

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 March 2023

Public Authority: NHS Sussex Integrated Care Board
Address: Wicker House
High Street
Worthing
BN11 1DJ

Decision (including any steps ordered)

1. The complainant has requested from NHS Sussex Integrated Care Board (ICB) information outlining what any new medical practice in Brighton and Hove should contain. The ICB stated that it did not hold any information falling within scope.
2. The Commissioner's decision is that the ICB does not hold the requested information.
3. The Commissioner requires no steps to be taken.

Request and response

4. Following a previous related request and subsequent correspondence on the same theme, the complainant wrote to the ICB on 23 November 2022 and requested information in the following terms:

"CCGs across the country seem to produce various documents outlining what any new medical practice should contain, e.g. the number of consulting rooms etc, and in developing local GP Practices, has any similar documents been produced for any of the medical practices in Brighton and Hove by Brighton and Hove CCG. e.g.

PROOF OF EVIDENCE/ CIL COMPLIANCE STATEMENT by Brighton and Hove CCG

Or in line with NHS Oversight Framework 2019/20 NHS Oversight

Framework 2019/20 annex 1: Provider oversight approach Or previous CCG improvement and assessment documents For GP/medical Practices in Brighton and Hove for say the last 5 years

See enclosed example from Warrington CCG, and provide copies"

5. The ICB responded on 5 December 2022. It stated that the requested information was not held.

"NHS Sussex ICB does not hold any documents of this kind for any of the medical practices in Brighton and Hove. Each property development considers the patient list, epidemiology of the population, and future housing growth, along with Health Building Notes (HBN) and Health Technical Memoranda (HTM) to assess the number of clinical and other rooms required.

The NHS Oversight Framework does not specify what a new medical practice should contain."

6. On 7 December 2022 the complainant asked for an internal review.
7. Following an internal review, the ICB wrote to the complainant on 10 January 2023 and maintained its position.

Scope of the case

8. The complainant contacted the Commissioner on 29 November 2022 to complain about the way their request for information had been handled. This was before the internal review had been carried out. After the complainant received the internal review, they were not content with the outcome and informed the Commissioner on the same date as the review.

9. The complainant sent the Commissioner a great deal of supporting documentation (some of it referring to different requests and reference numbers). However, after the Commissioner's queries they confirmed which information request they wanted the Commissioner to investigate. He therefore considers that the scope of his investigation is whether the ICB holds the information the complainant requested on 23 November 2022.

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."

Subject to any exemptions from disclosure that may apply as outlined in the legislation.

11. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-Tier Tribunal decisions, and the civil standard of proof based on the balance of probabilities, must decide whether the public authority holds any information which falls within the scope of the request (or was held at the time the request was made).
12. If it is determined (to the standard set out in the previous paragraph) that a public authority does not hold recorded information that falls within the scope of the request, the Commissioner cannot require a public authority to take any further action.

The complainant's view

13. The complainant had previously made the same request in July 2021 to the former Brighton and Hove Clinical Commissioning Group. That public authority had provided some explanation but stated that the information was 'not held'. This response then led to a second request because the complainant did not accept that the information was not held. The request that is the subject of this decision notice is the same as had been made in July 2021.

14. The complainant queried the ICB's response because they believed that there must be documents held that fell within the scope of the information request. They have pointed to a document entitled, 'Full Business Case for the redevelopment of St Peter's Medical Centre, Oxford Street, Brighton' published in October 2019 by Brighton and Hove CCG which had been obtained from NHS England (NHSE) in response to an FOI request. The complainant also queried other aspects of the 'not held' response but said that they left it up to the ICB whether it carried out a review or not. However, the ICB went back to the complainant as it was not appropriate for it to make this decision. The complainant confirmed that they wanted ICB to carry out a review.

The ICB's view

15. On 6 February 2023 the ICB responded to the Commissioner's investigation letter by stating the following:

"The ICB have confirmed that the search of systems and folders did not return any results relating to documents outlining what any new medical practice should contain. A search was undertaken again during the internal review and the ICB advised that they did not hold the documents requested."

16. The Commissioner wrote again to the ICB, asking more detailed questions in order to establish exactly what searches had been carried out and how they would have determined whether or not it held any information.
17. In response to the Commissioner's investigation correspondence, the ICB explained that it had "sent the request to the Associate Director of Estates...following discussions with Primary Care estate colleagues both within the ICB and NHSE" ICB confirmed that the information was/is not held. The Associate Director of Estates was responsible for coordinating the response.
18. There were also discussions between the Head of Estates for Brighton and Hove and NHSE colleagues and these confirmed the position that the information is not held. If the information was held it would be held electronically. Staff do not use personal computers for their work. The ICB stated that adequate searches were carried out at the time of the request and again when it was reviewed. The search terms used were "GP Premises requirements" and "clinical room requirements".
19. In answer to the Commissioner's questions the ICB confirmed that no information had been deleted or destroyed. It provided a link to the Commissioner regarding its current records management policy -

[SXIG08-Records-Management-Policy-FINAL.pdf \(ics.nhs.uk\)](https://www.ics.nhs.uk/SXIG08-Records-Management-Policy-FINAL.pdf)

and explained that there was no business need or statutory requirement upon it to hold the requested information.

The Commissioner's view

20. The complainant is convinced that the ICB holds information falling within the scope of the request that has not been provided and to which they are entitled. However, the Commissioner has asked the ICB questions designed to determine, to a civil standard, whether it holds the requested information. The ICB has responded to these questions and he accepts that a proper search has been carried out more than once and at an appropriate level of detail. The Commissioner does not have to prove the matter beyond reasonable doubt. Therefore, on the balance of probability, the Commissioner finds that the requested information is not held by the ICB.

Right of appeal

21. 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

22. 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.
23. 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

Janine Gregory
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF