

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 January 2021

Public Authority: St George's University Hospitals NHS Foundation Trust

Address: Blackshaw Road
Tooting
London
SW17 0QT

Decision (including any steps ordered)

1. The complainant requested information regarding the funding of pathology services. St George's University Hospitals NHS Foundation Trust ("the Trust") initially withheld all relevant information, but partially withdrew its reliance on the exemption and disclosed some information during the internal review process.
2. The Commissioner's decision is that the Trust did not comply with its duties under section 1 of the FOIA within 20 working days and therefore breached section 10 of the FOIA when responding to the request.
3. As a satisfactory response has now been issued, no further steps are required.

Request and response

4. On 3 June 2020, the complainant wrote to the Trust and requested information in the following terms:

"How much has been expended by the Trust for each and every year to date on automation and new technologies in the pathology services since the Carter Report of the Review of NHS Pathology Services in England? I would like the information limited to expenditure on physical equipment only and not new tests, buildings or training. Where possible, expenditure on general information technology equipment and software should be shown

separately from particular equipment and software used in pathology services. The expenditures may include leasing or hiring of contracted-out pathology services using automation and new technologies. Examples of automation can be found on page 26 of the report.

"I would the information in an electronic format, preferably as a spreadsheet."

5. The Trust responded to the request on 24 June 2020. It confirmed that it held some information within the scope of the request but it considered that disclosing the information would prejudice the Trust's commercial interests. It therefore relied on section 43(2) of the FOIA to withhold the information.
6. Following an internal review, the Trust wrote to the complainant again on 24 August 2020. It maintained that section 43(2) applied to the more granular spending information, but accepted that, in respect of its "global spend" totals, the anticipated prejudice would be negligible and thus the exemption would not be engaged. It therefore disclosed this information to the complainant.

Scope of the case

7. The complainant contacted the Commissioner on 16 December 2020 to complain about the way that the Trust had responded to the request. In particular, he was unhappy about the procedural handling of the internal review and the Trust's "misapplication" of the exemption when it originally responded.
8. The Commissioner wrote to the complainant on 18 January 2021 to clarify the grounds of complaint. She noted that some of his concerns (such as the fact that the internal review had been referred from one senior Trust official to a second senior official) would not amount to a statutory breach of the legislation. However, as the complainant appeared happy with the information he had now received, she suggested that the most pragmatic way of resolving the complaint would be to issue a decision notice focusing only on the procedural handling of the request. The complainant responded on the same day and agreed to this approach.
9. The scope of this notice and the following analysis is to consider the Trust's procedural handling of the request.

Reasons for decision

10. 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.*

11. Section 10 of the FOIA states that a public authority must comply with its duties under section 1(1) "*promptly and in any event not later than the twentieth working day following the date of receipt.*"

12. In this particular case, the Trust provided a response (in the form of a refusal notice) to the complainant well within 20 working days. However, as the Trust recognised in its internal review, some of the information that was initially withheld would not have attracted the exemption and should therefore have been disclosed.

13. Whilst the Commissioner accepts that the Trust rectified its error via its internal review, the fact remains that the complainant was entitled to some of the information within the scope of his request and should therefore have received it within 20 working days. As such, the Commissioner is obliged to record a breach of section 10 of the FOIA

Other matters

14. The Commissioner's guidance states that a public authority should normally complete an internal review within 20 working days and should never take longer than 40 working days. However, given the ongoing burden, across the public sector, of the Covid-19 pandemic, the Commissioner accepts that public authorities are more likely to need the full 40 working days in which to complete their review.
15. In this case, a senior officer at the Trust originally acknowledged the complainant's request for an internal review and informed him that she would be conducting the review. However, when the complainant chased the outcome of the review in August 2020, another senior colleague took on the task of completing the internal review. The complainant felt that the officer who originally responded had "passed the buck" to her colleague and was unhappy that this had happened.
16. The FOIA does not require an internal review to be carried out by a particular individual within a public authority. The section 45 Code of Practice only requires that, wherever possible, the review should be carried out by someone who is unconnected with and more senior than the person who compiled the original response.
17. From the evidence presented to the Commissioner, it would appear that another officer completed the review in order that the complainant could be informed of the outcome more quickly. Beyond noting that the review was completed on the 44th working day following the date that it was requested, the Commissioner has no broader concerns about the way the review was handled. Indeed the fact that the review identified (and rectified) a deficiency in the original response speaks to the thoroughness with which it was conducted.
18. Shortly before this notice was due to be issued, the Trust contacted the Commissioner because it was concerned that it had not had an opportunity to provide its version of events. Whilst broadly accepting that there had been some procedural deficiencies in handling the request, it noted that the request had arrived at a time where the Trust in general (and pathology services in particular) were under immense pressure as a result of the Covid-19 pandemic.
19. Whilst the Commissioner acknowledges that all public authorities (and particularly those connected to the NHS) have been under particular pressure for the best part of a year, the legislation remains unchanged. Unfortunately, even had she been informed, at an earlier stage, of the pressures facing the Trust, this would not have altered her decision.

Right of appeal

20. 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

21. 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.
22. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF