

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 February 2012

Public Authority: Surrey and Sussex Healthcare NHS Trust

Address: Maple House
East Surrey Hospital
Canada Avenue
Redhill
Surrey
RH1 5RH

Decision (including any steps ordered)

1. The complainant requested the number of formal and informal complaints made to Surrey and Sussex Healthcare NHS Trust (the Trust) relating to her father's care at East Surrey Hospital.
2. The Commissioner's decision is that the Trust has provided the requested information concerning formal complaints to the complainant. However in failing to provide the information which it held within 20 working days, the Trust has breached section 1(1)(b) and section 10(1) of the FOIA. In failing to confirm that it does not hold information concerning informal complaints within 20 working days, the Trust has also breached section 1(1)(a) and section 10(1) of the FOIA.

Request and response

3. On 6 June 2011, the complainant wrote to the Trust and requested the following information:
 - i. Details of the investigation into her father's care and mistreatment at East Surrey Hospital.
 - ii. The results of suspensions made (the complainant specified that the names of individuals did not need to be given).
 - iii. The outcome of the investigation.

- iv. How many complaints relating to her father's abuse of care were made to the Trust (both formal and informal).
4. The Trust responded on 7 July 2011. It stated that the information requested at points (i) and (ii) was exempt under section 41 and section 40(2) of the FOIA. With reference to point (iii) the Trust explained that the investigation had not been completed and that this information was therefore not held. With respect to point (iv) the Trust also applied section 41 and section 40(2) to information about complaints.
5. Following an internal review the Trust wrote to the complainant on 5 August 2011. It upheld its original response with respect to points (i) (ii) and (iv) but considered that it should now provide a response to point (iii). The review recommended that the Trust should respond separately to the requestor as part of its 'Being Open' policy and that it should provide her with a summary of her complaints.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way her request for information had been handled. On 29 November 2011 she confirmed that she had now received the requested report into her father's care. She confirmed that the scope of her complaint was limited to the Trust's refusal to provide her with the number of complaints it had received into her father's care.
7. On 28 December 2011, following the Commissioner's intervention, the Trust provided the complainant with the number of formal complaints it had received relating to her father's care. The Trust explained that it received eight formal complaints and that it does not hold the number of informal complaints. The Trust confirmed to the complainant that this total included the number of her complaints which had been provided to her following the internal review.
8. The complainant has argued that the information provided is not accurate. She queried whether the number of formal complaints provided by the Trust includes a specific complaint she made on [date redacted]. The Trust has confirmed that this particular complaint is not included in the number given as it was not considered to be a formal complaint but was instead logged as a 'clinical incident'. It was therefore managed through the serious incident process and not the complaints process.
9. The Trust has also now clarified the dates of the complaints provided to the complainant after the internal review. It has explained that one of them was logged under the name of the complainant's father as it was a general complaint about the handling of another complaint. The

complainant has questioned this as her father was deceased at the time of this complaint.

10. However, the Commissioner cannot consider the above concerns about the accuracy of the information provided under the FOIA. He has no jurisdiction to consider the complaints handling procedures of the Trust or to question how it records the complaints it receives.
11. This notice is therefore only concerned with the late provision of the information requested in part (iv) of the request.

Reasons for decision

12. Section 1(1)(a) and (b) of the FOIA states that any person making a request for information is entitled to be informed whether the public authority holds the information and have that information provided to him (unless exemptions apply).
13. Section 10(1) of the FOIA states that a public authority in receipt of a request for information has a duty to respond within 20 working days.
14. In failing to provide the requested number of formal complaints within 20 working days the Commissioner finds the Trust to be in breach of section 1(1)(b) and section 10(1) of the FOIA.
15. In failing to confirm that it does not hold the number of informal complaints within 20 working days, the Commissioner finds the Trust to be in breach of section 1(1)(a) and section 10(1) of the FOIA.

Right of appeal

16. 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

17. 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.
18. 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

Rachael Cragg
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Wilmslow
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SK9 5AF