

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 June 2020

Public Authority: Dr KE Hosie, Dr LPJ Hosie, Dr JF Davies,
Dr J Graham, Dr C Hart and Dr P Glatzel -
partners at the Dicconson Group Practice

Address: Boston House
Frog Lane
Wigan
WN6 7LB

Decision (including any steps ordered)

1. The complainant has requested information about complaints from Dicconson Group Practice (DGP), for the years 2009 to 2019. DGP did not release some relevant information it holds, it released other information and appeared to advise that it does not hold relevant information for two of the years requested.
2. The Commissioner's decision is that:
 - DGP's response to the request breached section 1(1)(a) and 1(1)(b) of the FOIA but it holds no further information falling within the scope of the complainant's request.
 - DGP's response breached section 10(1) and section 17(1) as it did not comply with section 1(1) or provide a refusal notice for an element of the request within 20 working days.
3. The Commissioner requires DGP to take the following step to ensure compliance with the legislation:

- Re-issue to the complainant the 'Internal Review' it says it had originally sent to him on 6 October 2019. As well as the two pdf documents, this communication should include the two Excel documents also discussed at paragraph 27 of this notice. Where it is not currently clear, DGP should identify each of the years that the complaints information included across the two Excel documents covers.
4. DGP 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.
 5. The Commissioner notes that the medical practice 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 a separate public authority. The Commissioner acknowledges that when an applicant makes a freedom of information request to a medical practice it is reasonable to expect for convenience that the practice will act as a single point of contact. However, each GP has a duty under section 1 of the FOIA to confirm or deny whether information is held and then to provide the requested information, subject to the application of any exemptions. For ease and clarity, this decision notice refers to the Practice where appropriate in detailing the correspondence and analysis that has taken place.

Request and response

6. On 1 May 2019 the complainant wrote to DGP and requested information in the following terms:

"Please be so kind as to send me a copy of your annual report as per section 18 (copied below), of The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, for all the years you have them for which should be 2009 to 2019...

... "18. (1) Each responsible body must prepare an annual report for each year which must

(a) specify the number of complaints which the responsible body received;

(b) specify the number of complaints which the responsible body decided were well-founded;

(c) specify the number of complaints which the responsible body has been informed have been referred to

(i) the Health Service Commissioner to consider under the 1993 Act; or

(ii) the Local Commissioner to consider under the Local Government Act 1974; and

(d) summarise

(i) the subject matter of complaints that the responsible body received;
(ii) any matters of general importance arising out of those complaints, or the way in which the complaints were handled;
(iii) any matters where action has been or is to be taken to improve services as a consequence of those complaints.

(2) In paragraph (1), 'year' means a period of 12 months ending with 31st March.

(3) Each responsible body must ensure that its annual report is available to any person on request.

(4) This paragraph applies to a responsible body which is

(a) an NHS body other than a Primary Care Trust; or

(b) a primary care provider or an independent provider, and which in any year provides, or agrees to provide, services under arrangements with a Primary Care Trust.

(5) Where paragraph (4) applies to a responsible body, the responsible body must send a copy of its annual report to the Primary Care Trust which arranged for the provision of the services by the responsible body.

(6) Each Primary Care Trust must send a copy of its annual report to the Strategic Health Authority whose area includes any part of the area of the Primary Care Trust.

(7) The copy of the annual report required to be sent in accordance with paragraph (5) or (6) must be sent as soon as reasonably practicable after the end of the year to which the report relates.""

7. DGP responded on 5 July 2019. It released some information, namely complaints data, ie figures for the period 01 April 2018 to 31 March 2019.
8. The complainant requested an internal review on 16 July 2019. On 9 October 2019 he wrote to DGP as he had not received an internal review and on 22 October DGP advised him that it had sent a review to him on 6 October 2019. The complainant said he had not received this and asked DGP to re-send it.
9. DGP provided the complainant with a review on 25 October 2019. It advised that it had reviewed its records and noted that the complainant had already received summary information for the years 2008/9 and

2009/10. It released complaints summary information for other years and advised it had been unable to identify any information, ie any complaint summaries, for the years "2012/13 and 2014/15".

10. The Commissioner noted that one of the seven attachments to this email is a document named 'Summary Apr 2014 – Apr 2015.doc'. And the complainant sent the Commissioner copies of the information he received. This comprises complaints summary information for: 2010/11, 2011/12, 2014/15, 2015/16, 2016/17, 2017/18 and 2018/19. It therefore appeared that DGP *does* hold information for 2014/15. The missing years appeared to be 2012/13 and 2013/14.
11. In correspondence to the Commissioner on 24 March 2020 DGP confirmed that the reference to the '2014/15' document had been a typing error. The years for which DGP said it does not hold particular complaints information are 2012/13 and 2013/14.

