

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 23 August 2011

Public Authority: Dr E. A. Odber
Address: Aldergate Medical Practice
The Mount
Salters Lane
Tamworth
Staffordshire
B79 8BH

Summary

The complainant made a request to Aldergate Medical Practice (the 'Practice') for the information it held about its treatment of his mother and his associated complaints.

The Practice refused to provide some information and claimed it did not hold other information. The case was referred to the Commissioner. During the course of his investigation, the Practice explained that it was prepared to provide the complainant privately with a copy of most of the relevant recorded information held about his mother through the Commissioner in an effort to informally resolve this case. It also found some further information that it was prepared to disclose under the Act and did so. The complainant contends that further relevant recorded information was held and is missing. The Commissioner has determined that on the balance of probabilities no further relevant recorded information is held by the Practice.

However, he has found breaches of section 1(1)(a) and 1(1)(b). He has also found procedural breaches of section 10(1), 17(1), 17(1)(a), 17(1)(b), and 17(7)(b), but he requires no remedial steps to be taken in this case.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The complainant's mother was not registered as a patient at the Practice. However, the Practice agreed to see her.
3. The complainant is concerned about the treatment received by his mother at the Practice. He has made a catalogue of complaints about it and is also concerned that he has not received all of the information that the Practice held about this matter.
4. The Commissioner notes that the Medical Practice itself is not for the purposes of the Act a public authority. Rather, each GP within the Practice is a separate legal person and therefore each is a separate public authority. The Commissioner acknowledges that when an applicant makes a freedom of information request to a Medical Practice it is reasonable to expect for convenience that the Practice will act as the single point of contact. However, each GP has a duty under section 1 of the Act to confirm or deny whether information is held and then to provide the requested information to the applicant, subject to the application of any exemptions. A more detailed explanation of how GPs are covered by the Act is contained in the Legal Annex at the end of this Notice.
5. The Commissioner has therefore issued seven Decision Notices in this case – one to each GP at the Practice. However for clarity and ease of reading the notice refers to the Practice where appropriate in detailing the correspondence and analysis that has taken place.

The Request

6. On 30 December 2010 the complainant wrote to the Practice to request the following:

[1] *'I am writing to request that you provide all medical records held by Aldergate Medical Practice pertaining to [complainant's mother name redacted] ...*

[2] *...Together with any information held outside the medical health records file relating to [complainant's mother name redacted]'.*
7. On 25 January 2011 the complainant reiterated his request. He explained that the particular event that he believed to be missing was records of an appointment that occurred on 7 August 2008. He also expressed concern that the recorded information held about a handwritten prescription hadn't been provided by the Practice.

8. On 28 February 2011 the Practice offered to provide the complainant with a copy of the information that it held in the Medical Files. It asked the complainant to pay £20.56 in accordance with the Access to Records Act 1990. It also explained that it held no further relevant recorded information about the handwritten prescription.

The Investigation

Scope of the case

9. On 7 January 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He explained that he had made a request for the medical records of his mother and had not received a response.
10. The Commissioner replied on the same day explaining that the complaint was not eligible for consideration until the internal review procedure was complete.
11. On 14 April 2011 the complainant explained that he understood that the Medical Records (the information requested in part **[1]** of his request dated 30 December 2010) were not covered by the Act and that his family would pursue this part of his request through the correct access regimes.
12. On 18 April 2011 the complainant confirmed his agreement to the Commissioner focussing his investigation on the following four items that stem from the second part of his request dated 30 December 2010. This covered whether there was further relevant recorded information held :
 1. about the handwritten prescription issued to his mother;
 2. about the investigation of his complaint conducted by [Named doctor redacted] to which the result was communicated on 9 November 2010;
 3. outside the medical records about the events on 7 August 2008 and 15 August 2008; and
 4. about when the complainant received the medical records of his mother – including the application for this information and when he was provided with it.
13. During the course of the Commissioner's investigation, a large quantity of information was located and provided to the complainant privately on 17 June 2011. Further information was supplied under the Act through

the Commissioner on 12 August 2011. The Commissioner will only consider whether further recorded information is held in the analysis section of this Notice.

14. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. In particular, the Commissioner cannot consider the complainant's concerns about the treatment that his mother received.

