

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 5 July 2019

**Public Authority:** Drs Mullen, Gullick, Kinsey, Mason & Dongre,  
partners of Parbold Surgery

**Address:** 4 The Green  
Parbold  
Wigan  
Lancashire  
WN8 7DN

### **Decision (including any steps ordered)**

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1. The complainant has requested copies of contracts held with the commissioners of services from two specific years. The Surgery disclosed information to the complainant in response to this request, but the complainant disputed whether this was all the information that the Surgery held that was within the scope of his request.
2. The Commissioner's decision is that the partners of Parbold Surgery ("the Surgery") do not hold further information beyond that which has already been provided.
3. The Commissioner does not require the Surgery to take any further steps in respect of this complaint.

### **Status of GPs under the FOIA**

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4. The Commissioner notes that the Surgery itself is not a public authority for the purposes of the FOIA. Rather, each GP within the practice is a separate legal person and therefore each is also a separate public authority. The actual duty under section 1 of the FOIA, to confirm or deny whether information is held and then to provide the requested information to the applicant, subject to the application of any exemptions, rests with each individual GP.

5. However, the Commissioner acknowledges that when an applicant makes an information request to a medical practice, or a single GP within the practice, it is reasonable to expect, for convenience, that the practice will act as the single point of contact and provide a response on behalf of the GPs concerned.
6. For the purposes of this decision notice, references to the views and actions of "the Surgery" should be read as referring to the collective views and actions of the above-named GPs.

## **Request and response**

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7. On 23 May 2018, the complainant wrote to the Surgery and requested information in the following terms:

*"I am requesting a copy of all the recorded information you hold in all the contracts you had with the commissioners of the services you provided in :-*

*1) 2009.*

*2) 2013."*

8. The Surgery responded on 24 May 2018. It provided some information and advised him that further information may be held by NHS England.
9. On 29 May 2018, the complainant contacted the Surgery again to say that he had been unable to access the attached information in the previous email. The Surgery sent a fresh copy of the attachment on 31 May 2018.
10. The complainant contacted the Surgery again on 30 July 2018 to say that he did not believe the information supplied would fall within the scope of his request and that he believed the Surgery held further information. The Surgery provided some further information later that day.
11. On 15 August 2018, the complainant wrote to the surgery again and formally requested an internal review because:

*"I am of the opinion that, on the balance of probabilities, you do hold further information fitting criteria of my 23 May 2018 emailed request and which you have still not provided me a copy of"*.
12. The Surgery provided the outcome of its internal review on 19 September 2018. It upheld its original position and provided some additional explanations as to why further information was not held.

## Scope of the case

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13. The complainant contacted the Commissioner on 1 February 2019 to complain about the way his request for information had been handled. He stated that he believed that the Surgery held further information within the scope of his request and that it had not issued him with a valid refusal notice in relation to that further information.
14. As the Surgery has at no point claimed it is withholding information, it would have been under no obligation to issue a refusal notice – therefore the Commissioner has not considered this point.
15. The scope of the Commissioner's investigation has been to consider whether further information was held within the scope of the request.

## Reasons for decision

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16. 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.*

### *The Complainant's position*

17. The complainant's belief that the Surgery holds further information beyond that which has been provided seems to be based on his interpretation of its Record Retention policy which is that contracts would normally be retained for six years.

### *The Surgery's position*

18. The Surgery explained to the Commissioner that it does not keep the old contracts because it has no need for them.
19. The Surgery pointed out that the contracts were subject to minor amendments each year and sometimes within the year. To continue to retain contracts which had been superseded, it argued, would likely lead to confusion – and therefore the redundant versions of the contract would be disposed of.

20. Nevertheless, it confirmed that it had carried out searches of its commercial and legal files to see whether it did have old copies of the contracts which would fall within the scope of the request. That which it did hold was provided to the complainant.

*The Commissioner's view*

21. The Commissioner's view is that the Surgery does not hold further information.
22. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check whether the requested information is held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
23. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
24. In this case, the complainant's rationale for believing that further information is held is based on his own interpretation of the Surgery's Record Retention policy which, he says, states that contracts are retained for six years.
25. The Commissioner has taken the time to examine the Records Retention policy and notes that the section to which the complainant refers relates specifically to *non*-NHS contracts. A contract, with NHS England, to provide NHS services, would be an NHS contract and would not therefore appear to be covered by this policy.
26. The Commissioner is satisfied with the Surgery's explanations as to why it would not be expected to hold further information within the scope of the complainant's request and she is satisfied that the Surgery has carried out appropriate searches to confirm its position. The original request was very specific in relation to years for which contracts were sought. Therefore providing information relating to a different year (which the Surgery offered to do) would not satisfy the request.
27. The Commissioner therefore concludes that, on the balance of probabilities, the Surgery holds no further information.

## Other matters

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28. During a telephone call with the Commissioner's office, the Surgery suggested that it might be able to get hold of older copies of the contracts by contacting other public authorities to see if they had retained the documents. However, there is no requirement under FOIA for it to do so. A public authority only needs to consider the information it holds *itself* at the time the request was made.
29. A better course of action is to signpost a requestor to another public authority which would be more likely to hold information. The Surgery did point the complainant toward NHS England and the Commissioner considers this to be good practice.

## Right of appeal

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30. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

31. 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.
32. 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**