

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2019

Public Authority: Kettering General Hospital NHS Foundation Trust

Address: Rothwell Road
Kettering
NN16 8UZ

Decision (including any steps ordered)

1. The complainant requested information from Kettering General Hospital NHS Foundation Trust (the "Trust") about the number of people who have initiated employment tribunal proceedings against the Trust and the number of people who have made whistleblowing allegations at the Trust in the last 5 years. The complainant also later made a further request for information from the Trust about the legal team that represented the Trust.
2. The Commissioner's decision is that the Trust has breached section 10(1) of the FOIA in that it failed to provide a valid response to the requests within the statutory time frame of 20 working days.
3. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation.
 - Respond to the complainant's requests in accordance with the FOIA
4. The Trust 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 26 November 2018, the complainant wrote to the Trust and requested information in the following terms:

"1) Please confirm by quarter for the last 5 years the number of people who have made whistleblowing allegations at KGH in accordance with KGH whistleblowing corporate policy.

2) Please confirm the number of people by quarter for the last 5 years who have initiated Employment Tribunal proceedings against KGH.

3) Please confirm the number of people who have ever whistleblown about waiting list fraud at KGH together with the date when they made their whistleblowing submission.

4) Please confirm the number of people by quarter who have ever initiated Employment Tribunal proceedings against KGH for waiting list fraud."

6. On 27 November 2018, the Trust wrote to the complainant to acknowledge the request.

7. On 5 December 2018, the complainant wrote to the Trust and made a further request for information in the following terms:

"I have a supplementary question to question 2 from my FOI request of 26th November 2018.

2.1 Of the Employment Tribunal cases initiated against KGH over the past 5 years please confirm the name of the legal team that legally represented KGH in each case together with the fees claimed by the legal team in each case."

8. To date, no substantive response to either has been issued.

Scope of the case

9. The complainant contacted the Commissioner on 28 December 2018 to complain about the failure by the Trust to respond to his request.
10. The Commissioner has considered whether the Trust has complied with its obligations in relation to the time for compliance at section 10(1) of the FOIA.

Reasons for decision

11. 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.

12. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "*not later than the twentieth working day following the date of receipt.*"

13. On 10 January 2019 the Commissioner wrote to the Trust, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.

14. Despite this intervention the Trust has failed to respond to the complainant.

15. From the evidence provided to the Commissioner in this case, it is clear that the Trust did not deal with the requests for information in accordance with the FOIA. The Commissioner finds that the Trust has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the FOIA.

Right of appeal

16. 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

17. 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.
18. 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**