Chronology

15. On 16 March 2011 the Commissioner wrote to the complainant and the Practice to confirm that he had received an eligible complaint. He asked the Practice for a copy of the information that it was withholding.
16. On 4 April 2011 the Practice wrote to the Commissioner and explained its view about the complaint.
17. On 14 April 2011 the Commissioner wrote to the complainant to explain the nature of his role and the proposed scope of his investigation. Between 14 and 19 April 2011 the Commissioner and the complainant exchanged further correspondence.
18. On 26 April 2011 the Commissioner spoke to the Practice and asked for some information. He confirmed what he asked for in writing. On 12 May 2011 he received what he asked for.
19. On 16 May 2011 the Commissioner wrote again to the Practice to make further enquiries. The Practice provided him with further information on 17 May 2011 and agreed that the Commissioner could provide the complainant privately with the information that it had located in an effort to find an informal resolution to this complaint.
20. On 17 June 2011 the Commissioner sent this information to the complainant and explained that he considered that all the relevant recorded information has been located and provided to the complainant. He asked the complainant to provide arguments if he disagreed that this was so which he did on 9 August 2011.
21. On 11 August 2011 the Commissioner wrote to the Practice again and received a response the next day locating further information. The Practice agreed that this could be disclosed to the complainant under the Act and provided consent for the Commissioner to send this information to him. The Commissioner passed this information with the Practice's consent to the complainant on the same day and the complainant acknowledged its receipt.

Analysis

Substantive Procedural Matters

Is further relevant recorded information held?

22. Section 1¹ of the Act provides 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 recorded information of the description specified in the request and (b) if that is the case to have that information communicated to him. It follows that it is necessary for information to be held in recorded form by the Council at the date of the request for it to be subject to the Act. The date of the request in this case is agreed to be 30 December 2010.
23. The standard of proof the Commissioner uses to determine whether relevant recorded information is held was confirmed by the Information Tribunal ("the Tribunal") in *Linda Bromley & Others v Information Commissioner and Environment Agency* [EA/2006/0072] ("*Bromley*"). It said that the test for establishing whether information was held by a public authority was not one of certainty, but rather the balance of probabilities.
24. He has also been assisted by the Tribunal's explanation of the application of the 'balance of probabilities' test in *Bromley*. It explained that to determine whether information is held requires a consideration of a number of factors, including the quality of the public authority's final analysis of the request, the scope of the search it made on the basis of that analysis and the rigour and efficiency with which the search was then conducted. It also requires considering, where appropriate, any other reasons offered by the public authority to explain why further recorded information is not held.
25. The Commissioner has considered the arguments of both sides and the factors specified in *Bromley*.
26. He has considered each of the four categories identified in paragraph 11 in turn:

Category one - recorded information about the handwritten prescription issued to his mother

27. On 9 November 2010 a named doctor indicated that the Practice had written a handwritten prescription for his mother. As noted above, in the

¹ All sections of the Act that are cited in this Notice can be found in full in an attached legal annex.

response dated 10 February 2011, the Practice wrote to the complainant to confirm that at that time it believed that a handwritten prescription had been issued from the Practice, but that it held no copy of it.

28. During the course of the Commissioner's investigation, the Practice conducted a further investigation and acknowledged that it was wrong. It explained to the Commissioner that the relevant doctor who indicated that a handwritten prescription was issued said this was so on the basis of her recollection of a conversation that happened some time ago. There were no records of this conversation and having considered the situation carefully no handwritten prescription was issued by it.
29. On 27 May 2011 the named doctor wrote to Mr Howard to apologise for the false information and to explain that no handwritten prescription exists.
30. On 9 August 2011 the complainant provided his detailed arguments about why he remained unhappy. In summary:
 - He accepted that there was no handwritten prescription;
 - He was concerned about the origin of the statement that there was one;
 - There remained problems with the chronology that led to a computerised prescription being issued; and
 - He remained concerned about the conduct of the Doctor in making the computerised prescription.
31. From the arguments that he has considered, the Commissioner is satisfied that no handwritten prescription was issued and that none exists. The relevant members of staff have confirmed that this is so and they have carefully checked their records. The complainant does not dispute that this is so.
32. The Practice has confirmed that it has carefully searched its records to check this matter about the handwritten prescription. It agreed to forward the Commissioner and the complainant every piece of recorded information held about the complainant's mother to allow him to come to a conclusion about this point. Having considered this information, the Commissioner is satisfied that there is nothing remaining that constitutes recorded information about a handwritten prescription that never existed.
33. The Commissioner is satisfied that the Practice does not hold recorded information about what led to it believing that there was a handwritten prescription. In the Commissioner's view the evidence suggests that the

relevant doctor made an error when stating that it existed and that it was based on a flawed understanding about what happened.

