

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 25 February 2019

**Public Authority:** Salisbury NHS Foundation Trust  
**Address:** Salisbury District Hospital  
Odstock Road  
Salisbury  
SP2 8BJ

#### Decision (including any steps ordered)

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1. The complainant has requested statistical information regarding allegations of abuse.
2. The Commissioner's decision is that Salisbury NHS Foundation Trust ("the Trust") failed to issue a refusal notice, setting out an exemption it later came to rely upon, within 20 working days. It therefore breached Section 17 of the FOIA.
3. The Commissioner does not require any further steps to be taken.

#### Request and response

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4. On 3 April 2018 the complainant wrote to the Trust and requested information in the following terms:

*"...in respect of the years 2008 to 2017 inclusive:*

- 1) *The number of allegations of abuse received (by letter, email, telephone, in person, or by any other means)*
- 2) *A breakdown of the allegations in respect of type of abuse (eg. physical/sexual/psychological)*

- 3) *A breakdown of the allegations in respect of against who they were made (eg. doctor/nurse/patient) and by whom (eg. doctor/nurse/patient)*
  - 4) *A breakdown of the allegations in respect of the department, or other location, in which the abuse allegedly took place*
  - 5) *The number of allegations that prompted an internal investigation*
  - 6) *A breakdown of the outcome of allegations subjected to internal investigation, (eg upheld in full/upheld in part/not upheld)*
  - 7) *The number of allegations referred to the police”*
5. On 6 April 2018, the Trust asked for clarification of the request which the complainant provided on 17 April 2018.
  6. On 2 May 2018, the Trust responded. It denied holding information within the scope of the request.
  7. The complainant requested an internal review on 12 June 2018. The Trust sent the outcome of its internal review on 6 July 2018. It revised its position and set out a series of information which it confirmed that it held.

## **Scope of the case**

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8. The complainant first contacted the Commissioner on 21 May 2018 to complain about the way his request for information had been handled. At that point he had not received his internal review. The complainant contacted the Commissioner again on 16 July 2018. He was unhappy at the wording of the Trust's responses and argued that more information was held.
9. At the outset of her investigation, the Commissioner brought to the Trust attention several statistical discrepancies within the information that had been provided. The Trust wrote to the complainant on 15 December 2018 and rectified these discrepancies.
10. Following further questions, the Trust issued a fresh refusal notice to the complainant on 11 January 2019, it now claimed that identifying and extracting all the information within the scope of the request would exceed the appropriate limit (£450). It stated that it could still provide the information, but that the complainant would have to fund the additional cost of complying with the request.

11. The complainant wrote to the Commissioner on 6 February 2019. He accepted that complying with his request would exceed the appropriate limit. However, he was unhappy about the time that it had taken to respond to his request and the apparently contradictory approaches it had taken in terms of the information it held.
12. The Commissioner has therefore restricted the scope of her investigation to determining whether the Trust properly refused the request.

### Reasons for decision

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13. 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."*

14. Section 12 of the FOIA states that:

*"(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.*

*(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit."*

15. Section 17(5) of the FOIA states that:

*"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."*

16. The Trust did not inform the complainant until 11 January 2019 that it was relying on Section 12 to refuse the request. This is clearly outside the 20 working day timeframe set down by the legislation.

17. The Commissioner is not making a decision as to whether the Trust was or was not entitled to rely on Section 12 – only that it should have cited the exemption within 20 working days (or, at least, at the internal review stage).
18. The Commissioner therefore finds that the Trust breached Section 17 of the FOIA.

### **Other matters**

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19. Section 13(1) of the FOIA states that:

*"A public authority may charge for the communication of any information whose communication—*

*(a) is not required by section 1(1) because the cost of complying with the request for information exceeds the amount which is the appropriate limit for the purposes of section 12(1) and (2), and*

*(b) is not otherwise required by law,*

*such fee as may be determined by the public authority in accordance with regulations made by the Minister for the Cabinet Office.*

20. A public authority can choose to comply with a request that exceeds the cost limit and can ask the requester to pay the costs associated with complying with that request. In this case, however, the figure that the Trust quoted was so large that it was not realistic to expect the complainant to pay it. The Trust should reserve this approach for situations where there is a realistic possibility that the requester will choose to cover the costs.
21. No breach of the legislation has occurred here, but the complainant wanted his concerns to be placed on record.

## Right of appeal

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

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

23. 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.
24. 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 .....**

**Ben Tomes  
Team Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**