Scope of the case

12. The complainant first contacted the Commissioner on 20 June 2019 to complain about the way his request for information had been handled.
13. In this correspondence and in correspondence on 20 February 2020 the complainant confirmed that he is dissatisfied that DGP did not:
 - confirm or deny whether it held all the information specified in his request
 - provide him with a copy of all the information he requested which he considers DGP is likely to hold
 - provide a proper/valid refusal notice; or
 - respond to his request within 20 working days.
14. The Commissioner's investigation has focussed on whether DGP complied with its obligations under section 1(1), section 10(1) and section 17(1) of the FOIA.

Reasons for decision

Section 1 – general right of access to recorded information held by a public authority

15. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the

information communicated to him or her if it is held and is not exempt information.

16. The complainant requested information about complaints that he considered DGP would hold for each of the years 2009 to 2019. DGP advised that it had previously disclosed information for the years 2008/09 and 2009/10 – that matter is discussed under the Section 17 analysis in paragraphs 34-37.
17. DGP disclosed complaints summary information for the years: 2010/11, 2011/12, 2014/15, 2015/16, 2016/17, 2017/18 and 2018/19. DGP's position appeared to be that it does not hold complaints information for the years 2012/13 and 2013/14.
18. In its submission to her received 6 March 2020 DGP confirmed that it could not locate 2012/13 or 2013/14 information. DGP said that it had conducted a search of its electronic records; those stored on its shared drive under the heading of 'Complaints'. The documents held in that location are its 'Complaints Summary' documents for complaints relating to each year. The summaries include: Date of occurrence, Type of complaint, Staff involved, Action(s), Outcome and Review.
19. DGP discussed its complaints data submissions that it submits to its Clinical Commissioning Group (CCG) each year. DGP says it receives [template] documents electronically, completes them and returns them to the CCG. These documents were only introduced in 2014/2015 and they have six sections: Written complaints by practice details and summary information, Age of patient by or on behalf of whom the complaint is made, Status of the complainant, Service area, Subject area and Staff group. DGP says it gathers the above information from its Complaints Summary documents.
20. DGP has stated to the Commissioner that, after exhausting every avenue, it could not locate "complaints information" for the years 2012/2013 and 2013/2014. DGP has conjectured that this could be due to the possibility of the files being deleted in error, or possibly a change in the way in which it submitted them.
21. However, in its submission DGP goes on to say that it had contacted the CCG to ask if it could send DGP electronic copies of the data that it had submitted prior 20114/2015 and which included the years 2012/2013 and 2013/2014. DGP said that it had "also sent this information".
22. The Commissioner queried this with DGP as it appeared to be suggesting that it had sent 2012/13 and 2013/14 information to the complainant, having advised both her and him that it does not hold this.

23. In correspondence on 24 March 2020 DGP told the Commissioner that it had sent the complainant information for 2012/13 and 2013/14. It said that this information was figures only, which it had received from the CCG, as it could not locate the summarised complaints information for those years.
24. DGP attached two documents to its 24 March 2020 correspondence. They are both headed 'Internal Review' but are slightly different. One is the review dated 25 October 2019. The other has no date but the Commissioner must assume it is a copy of the review that DGP said it had sent to the complainant on 6 October 2019 but which the complainant had advised DGP he had not received.
25. Attached to the 25 October 2019 review are the Complaints Summary documents described at paragraphs 9 and 10.
26. Embedded in what the Commissioner assumes is the 6 October 2019 review are four documents: two Excel documents and two pdf documents. One of the Excel documents contains complaints figures for the years 2013/14 to 2018/19. The second Excel document contains figures for what appears to be one year. The year is not given in the sheet or in the document name, but the Commissioner must assume – because DGP has advised her it sent the complainant information for that year - it is 2012/13. The two pdf documents are 'Complaints Data Submissions' that were submitted to the CCG in June 2015 (though this document is named '... Submission 2017') and May 2018.
27. It appears to the Commissioner that the two Excel documents mentioned above contain complaints information for the years 2012/13 and 2013/14. This information is not Complaints Summary information that DGP had been able to provide for other years. DGP has explained that it has been unable to locate that specific information for those years. However, the information in the Excel spreadsheets would appear to be complaints figures for the two years, which DGP requested from the CCG in order to address the complainant's request. It is therefore a moot point as to whether DGP could be said to have actually held that information – the 2012-2014 figures – at the time of the request, or request for a review. However, taking a pragmatic approach the Commissioner will accept that DGP held some complaints information for the years 2012/13 and 2013/14.
28. DGP believes it has communicated this information to the complainant by way of its 6 October 2019 internal review. But the complainant advised DGP that he did not receive that correspondence, and the internal review that he received on 25 October 2019 did not include those two spreadsheets.