34. The Commissioner cannot consider the concerns expressed by the complainant about what led up to the prescription. He can only consider whether there is further relevant recorded information and if so, whether it can be provided.
35. Having considered the strengths and weaknesses of both sides' arguments, the Commissioner is satisfied that on the balance of probabilities there is no recorded information held for this category.

Category two – recorded information about the investigation of his complaint conducted by [Named doctor redacted] to which the result was communicated on 9 November 2010

36. On 9 November 2010 the named doctor wrote to the complainant about his complaint and explained *'having reviewed this fully, I would reassure you that we have had a look at the points you have raised, we have discussed them at length in our meetings and we have now completely closed this case'*.
37. As noted above, on 17 June 2011 the Commissioner forwarded the complainant a copy of the information that the Practice had located. The Commissioner also ensured that the minutes of the meetings in which the case were discussed were forwarded to the complainant on 12 August 2011.
38. On 9 August 2011 the complainant provided his detailed arguments about why he remained unhappy. In summary:
 - The information provided on 17 June 2011 did not provide any recorded evidence about the investigations that were undertaken by the named doctor;
 - There remained problems about what medical records had been sent to another Practice and when; and
 - He continues to allege that relevant medical records are missing.
39. The Practice responded that it had asked the relevant doctor what the information was that was considered and whether further relevant recorded information had been generated in this case.
40. The Doctor explained that she had only considered the electronic medical records that were held and the file that was named after the complainant. This was the same information that was disclosed through the Commissioner to the complainant on 17 June 2011. In addition, the

Commissioner has also ensured that the Practice's minutes were checked and ensured that this information was provided to the complainant.

41. In relation to the point about medical records the Commissioner is satisfied that the Doctor only considered the electronic medical records and that these have been provided to the complainant.
42. It follows that the Commissioner is satisfied that on the balance of probabilities the Practice does not have any further relevant recorded information about the investigation that was undertaken that led to the response dated 9 November 2010.

Category three – recorded information held outside the medical records about the events on 7 August 2008 and 15 August 2008

43. The complainant remains concerned about the events that occurred on these two days.
44. On 17 June 2011, the Commissioner forwarded the complainant a copy of some relevant records that were the electronic medical records that were kept by the Practice and not previously provided to the complainant.
45. On 9 August 2011 the complainant explained that he remained concerned about what medical records of this meeting were passed to another named Practice.
46. Firstly, it must be noted that the Commissioner cannot consider the medical records themselves because they were agreed to be outside the scope of the complaint (and fall outside this category of information).
47. However, in any event, the Commissioner is satisfied that the Practice did not keep recorded information about what it passed on to the Strategic Health Authority which was then passed to the other Practice.
48. The reason it did not keep this information was because it was not the Practice responsible for the complainant's mother and it believed that what it sent to the Strategic Health Authority was self explanatory and was protected by it sending it through recorded delivery.
49. The Practice confirmed that this was its normal practice when it comes to medical records of individuals who were not registered with it.
50. From the evidence, it is not clear what was sent to the Strategic Health Authority (and then the other Practice) but the Commissioner is satisfied that the Practice does not hold recorded information about what it sent. While this is not good records management, it reflects the situation as it

was. It is not possible to obtain recorded information, when no relevant recorded information was retained.

51. The Practice has evidenced the searches that it has conducted to demonstrate why it would have picked up this information had it been held.
52. It follows that the Commissioner is satisfied that on the balance of probabilities the Practice does not have any relevant recorded information about what happened on these two dates.

Category four – recorded information about when the complainant received the medical records of his mother – including the application for this information and when he was provided with it.

53. On 27 January 2011 a member of staff from the NHS Trust that supervises the Practice told the complainant that he had received his mother's medical records from the Practice. That member of staff explained that the named doctor had told him that he had received those records.
54. The complainant has told the Commissioner that this is wrong. He never received the medical records from the Practice. Instead, his brother requested and received relevant records.
55. On 17 June 2011, the Commissioner forwarded the complainant a copy of the information held and this information did not indicate that the complainant himself received the records from the Practice.
56. The Commissioner is satisfied with the locations that were searched and the searches that were done to conclude that the complainant did not receive the medical records directly from the Practice. Instead those records were forwarded to his brother.
57. The Practice has also confirmed to the Commissioner that it never sent the records to the complainant.
58. It follows that the Commissioner is satisfied that on the balance of probabilities the Practice does not have any relevant recorded information about it providing his mother's medical records to him. This is because it didn't do so as explained in paragraph 56 above.

