

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 January 2023

Public Authority: Isle of Wight NHS Trust
Address: St Mary's Hospital
Parkhurst Road
Newport
Isle of Wight
PO30 5TG

Decision (including any steps ordered)

1. The complainant requested various information in respect of Health Service Guidelines HSG (94)5 and mental illness. The Isle of Wight NHS Trust ('the Trust') acknowledged the request, but did not send a formal response.
2. The Commissioner's decision is that the Trust has not responded to the request and has therefore breached section 10(1) FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide a response to the complainant compliant with FOIA.
4. The public authority 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 Act and may be dealt with as a contempt of court.

Request and response

5. On 26 January 2021, the complainant wrote to the Trust and requested the following information:

"Can you confirm if the Isle of Wight NHS follows the Health Service Guidelines HSG (94)5 which requires all Health Authorities to ensure through their contracts for mental health services that providers draw up, maintain, and use supervision registers?"

Can you confirm if the Isle of Wight NHS acknowledges that for the purpose of the Health Service Guidelines HSG (94)5, 'mental illness' includes people diagnosed with a personality disorder (psychopathic disorder)?

Can you confirm if the Isle of Wight NHS acknowledges/understands that Isle of Wight NHS has a legal duty to treat psychopathic disorder/psychopathy in the community as per the Health Service Guidelines HSG (94)5?"

6. The Trust acknowledged the request on 30 January 2021, however has not formally responded to the request to date. It does however consider that a response to a subsequent request issued on 22 August 2022, effectively answered the above request.

Reasons for decision

Section 10(1) – time for compliance with request

7. Section 10 of the FOIA states that, subject to subsections (2) and (3), 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.
8. The Commissioner notes that the complainant submitted their request for information on 26 January 2021, it was acknowledged on 30 January 2021, with reminders from the complainant sent on 23 February 2021 and 10 November 2021. On 20 January 2022, the complainant requested an internal review. The Commissioner notes that there was various correspondence between both parties in January 2022 with the complainant subsequently re-requesting an internal review on 3 June 2022.
9. The Commissioner contacted the Trust to establish why it had not responded to the request. The Trust informed the Commissioner that on receipt of the request, it had contacted its Mental Health and Learning Difficulties Division (MH/LD) to provide a response to the three

questions which formed the request. In turn, the MH/LD asked the Freedom of Information team for a discussion about the request.

10. There followed a discussion between the relevant teams regarding the complainant's number of requests (14 in a 12 month period up to this request in January 2021), and concern in respect of the voluminous communications from the complainant over a period of many years. The stated aim was to address the complainant's issues and take a more holistic approach, as opposed to responding to each request for information separately. During the discussion, a decision was made to attempt to engage with complainant by offering a meeting to try to resolve their concerns, which the complainant declined. However, due to an oversight, the request was not completed.
11. The Trust further informed the Commissioner that it does not consider it necessary to send a formal response at this stage as its response to a very similar request submitted on 10 August 2022 (22 August 2022), effectively answered the questions asked in the complainant's request of 26 January 2021.
12. The Commissioner asked the Trust to forward a copy of both the request and its response along with an explanation of which paragraph related to which item in the January 2021 request.
13. The Commissioner notes that although the Trust forwarded a copy of the request and response, it did not provide any detail of how it answered the three questions which comprise the January 2021 request, and although the Commissioner is satisfied that it may have indirectly provided an answer to item one of the request, he is not satisfied that it addressed the remaining two items.
14. Further, whilst the Commissioner acknowledges that the Trust attempted to satisfy this request by addressing the complainant's wider concerns, he would point out that it is a legal requirement (with few exceptions) to respond to a request for information under the FOIA. The Commissioner therefore has no option but to record a breach of section 10(1) FOIA in respect of this request for information.

Other matters

15. The Commissioner is mindful that the complainant has framed their request more as a series of requests for confirmation on particular matters, rather than as a request for recorded information. On the face of it, these "requests" could be addressed by the Trust stating either "Yes, we can confirm" or "No, we can't confirm" to each. The FOIA does

not oblige a public authority to confirm statements, provide explanations or give opinions.

16. The Commissioner would therefore take this opportunity to remind the complainant that the FOIA does not oblige a public authority to confirm statements, give opinions or explanations or to answer general queries. The focus of the FOIA is solely recorded information that a public authority holds. The Commissioner has published guidance for applicants on how to word a request in order to get the best result¹ which the complainant may find useful if they submit further requests to public authorities in the future.

¹ <https://ico.org.uk/your-data-matters/official-information/>

Right of appeal

17. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

18. 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.
19. 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

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