

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 January 2019

Public Authority: Cheshire & Wirral Partnership NHS Trust
Address: Trust Headquarters
Liverpool Road
Chester
CH2 1BQ

Decision (including any steps ordered)

1. The complainant requested information regarding the legal ownership of a plot of land.
2. The Commissioner's decision is that Cheshire & Wirral Partnership NHS Trust ("the Trust") failed to respond to the request within 20 working days and has therefore breached Section 10 of the FOIA.
3. As a response has now been issued, the Commissioner does not require the Trust to take any further steps.

Request and response

4. On 16 May 2018, the complainant wrote to the Trust and requested information in the following terms:

"I write to make the following FOIAR in respect of the Land/Brownfield Site which NHS Property Services manage on behalf of [the Trust], between the 1829 Building, on the Countess of Chester Health Park, and the roadway Upton Grange.

My FOIAR is, please –

[1] Were [the Trust] the sole Owners of this Land/Brownfield Site as was explicitly and unequivocally legally 'Certified' by [name redacted] of WYG Group, at the instant he made a Planning Application (subsequently allocated Reference Number

17/01543/FUL by Cheshire West and Chester Council) on 31st March, 2017, legally 'Certifying' thereon that [the Trust] were the sole Owners of the Land/Brownfield Site?"

[2] Were [the Trust] still the sole Owners of this Land/Brownfield Site on 30th August, 2017 at the instant at which CWaCC entered into a Section 106 Agreement, which enticed them, by way of a 'Combined Open Space Contribution' of £77,611.20 to grant Planning Permission, which otherwise they "...were minded to refuse...", in respect of the aforementioned Site/Brownfield Site?

[3] Who was/were the Owner(s) of the aforementioned Land/Brownfield Site on 10th December, 2014, at the instant when a previous Planning Application was made to CWaCC?

[4] If there has/have been a Change(s) of Ownership between 10th December 2014, and today's instant:-

[a] Provide details of those changes

[b] Explain why those Changes occurred"

5. On 14 June 2018, the Trust contacted the complainant to apologise for the delay in processing his request.
6. The Trust provided its formal response on 26 June 2018. It stated that, as it had ceased to own the land in question prior to December 2014 "we can't respond to your request." It provided him with a link to NHS Property Services' website to whom it said it had transferred ownership of the land in question.
7. The complainant requested an internal review on 20 August 2018. He did not appear to dispute the substance of the Trust's response, but was dissatisfied that the Trust had not met the FOIA deadline for complying with the request.
8. The Trust completed its internal review on 17 September 2018. It admitted that the response had been provided late and explained that there had been delays in the internal process of producing and approving the response before it could be sent to the complainant.

Scope of the case

9. The complainant contacted the Commissioner on 24 September 2018 to complain about the way that the Trust had responded to his request.

10. As with his internal review, the complainant has made no attempt to persuade the Commissioner that the Trust might hold information within the scope of his request. His sole concern appears to be the timeliness with which the response was provided.
11. The complainant has levelled a series of serious accusations at the Trust which, he believes, speak to its motivation in not answering the request within 20 working days. In particular, he felt that, by failing to meet the deadline, the Trust had prejudiced action he had brought in the High Court.
12. The Commissioner notes that, had the information requested been an integral part of any action in any court, that court would have had broader powers to order disclosure than would have been available under the FOIA. She also notes that the reasons why a response was issued late are immaterial to her consideration of whether a breach has occurred. Either a response has been provided in accordance with the Act's timescales or it has not.
13. To be clear, the Commissioner has not sought any explanations from the Trust. She does not need to do so to determine the timing of a response.
14. The scope of this notice and the following analysis is therefore to consider whether the Trust has complied with Section 10 of the FOIA.

Reasons for decision

15. 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.*

16. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

17. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.

18. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"

19. As the request was made on 18 May 2018, a response would have been due by 14 June 2018. Whilst the Trust did issue a holding response on this date, it did not cite a section of FOIA which would have allowed it to extend the deadline for a response.

20. From the evidence presented to the Commissioner in this case, it is therefore clear that, in failing to issue a response to the request within 20 working days, the Trust has breached Section 10 of the FOIA.

Other matters

21. Given that the first duty placed on a public authority under FOIA is to confirm or deny whether information within the scope of a particular request is held, the Commissioner considers it good practice for public authorities to be explicit, when responding, as to whether information is, or is not, held within the scope of a request (unless they are relying on an exemption from the duty to confirm or deny).

22. Whilst the Commissioner considers that it was implicit in the Trust's response that the requested information was not held, she would recommend that the Trust ensure that future responses include an unequivocal statement as to whether or not requested information is held.

Right of appeal

23. 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

24. 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.
25. 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
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SK9 5AF**