

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 August 2012

Public Authority: The Royal Liverpool and Broadgreen
University Hospitals NHS Trust

Address: The Royal Liverpool University Hospital
Prescott Street
Liverpool
L7 8XP

Decision (including any steps ordered)

1. The complainant requested information held by the Royal Liverpool and Broadgreen University Hospitals NHS Trust (the 'Trust') concerning a doctor recorded on the complainant's medical notes.
2. The Information Commissioner's decision is that the Trust holds no recorded information within the scope of the request.
3. The Information Commissioner (the 'Commissioner') requires no steps to be taken.

Request and response

4. On 21 September 2011, the complainant wrote to the Trust and requested information in the following terms:

'On page 17 of my day case file (date redacted) a doctor's name appears at the top of the page next to [name redacted], a name that I wish you to decipher for me...

Also, I wish to know: -

- 1) *What position he held on that day i.e qualified doctor or trainee?*
- 2) *His qualifications?*
- 3) *His speciality or purely General Surgeon?*

- 4) *His G.M.C registration number.*
 - 5) *His current post with your Trust or elsewhere.*
 - 6) *How many more operations did he assist on during his time at the Trust?...'*
5. The Trust responded on 18 October 2011. It applied section 14(1) of the FOIA (vexatious requests) to the part of the request asking for the name of the doctor and stated that it did not hold the information requested in points 1 to 6.
 6. Following an internal review the Trust wrote to the complainant on 10 November 2011 in which it upheld its initial decision.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. Specifically, he complained that the Trust held information which it had not provided to him.
8. During the course of the Commissioner's investigation, the Trust stated that it was no longer relying upon section 14(1) in respect of the name of the doctor. It informed the complainant and the Commissioner that it did not hold the requested information. The Commissioner therefore focused on what relevant information was held by the Trust at the time of the request.

Reasons for decision

9. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by that authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him.
10. Where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner will consider the actions the public authority took to check that the information was not held and if it can explain why it was not held. For clarity, the Commissioner is not expected to prove categorically whether

the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities." ¹

11. The complainant's request was focused around a handwritten name that appeared on an operation note contained within the complainant's medical records. This handwritten name was written next to the name of a surgeon whose name was able to be identified. It is not clear to the Commissioner what the name of the unidentified individual is from the handwritten record.
12. The parts of the request that ask for details of the doctor are, in the Commissioner's view, inevitably linked to the identity of the doctor. If the doctor cannot be identified then it follows that their details may not be either (as it would first be necessary to identify the doctor in order to do this).

Scope, quality, thoroughness and results of search

13. The Commissioner investigated what searches the Trust had conducted for the requested information. The Trust explained that it had searched the system which was designed to record the names of those in operating theatres. It also explained that it had searched records which held the names of doctors in order to see if the handwritten name could be matched to any particular doctor. The Commissioner's analysis of those searches is discussed in the following paragraphs.

Search of the 'electronic list'

14. The complainant has argued to the Commissioner that he had previously been advised by the Trust that there was an 'electronic list' or 'electronic print out' of those who were present in theatre at the time of the operation. The Trust had provided the complainant with what it stated were the names which appeared on that list. However, the complainant was dissatisfied as there was no identifiable match to the handwritten record on the operation note and he was of the view that there was additional information (ie the name of the doctor) on the 'electronic list' or print out which had not been provided to him.
15. The Trust informed the Commissioner that the print out would have been taken from the ORMIS system. This system was set up in 2005/6 to log information about theatre operations in an electronic form. The Trust explained that this system was designed to record information on theatre procedures such as the names of staff present in theatre at the time of an operation. It explained that the names appearing on the

¹ This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others/ Environment Agency* (31 August 2007) EA/2006/0072

ORMIS system for the complainant's operation was the 'electronic list' referred to.

