

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 September 2011

Public Authority: Southampton University Hospital NHS Trust
Address: Freedom of Information Office
Mailpoint 079
Southampton General Hospital
Tremona Road
Southampton
SO16 6YD

Decision and any required steps

1. The complainant asked Southampton University Hospital NHS Trust (the Trust) to,

"Please supply an electronic copy of the treatment protocol for Phosphorus burns and also for exposure to Phosphine gas."
2. The Information Commissioner's decision is that the Trust does not hold the requested information. The Information Commissioner (the Commissioner) also considers that the Trust was under no duty to provide advice and assistance in this case.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 11 July 2010, the complainant wrote to the Trust and made the request described in paragraph 1.

5. The Trust responded on 6 August 2010 stating that it did not hold any information within the description provided in the request. The Trust provided the complainant with links to relevant information on the Health Protection Agency's website and the 'Toxbase' homepage. Toxbase is a clinical toxicology database, designed for use by UK healthcare professionals. It is commissioned by the Health Protection Agency (the HPA) and maintained by the National Poisons Information Service (NPIS). The Trust explained that in the event of a toxic exposure incident, such as that referred to in the request, it would consult these organisations and access information on their websites.
6. The complainant requested an internal review on the grounds that the Trust should have provided any information available to it from the Toxbase website which would fall within the scope of his request. He argued that as the Toxbase website is not accessible to the general public, the Trust was required to do so under the duty in the FOIA to provide advice and assistance. The complainant also argued that in its response to the request the Trust should have provided details of its internal review procedure and the Commissioner's contact details.
7. Following an internal review the Trust wrote to the complainant on 1 September 2010 upholding its original decision.

Scope of the case

8. On 21 January 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the Trust was required to provide information that would fall within the scope of the request which was accessible to it through the Toxbase website. He also asked the Commissioner to consider whether the Trust had failed to provide reasonable advice and assistance and whether it had breached the FOIA by not providing a refusal notice that met the correct procedural requirements.
9. In the course of his investigation the Commissioner has considered all of the arguments made by the complainant and the Trust including those not specifically referenced within this decision.

Reasons for decision

Is the information held?

10. Section 1(1)(a) of the FOIA states that a person making a request for information has a right to be informed whether a public authority holds information of the description specified in their request.
11. The Trust has explained that it would consult external sources of expertise such as Toxbase and the HPA and use the information accessible to it through those organisations, in managing any toxic exposure incident that occurred. The Trust provided the complainant with a link to relevant information available on the HPA's website and a link to the Toxbase website homepage. The Commissioner considers that the Trust's account of how it would deal with such occurrences, and its explanation of the information it can access, explains the absence of its own written procedures to handle such an incident.
12. The Commissioner is satisfied that the Trust does not hold information falling within the complainant's request. The FOIA does not require a public authority which does not hold relevant information to obtain information from other sources in order to respond to a request. In this case the Trust was under no obligation to provide the complainant with information available to it through the Toxbase website.

Advice and Assistance

13. The Commissioner does not consider that any of the duties to provide advice and assistance outlined in the Secretary of State's Code of Practice¹ (the Code) were triggered in this case. As no duty arose there can be no breach of the duty to provide advice and assistance under section 16(1) of the FOIA.
14. The Commissioner encourages public authorities to provide advice and assistance beyond the requirements of the Code. He considers that the Trust followed good practice by providing the complainant with an explanation of the organisations it would consult, and the information sources it would access, should a toxic exposure incident occur.

¹ Part II of the Secretary of State's Code of Practice issued under section 45 of the FOIA.

Other matters

15. The Code also provides good practice recommendations that apply where a public authority does not hold information within the scope of the request.² Where public authorities have reason to believe that some or all of the requested information is held by another public authority, the Code states that that the public authority should consider what would be the most helpful way to assist the applicant with their request and outlines what this will usually involve.³ The Trust informed the complainant that the HPA held information it considered relevant to the request and provided a link to that information. The Commissioner considers that it was good practice for the Trust to do so.
16. The Code also recommends that where a public authority cannot advise the applicant that another public authority holds, or may hold, the requested information it should consider what advice would be helpful for the applicant to enable them to pursue their request.⁴ The Commissioner considers that the Trust followed good practice by providing the complainant with a link to the Toxbase website. Although the information contained on Toxbase is not accessible to the general public, the fact that the Trust would consult Toxbase in the event of a toxic exposure incident occurring may have been helpful information to the complainant. The website also provides information about Toxbase which the complainant may have found useful.
17. The Commissioner therefore considers that the Trust followed the good practice guidelines set out within Part II and Part III of the Code.

Procedural matters

18. The complainant has asked the Commissioner to consider whether the Trust breached the FOIA by not providing a refusal notice meeting the correct procedural requirements. He argued that the Trust's response of 6 August 2010 did not include particulars of the Trust's internal review procedure or the Commissioner's contact details and that this constituted a breach of the FOIA.

² Part III of the Code, 'Transferring requests for information'.

³ Paragraph 17 and 18 of Part III of the Code.

⁴ Paragraph 24 of Part III of the Code.

19. The Trust responded to the complainant's request stating that it did not hold any information of the description specified in the request. It did not rely to any extent on exemptions in Part II FOIA or any section within Part I of the FOIA which requires a refusal notice to be issued to meet the requirements of section 17 FOIA. As the Trust was not required to issue a refusal notice there are no related procedural breaches.

20. The Commissioner considers that it is good practice for public authorities to include details of its internal review procedure and the Information Commissioner's contact details in response to all requests for information. He recognises that the Trust has stated it will now provide links to the Freedom of Information section of its website and the Commissioner's website in response to all future requests.

Right of appeal

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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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.

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

Faye Spencer
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