that incorporates policies, procedures, standards and guidelines

I would like to receive the full PHNT Complaints policies, procedures, standards and guidelines and this includes information that may no longer be in use.

Requested Actions:

1. I believe Plymouth Hospitals NHS Trust need to improve their information governance and practices. I would like to ask if the hospital's Freedom of Information process and practices could be assessed and reviewed to ensure it delivers the full information and within the statutory timeframe.

2. I would like to receive the complete information requested:

a. PHNT PALS policies, procedures, standards and guidelines

b. PHNT Complaints policies, procedures, standards and guidelines'

8. The Commissioner considers that the focus of the investigation will be to determine whether the Trust handled the request in accordance with the FOIA. As the Trust has not applied any exemptions as a basis for refusing to provide the withheld information the scope of the case will be to determine whether the Trust provided all the recorded information within the scope of the request.
9. The complainant was advised that the Commissioner can only consider what is held. It is outside the Commissioner's remit to determine if it should be held, and even if it should be, she cannot require a public authority to create the information under the FOIA. Specifically, the Commissioner cannot consider or comment on the 'lack of standards' of the recorded information provided.

Reasons for decision

10. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
11. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead

of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.

12. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
13. As is the practice in a case such as this, the Commissioner asked the Trust a number of questions to confirm/establish if further information is held.
14. In response to the Commissioner's questions about the location of the information, the Trust confirmed that it did not hold any further recorded information falling within the scope of the request.
15. The Trust explained that:

'The FOI team maintain a list of leads from across the Trust who are contacted to provide information for FOI cases. In this instance, a manager who oversees the PALs and Complaints team named the documents relevant to the request. All FOI responses are then checked by a Director before being sent to the Communications Team. In this instance, the Director checked with the Senior Matron responsible for the PALs and Complaints teams before approving the FOI response. Therefore three levels of management confirmed that the documents provided were the only ones relevant to the request.

In addition, the Information Governance team are responsible for the document control of Trust-wide formal documents such as policies and procedures. These documents are held on electronic folders and displayed on the Trust intranet. There is a search bar to find documents by name or contents. Two views are available, by folder or by category. This search confirms that the correct documents were provided. Trust Policies are also published on the Trust website as part of the Trust's publication scheme.

The Complaints Standard Operating Procedure is available on the Trust's intranet. The PALS policy is available on the intranet and also the Trust website.'

16. The Commissioner asked the Trust a number of questions to establish what searches had been carried out for information falling within the scope of the request.
17. The Trust explained that *'trust-wide documents are held in a central repository which is managed by the Information Governance Team. These documents are displayed on the staff intranet. These documents*

are not held locally on individual computers... These documents are easily found in the Patient Services Folder which only contains ten documents. The search terms "PALS" and also "Complaints" will also locate the documents.'

18. The Trust was confident that the searches had retrieved all the information pertinent to the request.
19. The Commissioner asked questions on whether any recorded information ever held relevant to the scope of the request had been destroyed. The Trust answered: *'the documents provided are the current versions and replace those documents which they supersede. The previous versions are held in an electronic archive folder.'*
20. Referring to the particular query on the document provided to the complainant (the PHNT Managing & Responding to Formal Complaints Standard Operating Procedure (SOP)), the Trust confirmed that the "complaints management guidance pack" referred to in the SOP is no longer in use and the guidance had been incorporated into the main SOP document as appendices. The reference to the guidance was inadvertently left in the list of links to other policies but will be removed.
21. The Commissioner asked about the Trust's formal records management policy on the retention and destruction of records of this type. The Trust answered that as an NHS organisation it follows the Information Governance Alliance's Records Management Code of Practice for Health and Social Care 2016.
22. Having considered the Trust's responses to the Commissioner's investigations, the Commissioner is satisfied that, on the balance of probabilities, the Trust does not hold any further recorded information within the scope of the request.
23. As the Commissioner's decision is that the information is not held, the Commissioner does not require the Trust to take any steps.

Procedural matters

24. Section 10(1) of the FOIA states that a public authority should respond to a request promptly and in any event no later than 20 working days of receipt. In this case that the Trust responded after 22 working days and so breached section 10(1) of the FOIA.

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: <http://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
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