

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

### **Decision notice**

**Date:** 19 August 2022

**Public Authority:** Royal Berkshire NHS Foundation Trust

**Address:** Royal Berkshire Hospital  
London Road  
Reading  
RG1 5AN

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

---

1. The complainant requested information about a Serious Incident report concerning Covid-19 testing at Royal Berkshire Hospital. By the date of this notice, Royal Berkshire NHS Foundation Trust ("the Trust") had not issued a substantive response to this request.
2. The Commissioner's decision is that the Trust has breached section 10(1) of FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires the Trust to take the following step to ensure compliance with the legislation.
  - The Trust must provide a substantive response to the request in accordance with its obligations under FOIA.
4. The Trust must take this step 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 FOIA and may be dealt with as a contempt of court.

## **Request and response**

---

5. On 14 June 2022, the complainant wrote to the Trust and requested information in the following terms:

“Dear Royal Berkshire NHS Foundation Trust,

For information, this Freedom of Information request was originally sent to Frimley Health NHS Foundation Trust/Berkshire & Surrey Pathology Services, but they have informed me that they do not hold the information and that the request should be sent to Royal Berkshire Hospital:

1. Please let me have a full copy of the Serious Incident Investigation report regarding the Covid-19 outbreak in Mortimer Ward in Royal Berkshire Hospital in October 2020, where patients were falsely reported as positive (BSPS). Please supply that report along with any other related investigation report(s) of whatever type together with details of what occurred and outcomes, including when and how the false positives were discovered. Please include details of how many patients were affected along with their outcomes.

2. Regarding other incidents (If any) please also let me know about and supply details and reports (of any type, including Serious Incidents) of any other investigations or findings relating to false reports of Covid-19 (either positive or negative) or any other issues (not limited to false positive/negative Covid-19 tests) in relation to testing services Berkshire & Surrey Pathology Services has provided to Royal Berkshire Hospital.

3. Please also let me know when BSPS first started Covid-19 testing in Royal Berkshire Hospital, and if Covid-19 testing has been done continuously there by BSPS from that date to the current date. Please also say if Covid-19 testing at that site was/is done by BSPS staff or Royal Berkshire Hospital staff.”

6. To date, a substantive response has not been issued.

## **Scope of the case**

---

7. The complainant contacted the Commissioner on 25 July 2022 to complain about the Trust’s failure to respond to their request.
8. The Commissioner has considered whether the Trust has complied with its obligations in relation to the time for compliance at section 10(1) of FOIA.

## Reasons for decision

---

9. 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) if that is the case, to have that information communicated to him.”

10. Section 10(1) of FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt”.

11. On 1 August 2022 the Commissioner wrote to the Trust, reminding it of its responsibilities and asking it to provide a substantive response to the complainant’s request within 10 working days.

12. Despite this intervention the Trust has failed to respond to the complainant.

13. From the evidence provided to the Commissioner in this case, it is clear that the Trust did not deal with the request for information in accordance with FOIA. The Commissioner finds that the Trust has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with FOIA.

## Right of appeal

---

14. 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)

15. 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.
16. 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 .....**

**Claire Churchill**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**