

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 8 October 2021

**Public Authority:** Birmingham Women's and Children's Hospital  
NHS Foundation Trust

**Address:** Steelhouse Lane  
Birmingham  
B4 6NH

### Decision (including any steps ordered)

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1. The complainant requested copies of Royal College reports. Birmingham Women's and Children's Hospital NHS Foundation Trust ("the Trust") had not responded to the request at the date of this notice.
2. The Commissioner's decision is that the Trust has 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

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5. On 20 May 2021, the complainant wrote to the Trust and requested copies of her daughter's medical records. However, in the same correspondence, she also requested information in the following terms:

*"as well as any royal college reports on the hospital under the freedom of information act."*

6. The Trust acknowledged the request on the same day but had failed to provide a substantive response by the date of this notice.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 23 August 2021 to complain about the Trust's failure to respond to the request.
8. In line with her usual practice, the Commissioner contacted the Trust on 17 September 2021 to highlight the outstanding response. She requested that the Trust respond to the request within 10 working days. The correspondence was acknowledged but no substantive response was provided to either the complainant or the Commissioner.
9. The complainant contacted the Commissioner on 8 October 2021 to record that the Trust had still not responded to the request.
10. Given that the response to this request remains outstanding, despite her attempts to resolve matters informally, the Commissioner now considers that a decision notice is appropriate.
11. 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**

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12. 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.*

13. 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.*

14. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.
15. 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.*"
16. 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, the Trust has breached section 10 of the FOIA.

### **Other matters**

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17. The Commissioner notes that, in her letter of 20 May 2021, the complainant also sought access to her daughter's medical records. It is not clear under which information access regime the Trust was dealing with that section of the request – as it would almost certainly be exempt under FOIA – or whether it has now responded to that section.
18. The Commissioner cannot, in a FOIA decision notice, require a public authority to issue responses otherwise than under the FOIA. However, she would strongly advise the Trust to either issue a response to the non-FOIA section of the request, or contact the complainant to set out any further information needed to process that section, at the earliest possible opportunity – if it has not already done so.

## Right of appeal

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19. 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: 0203 936 8963

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)

20. 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.
21. 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 .....**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**