16. The Trust explained that it had searched its records contained within the ORMIS system and confirmed that no other names appeared on that system in relation to the complainant's operation other than those which it had already provided to him. It further explained that any print outs from ORMIS which were made would not be kept for record purposes as the information contained within the print out would be stored on the ORMIS system itself.
17. The FOIA entitles requesters to recorded information rather than to documents containing the information. As any print out would have contained the information on the ORMIS system and as that print out would not be routinely kept, the Commissioner is of the view that the ORMIS system was an appropriate place to search for the information.
18. The Trust has explained that the ORMIS system was archived around 30 September 2009 and is referred to as the legacy ORMIS system. It explained that the current system has data from 1 October 2009.
19. The Trust also explained the operation of the ORMIS system and how the ORMIS system records who is present in the operating room at any time during an operation. It explained that there are pre-filled boxes for staff members who are potentially in theatres that are selected as required. There are specific boxes for the 'required staff' such as Surgeon 1, surgeon 2, scrub nurse and circulating nurse. In addition there is also a 'free text' area that should be used for visitors, such as students and doctors.
20. The Trust clarified that the legacy ORMIS system is a database of all of the data held by the previous system. It stated that it is not an exact copy of the ORMIS software but that it would hold all of the information which had been recorded on it. The Trust has stated that in responding to the request and during the Commissioner's investigation, it asked a Senior Analyst to provide a copy of the details on ORMIS with regard to the staff who were recorded as being present in theatre during the operation. The Trust has explained that the list of staff has remained the same, as has been previously provided to the complainant.
21. The Trust explained that on occasion the names of staff and visitors would not have been known in order to be entered onto ORMIS. However, the Trust stated that in such instances those names should have been noted at reception before access to the theatre was allowed.
22. The Trust explained that it had searched such records it held of the people who booked into theatre on the date of the operation and that

there was no similarity between any of the names listed and the handwritten text recorded in the medical note for the name of the doctor.

Personnel records

23. The Trust explained that its Human Resources (HR) department had completed a search on both its current Electronic Staff Records - (ESR), and the previous HR system – System 4. It explained that this was an attempt to identify the individual based upon comparing the handwritten text in the medical note with doctors on its systems.
24. After failing to identify the individual, the Trust was able to clarify that, at the time of the operation, some junior medical staff were employed and supplied through Arrowe Park Hospital, which is part of a separate public authority to that of the Trust. This was part of the Trust's practice of taking staff from different organisations on a rotational basis.
25. The Trust has informed the Commissioner that at the time of the operation all surgical trainees were supplied from Arrowe Park Hospital. It further explained that the Trust's HR department has indicated that as the handwritten text in the medical note quotes the individual's title as 'Dr', that this would likely have been a junior (SHO or below) surgical individual, as above this grade staff are generally referred to as 'Mr, Ms' and so on.
26. The Trust explained that it made enquiries with Arrowe Park Hospital and this resulted in the Trust being provided with a list of staff allocated to the Trust at the time of the operation. The Trust explained the list had been compared with the medical note and a match to the handwritten text could not be found.
27. Whilst the Trust has informed the Commissioner that it also used Locums, it has clarified that these would be in more senior positions and that they would have appeared on the HR systems which were searched as explained above.
28. The Commissioner considers that, in the round, the scope, quality and rigour of the Trust's searches were sufficient in this case. This is because it searched the records most likely to capture the information requested. Indeed, the Commissioner considers that the Trust went beyond what was strictly necessary by contacting Arrowe Park hospital in an attempt to identify the doctor.

Reasons for holding/not holding the information

29. The complainant has argued that the Trust should have the information because they should record individual doctors who would be in an

operating theatre. Specifically, the complainant has argued that the Trust would have been required to keep accurate records in order to comply with various clinical and statutory requirements.

30. The Commissioner has considered both the Trust's and complainant's arguments. The complainant's arguments amount to an assertion that the Trust should have a record of the name of the doctor because it would be required to. However, it is not within the Commissioner's jurisdiction to make judgments on the public authority's administration of its clinical records. The Commissioner can only consider this issue as far as it sheds light on the probability of the Trust holding information.
31. The Trust has explained that the lack of further recorded information is an issue of its adequateness of record keeping. Specifically, it has stated that apart from the handwritten note on the medical record there has never been any other record of who the doctor was in the operation.
32. It has further explained that keeping records of people present in theatre is now more rigorous than at the time of the operation. It has stated that names of those present are now confirmed when undertaking the World Health Organisation (WHO) checklist at the start and finish of a procedure. This is done as staff are required to confirm their name and role in theatre as part of the checklist. The Trust has explained that the WHO checklist did not exist in 2006, when the operation was performed.
33. With regard to records of those entering the theatre the Trust has argued that if it was assumed that the unidentified doctor was part of the identifiable surgeon's team, then there would be no entry in the records on reception as they would have come into theatre with that identifiable surgeon.
34. The Commissioner considers that it would appear that at the time of the operation there was no automatic process for keeping records of who was present in theatre. The process was dependent on entries being made manually onto the ORMIS system. If entries were not physically entered then the information would not be recorded.
35. Therefore, in respect of whether it is likely on the balance of probabilities that the Trust holds further relevant information, the Commissioner considers that there are credible reasons as to why information would not be held.
36. The Commissioner is therefore of the view that, on the balance of probabilities and on the basis of the evidence in front of him, the Trust holds no further relevant information.

Right of appeal

37. 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

38. 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.
39. 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

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