Procedural Requirements

Section 1(1)(a)

59. Section 1(1)(a) requires that a public authority confirms or denies whether it has relevant recorded information when it receives a request for information.
60. The Practice failed to address part 2 of the request before the Commissioner's involvement and so breached section 1(1)(a).

Section 1(1)(b)

61. Section 1(1)(b) requires that a public authority provides the applicant with that information when it is not exempt from disclosure.
62. The Practice failed to provide the complainant with the information that he was entitled to under the Act prior to the Commissioner's involvement. In particular, it failed to supply the information that was disclosed to the complainant on 12 August 2011.
63. The Practice therefore also breached section 1(1)(b).

Section 10(1)

64. Section 10(1) requires that a public authority complies with section 1(1) of the Act within 20 working days of receiving the request.
65. The Practice failed to confirm or deny whether it held information relevant to part 2 of the request in 20 working days and therefore breached section 10(1).
66. It also failed to provide the information that was disclosed on 17 June 2011 and 12 August 2011 to the complainant in 20 working days and this was also a breach of section 10(1).

Section 17(1)(a)

67. Section 17(1)(a) requires that a public authority explains when it withholding information under the Act that it issues a notice that states that fact. The Practice did not do so and breached section 17(1)(a).

Section 17(1)(b)

68. Section 17(1)(b) requires that a public authority explains the exemption under which it is withholding information. In this case, the Practice appeared to claim that the medical records were being withheld because the complainant already had them. It was therefore applying section 21.

However, it did not say what exemption it was applying and so breached section 17(1)(b).

Section 17(1)

69. Section 17(1) explains that where a public authority is issuing a refusal notice that it issues a valid one in 20 working days. The Practice failed to do so and breached section 17(1).

Section 17(7)(a)

70. Section 17(7)(a) explains that a response should contain details of the public authority's internal review procedure or confirmation that it does not have one. The Practice failed to do so and breached section 17(7)(a).

Section 17(7)(b)

71. Section 17(7)(b) explains that a response should contain particulars of the right to appeal to the Information Commissioner under section 50 of the Act.
72. The responses issued by the Practice do not contain such details and therefore the Commissioner finds a breach of section 17(7)(b).

The Decision

73. The Commissioner's decision is that no further information is held by the Practice falling within the request. However he has also decided that the Practice did not deal with the request for information in accordance with the Act. For the reasons outlined above, it breached sections 1(1)(a), 1(1)(b), 10(1), 17(1), 17(1)(a), 17(1)(b), 17(7)(a) and 17(7)(b).

Steps Required

74. The Commissioner requires no steps to be taken. This is because he is satisfied that the relevant recorded information that was held has now been provided to the complainant.

Other matters

75. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
76. The Commissioner considers that it is important that the Practice identifies that requests for recorded information are Freedom of Information requests. It should carefully consider what relevant recorded information that it holds and whether it can provide this information under the Act. It should be certain to indicate either that it has no internal review procedure or provide details of the procedure that it runs. It should also be sure to provide the Commissioner's details in future cases.

Right of Appeal

77. 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,
Arnhem House,
31, Waterloo Way,
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

78. 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.

79. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 23rd day of August 2011

Signed

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

General Right of Access

Section 1(1) provides 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."

Time for Compliance

Section 10(1) provides 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'.

Refusal of request

Section 17 provides that -

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) A notice under subsection (1), (3) or (5) must—

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.

Section 21 - Information accessible to applicant by other means

(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1)—

(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

(3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

Status of GPs under the Act

Schedule 1 of the Act outlines which bodies are covered by the Act. Part III of Schedule 1 relates to organisations and individuals in the National Health Service. Paragraphs 44 and 45 of Part III deal with the coverage of GPs:

"44. Any person providing general medical services, general dental services, general ophthalmic services or pharmaceutical services under Part II of the National Health Service Act 1977, in respect of information relating to the provision of those services

45. Any person providing personal medical services or personal dental services under arrangements made under section 28C of the National Health Service Act 1977, in respect of information relating to the provision of those services."

The Commissioner is satisfied that a GP is a separate legal person who falls within either or both of the classes above. Therefore each GP is a separate public authority for the purposes of the Act whether they operate in a medical practice with other GPs or not.

However, the Commissioner recognises that information held by GPs will only be covered to the extent where that information relates to the 'provision' of general or personal medical services. Therefore, some information held by GPs will not fall within this condition.