

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 June 2012

Public Authority: National Institute for Health and Clinical Excellence

Address: MidCity Place
71 High Holborn
London
WC1V 6NA

Decision (including any steps ordered)

1. The complainant has requested the information considered by the Interventional Procedures Advisory Committee in respect of the procedure percutaneous venoplasty for chronic cerebrospinal venous insufficiency in multiple sclerosis. The National Institute for Health and Clinical Excellence (NICE) refused to provide this information under section 36 (prejudice to the effective conduct of public affairs) of FOIA. It subsequently decided to disclose this information following the publication of guidance to which the information related. The Commissioner's decision is that, by failing to provide the requested information within 20 working days, NICE contravened the requirements of section 10(1) of FOIA. However, he does not require any steps to be taken as a result of this notice.

Request and response

2. On 27 July 2011 the complainant requested information in the following terms –

“The full text of the experts reports and patient feedback submitted to NICE regarding the procedure percutaneous venoplasty for chronic cerebrospinal venous insufficiency (CCSVI) in multiple sclerosis. This information was considered by the Interventional Procedures Advisory Committee (IPAC) at its meeting on July 14, 2011.”
3. NICE informed the complainant on 23 August 2011 that it would not be in a position to respond to the request within the 20 working days required by FOIA. This was because it had yet to reach a decision on the

public interest test in relation to the possible application of section 36 of FOIA. NICE stated that its response should be with the complainant within the next week.

4. NICE provided its substantive response on 25 August 2011. It confirmed that it held information described by the request but considered this to be exempt from disclosure under sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) of FOIA.
5. Later the same day, the complainant asked NICE to reconsider its refusal to release the specialist reports, either in an anonymised form or preferably in full. NICE wrote to the complainant on 7 October 2011 with the outcome of its internal review. This upheld its original position that the reports were exempt information under section 36 of FOIA.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way her request for information had been handled.
7. On 4 May 2012 NICE disclosed the requested information to the complainant on a voluntary basis. This followed the publication of guidance on percutaneous venoplasty for chronic cerebrospinal venous insufficiency in multiple sclerosis. NICE maintained that the application of section 36 was correct at the time the request was made. However, it said that it was prepared to disclose the withheld information in light of this subsequent development.
8. In recognition of the disclosure, the Commissioner asked the complainant if she was prepared to withdraw her complaint. The complainant said she was not prepared to do so.

Reasons for decision

Section 10(1) – time for compliance

9. Section 10(1) of FOIA requires that a public authority complies with section 1(1) promptly and in any event not later than 20 working days following the date that a request was received. Section 1(1) states that a public authority should confirm whether it holds relevant recorded information and, if so, to communicate that information to the applicant.
10. In this case NICE disclosed the information in question outside of the statutory time limit for compliance with requests. The Commissioner has therefore found that NICE breached the requirements of section 10(1) of FOIA.

Right of appeal

11. 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

12. 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.
13. 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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