

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 June 2024

Public Authority: Frimley Health NHS Foundation Trust
Address: Portsmouth Road
Surrey
GU16 7UJ

Decision (including any steps ordered)

1. The complainant has requested information relating to Myasthenia Gravis diagnosis. Frimley Health NHS Foundation Trust (Frimley) disclosed the information it held. The Commissioner's decision is that on the balance of probabilities, Frimley has complied with its obligations under sections 1 and 10(1) of FOIA and holds no further recorded information relevant to the complainant's request.
2. However, he also finds that Frimley did not provide adequate advice and assistance in line with its obligations under section 16 of FOIA.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 24 August 2023, the complainant wrote to Frimley and requested information in the following terms:

"This request DOES NOT relate to my personal data and DOES NOT require identification of any individual. It relates to the blood testing of MG diagnosis (AChR). I have been advised that the MG Diagnosis testing takes place at the laboratory within Ashford and St Peter's Hospital NHS Foundation Trust. "For further information, their FOI Department can be contacted at the following email address: asp-tr.foi@nhs.net"

1. For each month during the period February 2023 to July 2023, how many AChR test samples were received for testing?

Note: you may use any convenient dates for each month, to avoid recalculation

2. What were the expected turn around [sic] time(s) for testing during this period? Please detail any changes during the period
3. How many tests for each month were completed within the expected 'turn around [sic] time' applicable?
4. .. What was the quickest and slowest recorded return of test results for the period February to July?
5. Please provide copies of any documentation providing reasons for not meeting turn around [sic] time expectations, action plans for remedies and/or actions taken to advise GPs (for example, monthly review reports, emails)
 - 6a. Who is the senior manager responsible within BSPS for the turn around [sic] time performance?
 - 6b. Who is the senior manager responsible within BSPS for blood testing liaison with GPs and other service users?"
5. Frimley responded on 17 October 2023 and provided some information falling within the scope of the request. On 26 October 2023 the complainant requested an internal review in which they raised concerns surrounding the specific responses they had received to their information request. It is the complainant's view that the responses were incomplete and not credible. They also considered that the advice they had received from Frimley about how to submit an information request was inconsistent.
6. Following an internal review on 23 November 2023, Frimley responded to the complainant's questions, and provided additional context and documentation to the response it had originally provided.

Reasons for decision

7. This reasoning covers whether Frimley stated correctly that it does not hold any additional information falling within the scope of the complainant's request.
8. The Commissioner has noted that on 1 December 2023 the complainant wrote to Frimley raising additional questions.
9. During the Commissioner's investigations, Frimley advised that it had provided a full response to the complainant's information request in its

original response, as well as the additional information provided during the internal review. On this basis, it stated that it did not intend to respond to the additional questions from the complainant in their correspondence of 1 December 2023. It confirmed that it was satisfied that all the questions in the complainant's information request and the subsequent internal review have been answered.

10. In their complaint to the Commissioner the complainant argued that:

1. "The original response was incomplete and contained incorrect information and statistics.
2. The revised response also contains one questionable statistic (July 2023, 6 resulting in 6% completion?), I requested all statistics should be reviewed but the anomaly remains unchanged.
3. The revised response contains a further document not previously disclosed, but the content of the responses suggests further documentation has been withheld. (A subsequent FOI has revealed a further document relating to this request, and further suggestions that there are more documents not yet supplied. That response is now being reviewed by the Trust).
4. The Trust did not contact me at any point to indicate it would not or could not respond to the request requirements. The errors are not explained.
5. This FOI request relates to BSPS, which operates blood testing facilities. BSPS website directs FOI to Frimley Health NHS Trust, but a previous FOI stated any FOI relating to a specific test must go to Ashford and St Peters NHS Trust.....which waited, used the time, then redirected to Frimley. No explanation has come from either Trust" [sic].

11. Frimley informed the Commissioner that Ashford St Peters NHS Foundation Trust (ASP) is a separate public authority that handles its own FOI requests. ASP is part of Berkshire and Surrey Pathology Services (BSPS). In collaboration with five Acute Trusts, Frimley is the lead organisation or Data Controller for BSPS and therefore it takes responsibility for any FOI requests received by any of the five partner organisations where the request relates to the overall function of BSPS.

Section 10- time for compliance

12. A public authority will breach section 10 of FOIA if it fails to respond to a request within 20 working days.

13. Based on the evidence available to the Commissioner, he does not consider that Frimley's response to the complainant's information request of 19 September 2023 was out of time.
14. Therefore, the Commissioner finds that a breach of section 10 has not occurred.

Section 1-general right of access

15. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to them.
16. In reaching his decision, the Commissioner has considered Frimley's original response together with the internal review response. Having considered the responses provided, the Commissioner is satisfied that on the balance of probabilities, Frimley has provided all the information it holds within the scope of the request.

Section 16- duty to provide advice and assistance

17. The Commissioner agrees with the complainant that the previous advice which Frimley had provided under FOI 0115-23 relating to the submission of FOI requests was unclear and does not explain how the complainant's request, originally submitted to ASP on 24 August 2023 was delayed or not responded to.
18. While the Commissioner notes that the request was resubmitted to Frimley on 19 September 2023, he is of the view that advice and assistance could have been provided to the complainant to explain further which FOI requests (in this case BSPS) must be submitted to Frimley and that which must be submitted to ASP directly. The Commissioner does not consider that Frimley provided adequate advice and assistance to the complainant in this regard.
19. The Commissioner therefore considers that Frimley failed to comply with its obligations under section 16 of FOIA to provide adequate advice and assistance during its handling of the complaint, as evidenced by the more specific advice it has suggested to the Commissioner. However, as Frimley have now clarified the matter, the Commissioner does not consider that any further steps need to be taken by Frimley.

Other matters

20. The Commissioner considers that the complainant's questions in their letter of 1 December 2023 do not fall within his remit. The

Commissioner's role is to determine if a public authority has complied with the legislation he oversees. It does not extend to telling the public authority how it should implement request handling, determining the veracity of any information provided or how it deploys its resources.

21. Furthermore, a public authority is not obliged to answer the questions under the FOIA as they are not asking for recorded information and therefore the Commissioner does not consider these questions to be valid under section 8 of FOIA. These questions are effectively 'moving the goal post' for Frimley to provide a meaningful response. Whilst it was open for a public authority to answer questions posed, they were under no obligation to do so.
22. The Commissioner therefore accepts the explanation provided by Frimley and has concluded that on the balance of probabilities, it has provided a reasonable response to the information requested.

Right of appeal

23. 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

24. 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.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Information Commissioner's Office
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