

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 September 2022

Public Authority: United Lincolnshire Hospitals NHS Trust
Address: Lincoln County Hospital
Greetwell Road
Lincoln
LN2 5QY

Decision (including any steps ordered)

1. The complainant has requested from United Lincolnshire Hospitals NHS Trust (the Trust) information relating to a self-assessment submitted to the Quality Surveillance Programme.
2. The Commissioner's decision is that, on the balance of probabilities, the requested information is not held by the Trust. However, the Commissioner finds that the Trust breached section 10(1) of FOIA as it failed to provide its response to the request within the statutory timeframe of 20 working days.
3. The Commissioner does not require any steps to be taken as a result of this decision.

Request and response

4. On 16 August 2021, the complainant wrote to the Trust and requested information in the following terms:

“With regards to the Main Arterial centre within your group of hospitals I request electronic copies of the following information.

- 1. The 2019/2020 annual self-assessment that was submitted via the Quality Surveillance Programme relating to the Specialised Vascular Services (Adult) Specification 170004/S.**
- 2. If the Main Arterial centre declared a positive result (stated Yes)/compliance with indicator 170004S-001 - "There is an agreement outlining the network configuration", then I request copies of the evidence documents: operational policy (or part of) that supported this positive declaration. #**
- 3. If the Main Arterial centre declared a positive result (stated Yes)/compliance with indicator 170004S-017 - "There are patient pathways in place", then I request copies of the evidence documents: operational policy (or part of) including pathways that supported this positive declaration.**
- 4. If the Main Arterial centre declared a positive result (stated Yes)/compliance with indicator 170004S-021 - "There are clinical guidelines in place", then I request copies of the evidence documents: operational policy (or part of) including guidelines that supported this positive declaration".**
5. On 9 November 2021, the Trust responded. It provided the complainant with a copy of the self-assessment. It said that whilst the self-assessment is headed as 'Arterial at Grantham and District Hospital' it covers all sites of the Trust.
6. The Trust also said that because of the request, it identified that record keeping of evidence to support the submission was 'poor'. The Trust also said that it would undertake work to address its record keeping and to identify and verify the evidence that supported the self-assessment submission. The Trust said that as soon as this is resolved the evidence would be provided to the complainant.
7. On 8 December 2021, the Trust completed an internal review and wrote to the complainant upholding its original position. It said that no further information could be offered to the complainant at that that time. Once work to identify and verify evidence that supported the submission had been completed, the information would be provided to the complainant in an electronic format.

Scope of the case

8. On 9 December 2021, the complainant contacted the Commissioner to complain about the way the Trust had handled their request for information.
9. The Commissioner has considered whether, on the balance of probabilities, the requested information, specifically evidence supporting the self-assessment submission to the Quality Surveillance Programme, is held by the Trust.

Reasons for decision

10. Section 1 of 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. The Commissioner has sought to determine whether, on the balance of probabilities, the Trust holds evidence supporting the self-assessment submission. He will apply the civil test of ‘the balance of probabilities’ in line with the approach taken by the Information Rights Tribunal when it has considered the issue of whether information is held by a public authority.
12. In deciding where the balance of probabilities lies in this case, the Commissioner will consider explanations provided by the Trust, together with searches it has carried out and any other information offered, which is relevant to his determination. He will also consider any comments made by the complainant.

The complainant’s view

13. The complainant said that although they acknowledge that there is no requirement or even a process as part of the self-assessment that allows for the upload of evidence documents during the submission process, there is a requirement for the Trust to have the evidence documents.

They said that if a Trust does not have supporting evidence documents they should enter a negative "No" response on the self-assessment. Entering a "yes" response, when it should have been a "no" response effectively circumvents the Quality Surveillance Team's monitoring process. This is because the team monitors self-assessments for negative responses and responds accordingly. The team does not respond to positive declarations, as a positive declaration indicates one hundred percent compliance with the quality indicator being measured.

14. The complainant also said that when they tried to discuss the evidence documentation with NHS England (NHSE), it referred to the self-assessment submitted by the Trust and said that the Trust has all the required documents in place because this is declared on the self-assessment.

The Trust's position

15. The Trust has confirmed to the Commissioner that as a result of searches it has carried out, it has identified that it does not hold the supporting evidence relating to the self-assessment requested. This is because, it said, that the assessment was submitted without the supporting evidence being available.
16. The Trust has acknowledged that whilst there is no requirement for the requested information to be offered at the point of submission of the self-assessment, there is a requirement for it to be held and maintained in order to support it in making the self-assessment to the Quality Surveillance Programme.
17. The Trust said that because of the nature of the information, if it were held then it would be held in electronic format within its Document Management System. It has undertaken searches of the system, and search terms used focused on the request made by the complainant, and the terms contained within the self-assessment including operational policy and guidelines related to the Main Arterial Centre and Specialised Vascular Services.
18. The Trust said that it has undertaken numerous searches of both its corporate and divisional electronic systems. Because no information was identified, it also carried out wider searches with divisional colleagues, including the Lead Clinician to determine if the information was held by the service locally. The result of the search continued to identify that no information was held by the Trust or had been destroyed.
19. The Trust confirmed that as it had identified that the information had never been held, the information had not therefore been

copied or deleted to other locations.

20. The Trust said that through the request made by the complainant, it has 'identified poor record keeping' to evidence the submission and that its searches had led to the realisation the self-assessment was submitted without the evidence documents being held. It said that work is underway (e.g., development of an operational policy) to ensure that these documents are developed. However, due to changes in clinical leadership of the service and wider team changes there has been a delay in this work being completed. It was anticipated that the operational policy would be completed and approved by the end of July 2022.
21. The Trust also said that references it made in its responses to the complainant about providing the information in the future was in regard to any future information requests made for future self-assessments where supporting evidence is available. It acknowledged that it had been unclear on this point.

The Commissioner's position

22. The Commissioner notes that as a result of searches carried out, the Trust has identified and confirmed that the self-assessment was submitted without the supporting evidence being held.
23. The Commissioner notes that there is no requirement for the self-assessment to be submitted accompanied by evidence documents, and the complainant's comment that there is no process for the upload of such documents as part of the self-assessment submission process.
24. The Commissioner notes that the complainant said there is a requirement for the Trust to hold evidence to support the self-assessment submission even if it is not to be submitted. He also notes that the Trust acknowledges this requirement, and the extent of the searches carried out by the Trust and search terms used has revealed that no evidence was compiled / is held relating to the self-assessment.
25. The Commissioner notes the complainant's comments about the Trust entering a "yes" response when they say it should have entered a "no" response in the self-assessment. The Commissioner also notes the Trust's comments about points of learning as a result of the request, and its development of an operational policy to ensure the required evidence documents are held when submitting self-assessments in the future.

26. The Commissioner notes the comment made by NHSE to the complainant. He also notes that NHSE is not the public authority the request was made to and acknowledges that its comment is a general view in relation to any Trust declaring they hold the required evidence when submitting a self-assessment.
27. For the reasons given above, the Commissioner is satisfied that, on the balance of probabilities, evidence supporting the self-assessment submitted to the Quality Surveillance Programme, is not held by the Trust.

Section 10(1) of the FOIA – Time for compliance

28. Section 1(1) of 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) b) if that is the case, to have that information communicated to him."
29. Section 10 of FOIA states that: "...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."
30. The complainant submitted their request for information, to the Trust, on 16 August 2021.
31. The Trust issued its response to the complainant on 9 November 2021.
32. The Trust therefore failed to meet the 20 working day requirement and breached section 10(1) of FOIA

Right of appeal

33. 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

34. 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.
35. 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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