29. To summarise, DGP communicated the majority of the information requested to the complainant through its response of 5 July 2019 and its internal review of 25 October 2019. DGP holds some complaints information for the years 2012/13 and 2013/14 but its correspondence with the complainant was unclear. DGP seemed to indicate that it did not hold any information for those years but at the same time it considered it had communicated 2012/13 and 2013/14 information (which it had received from the CCG) to the complainant. In fact, the complainant had not received that communication.
30. The Commissioner has decided that DGP breached section 1(1)(a) of the FOIA as its correspondence to the complainant suggested that it did not hold some information falling within the scope of the complainant's request – complaints information for the years 2012/13 and 2013/14 - when it does hold such information.
31. The Commissioner finds that DGP has also breached section 1(1)(b) of the FOIA regarding the 2012/13 and 2013/14 information because it has not communicated that information to the complainant as he did not receive DGP's review correspondence of 6 October 2019.
32. The Commissioner finds DGP's search for complaints summary information for 2012/13 and 2013/14 to have been appropriate and adequate. On the balance of probabilities, the Commissioner accepts that complaints figures for the above two years are all the relevant information that DGP holds for those years, and that it holds no further information falling within the scope of the complainant's request.

Section 10 – time for compliance

33. Under section 10(1) of the FOIA, a public authority should comply with section 1(1) promptly and no later than 20 working days following the date of receipt of the request.
34. The Commissioner finds that DGP breached section 10(1) of the FOIA. This is because, in addition to the shortcomings discussed above, its initial response to the complainant of 5 July 2019 was not provided within the 20 working day requirement.

Section 17 – refusal of request

35. In 2018 the complainant had brought a complaint to the Commissioner about DGP. That case - FS50744322¹ – also concerned whether or not DGP held particular information. In her decision the Commissioner explained the situation regarding refusal notices under section 17 of the FOIA, in held/not held cases. Namely that if the situation is that a public authority does not hold information that has been requested, it is not obliged to issue a refusal notice; it is obliged only to comply with section 1(1)(a).
36. However, in cases where a public authority is relying on a Part II exemption to refuse to disclose information it holds, under section 17(1) the authority must issue a refusal notice within the time for complying with section 1(1).
37. In this case DGP advised the complainant that it had previously provided him with the information he had requested – Complaints Summaries - for the years 2008/09 and 2009/10. It did not therefore provide this to him again. If DGP considered this particular information was already accessible to the complainant, in line with section 17(1) it should have issued a refusal of that element of the request and advised that it was relying on section 21(1) of the FOIA to withhold that information. Section 21 is a Part II exemption and concerns information that is accessible to an applicant by other means.
38. Because DGP did not issue such refusal notice, the Commissioner must find in these circumstances that it breached section 17(1) of the FOIA.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259526/fs50744322.pdf>

Other Matters

39. The Commissioner considers that the complainant's request was relatively straightforward and that it is the shortcomings in DGP's handling of the request – which also included the length of time it took it to carry out its internal review - that have led to what was probably an avoidable complaint to her. This, in turn, has led to additional work for DGP.
40. DGP has dealt with many requests for information from the complainant over recent years, a number of which have resulted in complaints to the Commissioner and First-tier Tribunal appeals. In FS50744322 the Commissioner had strongly advised DGP to comply with the basics of the FOIA in similar situations. She is disappointed that, again, it has not done so. The Commissioner therefore refers DGP back to her advice at paragraph 25 of her FS50744322 decision, and the FOIA guidance published on her website. She instructs it to act on this advice and guidance should it receive any further information requests.
41. In addition, as has been recorded in this notice, DGP is unable to identify part of a series of complaints data that it collects every year and it has said that information might have been accidentally deleted. The Commissioner has also noted one or two irregularities – albeit relatively minor ones - in the supporting material DGP has provided to her: information for June 2015 named as '... Submission 2017' and one of the Excel complaints documents not having any year associated with it. The Commissioner reminds DGP that it is obliged to follow good practice in its record management and advises that DGP reviews her Section 46 Code of Practice on records management².

² <https://ico.org.uk/media/for-organisations/documents/1624142/section-46-code-of-practice-records-management-foia-and-eir.pdf>

Right of appeal

42. 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

43. 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.
44. 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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SK9 5AF