

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 23 May 2022

**Public Authority:** Dr Debra Wignell, Dr Simon Bentley, Dr Imran Hanif, Dr Anthea Goode, Dr Kimya Razavi, Dr Olatayo Ariba

**Address:** Windrush Surgery  
21 West Bar St  
Banbury  
Oxon  
OX16 9SA

### **Decision (including any steps ordered)**

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1. The complainant has made a request to Windrush Surgery (the Surgery) for information regarding Black Alert status. The Surgery provided some information in response to the request but confirmed that some information requested was not held under section 1(1)(a) FOIA.
2. The Commissioner is satisfied that, on the balance of probabilities, Windrush Surgery does not hold any further information that falls within the scope of the request other than that which has been provided.
3. The Commissioner requires no steps to be taken.
4. The Commissioner notes that a medical practice itself is not for the purposes of FOIA a public authority. Rather, each GP who provides primary medical services is a public authority themselves and has a duty to reply to a request in accordance with section 1 of FOIA. However, the Commissioner acknowledges that when an applicant makes a freedom of information request to a medical practice it is reasonable to expect that the practice will act as the single point of contact and process the request on the doctors' behalf. For the purposes of this decision notice all references to the Surgery should be regarded as referring to the public authority.

## Request and response

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5. On 17 November 2021, the complainant requested information in the following terms:
  - “1. Please detail the criteria that will trigger Windrush Surgery to implement a Black Alert status, including any metrics such as GP to patient ratio.
  2. How many times each month between 01 March 2019 and 30 September 2021 has Windrush Surgery been on Black Alert for any part of the day?
  3. Please provide the number of GPs on duty for each time the surgery has gone to Black Alert.
  4. How many times each month between 01 March 2019 and 30 September 2021 has Windrush Surgery closed triage for any part of the day such that it is not possible to make an appointment.
  5. Please provide the number of GPs on duty for each time triage has been closed and it has not been possible to make an appointment.”
6. On 24 January 2022 the Surgery responded. It provided some information and confirmed that it did not hold the information requested at parts 2-5 of the request.
7. The complainant requested an internal review on 26 January 2022. The Surgery sent the outcome of its internal review on 7 February 2022. It upheld its original position.

## Scope of the case

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8. The complainant contacted the Commissioner to complain about the way the request for information had been handled. In particular the complainant considers the information requested at parts 2-5 of the request is held by the Surgery.
9. The Commissioner has considered whether, on the balance of probabilities, the information requested at parts 2-5 of the request is held by the public authority.

## Reasons for decision

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10. Section 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. The Commissioner has sought to determine whether, on the balance of probabilities, the public authority holds any information which falls within the scope of parts 2-5 of the request. 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 public authority, 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.
13. In this case the Surgery has explained that no information was recorded at any time which the Surgery had called a Black Alert. This was a term the Surgery had been advised to use when due to staff illness it found itself with a skeleton staff and was concerned it could not function as a GP surgery. The Surgery does not have any dates recorded as to when this circumstance occurred so it is unable to search rotas to look at who would have been present. As the dates were not recorded, it has no basis for which dates to search.
14. The Surgery went on to explain that when a member of staff leaves the surgery, they are removed from its system therefore if you go back to any date in the past their subsequent rota days are also removed and will not show. The Surgery does have a paper planning record but these are for planning and not changed live so will not show who was still available. Again, there is no record of what date to look at.
15. The Surgery tried to ascertain from the Local Medical Committee (LMC) the date it sought assistance but unfortunately the individual who gave

advice has since left. One of the GPs has searched her sent e-mails folder and inbox but from memory considers it was dealt with by a phone call from her personal mobile.

16. The Surgery sought clarification from the LMC and the Clinical Commissioning Group (CCG) as to what escalation pathway is available for surgeries in difficulty and there is no standardised recognised system for GP surgeries as there is for hospitals.
17. The Surgery confirmed that no information was held and no information was destroyed as it was never recorded. The Surgery has confirmed that it is now in the process of writing a policy to ensure these records will be kept but as there is no formal pathway recognised for surgeries to escalate when in staffing or capacity difficulties there are no guidelines on retention of records.
18. In this case it appears that there is no standardised process for GPs to follow when experiencing staffing or capacity difficulties, furthermore there is no record of a date when such an incident occurred and from memory the GP who dealt with such an occurrence arising considers it was dealt with via a telephone call. Based upon this, on the balance of probabilities, the Commissioner considers that the Surgery was correct to confirm it did not hold information relevant to parts 2-5 of the request under section 1(1)(a) FOIA.

## 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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.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.....**

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