

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 November 2020

Public Authority: Epsom and St Helier University Hospitals NHS Trust

Address: St Helier Hospital
Wrythe Lane
Carshalton
SM5 1AA

Decision (including any steps ordered)

1. The complainant requested information from Epsom and St Helier University Hospitals NHS Trust (the Trust) about the decision by the Trust to conduct a recent post-operation survey. The Trust had failed to provide a substantive response by the date of this notice.
2. The Commissioner's decision is that Epsom and St Helier University Hospitals NHS Trust (the Trust) failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the FOIA, to the request.
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 FOIA and may be dealt with as a contempt of court.

Request and response

5. In a letter dated 15 July 2020, the complainant wrote to the Trust and requested information in the following terms:

"I was contacted yesterday by someone from the St Helier hand surgery dept. following from my surgery on 21st Feb 2020. To-day I received a very detailed online questionnaire which I completed.

*What has prompted this survey?
(i.e. an NHS directive or concern about patient outcomes?)*

As I remain in severe pain post-op I am questioning why it was ever carried out. I am not making a complaint, just an FOI request. I gather further questionnaires will be sent."

6. The Trust did not acknowledge receipt of the request and had failed to provide a substantive response by the date of this notice.

Scope of the case

7. The complainant contacted the Commissioner on 16 September 2020 to complain about the failure, by the Trust, to respond to the request.
8. In line with her usual practice, the Commissioner contacted the Trust on 24 September 2020 to highlight the outstanding response. She requested that the Trust respond to the request within 20 working days.
9. The correspondence was acknowledged by the Trust on 24 September 2020. The Trust stated that they had not received the original request dated 15 July 2020 and that they would treat the correspondence as a new request for information.
10. The scope of this notice and the following analysis is to consider whether Trust has complied with section 10 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 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.*

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

14. 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.*"

15. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, whether the request was made on 15 July 2020 or 24 September 2020, the Trust has breached section 10 of 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@justice.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**