

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

### **Decision notice**

**Date:** 12 October 2023

**Public Authority:** Frimley Health NHS Foundation Trust

**Address:** Portsmouth Road  
Frimley  
Surrey  
GU16 7UJ

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

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1. The complainant requested information from Frimley Health NHS Foundation Trust (the Trust).
2. The Commissioner's decision is that the Trust breached section 10(1) of FOIA by failing to provide a valid response to the request within the statutory time frame of 20 working days. No steps are required.

#### **Request and response**

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3. On 10 February 2023, the complainant submitted the following request for information:
  - 1) " On what date was the blood received by your unit?
  - 2) On what date was the blood submitted to the Manchester laboratory
  - 3) On what date was the test started?
  - 4) What are the reasons for any delay in starting the test?
  - 5) What date was the test completed?

- 6) What are the reasons for the delayed results? (I am told these were originally expected on 20 January, then 24 January)
  - 7) What information did you request from the laboratory when the expected results date had passed? What was their response?
  - 8) Have you previously advised Hillview of the reasons for any delays?
  - 9) Given the delays, is the test now viewed as accurate and reliable, or might it be viewed as unreliable?
  - 10) Do you operate to a service standard requirement and does this experience meet that standard?
  - 11) How many tests of this type did you submit for testing between 1 December and 30 January? How many results met the expected date, how many were late?
  - 12) What systems and procedures are in place to ensure 'critical' tests are monitored to ensure they are completed in a timescale to allow for patient treatment decisions?
  - 13) What are the reasons for not responding to my previous emails?
  - 14) Why was I not contacted by a manager, as I requested on the telephone?"
4. The Trust responded to the request for information on 10 March 2023 stating:

"Following searches carried out on our electronic patient record (EPR), as we were unable to trace that you were a patient within Frimley Health Foundation Trust, we need broaden our 'searches' to ascertain where your request could be forwarded onto to enable you to get a response to the enquiries made.

We can now confirm that the Ashford and St Peter's Hospitals NHS Foundation Trust will be able to help you. We have forwarded your request onto their Information Governance (IG) Team and you should be hearing from them in due course."

5. The complainant wrote to the Trust on 4 June 2023, raising the following concerns:

- It had no authority from the requester to transfer the request for information to another public authority, and
- It failed to respond to the request in a timely manner in accordance with the Commissioner's code of conduct."

6. The Commissioner understands that the code of conduct referred to by the complainant is the Section 45 code of practice<sup>1</sup>.

7. The complainant also asked the Trust to answer the following questions:

- 1) "Are you the contact responsible for FOIA for the laboratory operation based at Frimley which was responsible for delaying processing of "MG diagnosis testing (ACHR)"?

(If not, why wasn't this advised to me and transfer requested, or forwarded to the correct official, with the same request?)

The original questions are in this email thread

- 2) If your office is responsible for collating information for AStP, why wasn't this done? If you did not have contact about this, then your Trust is affected by failure anyway....I think you need to escalate this to ensure you are not subject to ICO action against you"

The Trust responded to the complainant on 17 July 2023 upholding their complaint. In relation to the complainant's concern that it failed to respond to the request in a timely manner, the Trust stated that it did provide a response within 20 working days, informing the complainant that their request had been transferred to another Trust to process.

8. In response to questions 1 to 7, 13 and 14 of the original request, the Trust stated that these were requests for the complainant's own

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<sup>1</sup> [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf \(publishing.service.gov.uk\)](#)

personal information and refused to provide the information under section 40(1) (personal data) of FOIA.

9. In response to questions 8 to 12 of the original request, the Trust acknowledged that these questions should have been dealt with as an FOIA request. The Trust accepted that whilst it did respond to the complainant within 20 working days, this was not a complete response as it had transferred the request to another Trust. The Trust provided the complainant with the information it held in relation to questions 8 to 12 of the original request.
10. The Trust also provided the complainant with the information it held in relation to the additional question they had asked in their correspondence of 4 June 2023.

### **Reasons for decision**

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11. 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.”
12. 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”.
  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 provide a valid response to the request within 20 working days.

14. As the Trust has now provided the complainant with the requested information, the Commissioner does not require it to take any further steps in relation to this request.

## **Other matters**

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### Transferring requests for information to another public authority

15. The complainant raised a concern about the Trust transferring their request to another public body without their permission or involvement.
16. In most cases where a public authority does not hold the information, but thinks that another public authority does, it should respond to the requester informing them that it does not hold the requested information, and that another public authority may hold it. The public authority should, as best practice where it can, provide the contact details for the public authority it believes holds the requested information.
17. Where the public authority that originally received the request wishes to ask a different public authority directly to deal with the request by transferring it to that other public authority, this should only be done with the requester's agreement in case the requester objects to their details being passed on. This is because a public authority has a duty to respond to a requester and confirm whether or not it holds information in scope of the request as set out in paragraph 11 above.
18. The Commissioner notes that in the Trust's internal review response dated 17 July 2023, it accepted that it should have either provided the complainant with contact information as to where to redirect their request, or informed the complainant that their request would be best answered by another public authority and requested approval to transfer the request to that public authority to be processed.

### Internal review request

19. The Commissioner notes that the time taken for the Trust to respond to the internal review request exceeded 40 working days. Although there is no statutory time limit set out in FOIA within which public authorities must complete a review, the Commissioner takes the view that a reasonable time for completing an internal review is 20 working days, and in no case should the total time taken exceed 40 working days.

20. The Commissioner therefore recommends that the Trust review the Section 45 code of practice in respect of transferring requests for information to other public authorities, and internal review requests<sup>2</sup>.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

## Right of appeal

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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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**