

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 September 2017

Public Authority: Cardiff and Vale University Health Board

Address: University Hospital of Wales
Heath Park
Cardiff
CF14 4XW

Decision (including any steps ordered)

1. The complainant requested information about funding streams for the University Dental Hospital ('the Dental Hospital'). Cardiff and Vale University Health Board ('the Health Board') provided a table showing funding information for the financial year 2014/15. During the course of the Commissioner's investigation the Health Board provided a table showing the funding information for the financial year 2015/16 and stated it did not hold any additional information relevant to the request. The Commissioner's decision is that, on the balance of probabilities the Health Board does not hold any additional information relevant to the request. In failing to disclose all of the information held within the statutory timescales, the Commissioner finds that the Health Board breached section 10 of the FOIA. The Commissioner does not require any steps to be taken.

Request and response

2. Following receipt of a letter from the Health Board dated 3 February 2016 the complainant wrote to the Health Board on 14 March 2016 and requested information in the following terms:

".....could you provide information/documents relating to the funding streams for the Dental Hospital for financial years 2014 and 2015 indicating the sources by

- a. *Welsh Government Education Department*
 - b. *Other Welsh Government Funding*
 - c. *Cardiff University*
 - d. *Cardiff and Vale Local Health Board*
 - e. *Others*".
3. The Health Board responded on 12 April 2016 and provided a table showing funding information for the Dental Hospital for the financial year 2014/15.
 4. The complainant wrote back to the Health Board on 24 April 2016 and requested an internal review of its handling of the request. He indicated that he was unhappy that the Health Board had only provided information for one financial year when he had requested two. He also pointed out that the Health Board had not provided information as to which department of the Welsh Government provided the funding.
 5. On 26 July 2016 the complainant wrote to the Health Board to chase a response to his internal review request.
 6. The Health Board provided the outcome of its internal review on 24 August 2016. It upheld its position that the request had *been "handled appropriately and in accordance and with the Freedom of Information Act 2000"*. In the internal review response, the Health Board referred to previous contact from the complainant, and the provisions relating to repeated and vexatious requests under the FOIA. The Health Board stated that:

"your continued repeated correspondence can only be considered vexatious in nature and as such the UHB will not respond to any further correspondence to you seeking the same information in the future.....Please note we will not send a written refusal in response to any further vexatious or repeated requests. I would like to inform you that this response represents a formal notice."

Scope of the case

7. The complainant contacted the Commissioner on 3 October 2016 to complain about the way his request for information had been handled. He indicated that he wished the Commissioner to investigate:
 - The delay in the Health Board providing its internal review response.

- The Health Board's failure to provide information for the financial year 2015/16 and to provide information about which department of the Welsh Government provided funding for the Dental Hospital
 - The Health Board's application of section 14(1) – vexatious requests to his request.
8. During the course of the Commissioner's investigation, the Health Board provided the complainant with a table showing the funding streams for the Dental Hospital for the financial year 2015/16. The Health Board also confirmed that it had not applied section 14(1) to the request of 14 March 2016 and the reference to vexatious requests was more a warning that any future requests on the same subject may be refused under section 14(1) as vexatious.

Reasons for decision

Interpretation of request

9. As stated earlier in this Notice, during the course of the Commissioner's investigation, the Health Board provided information relating to the funding of the Dental Hospital for the financial year 2015/16. The Health Board apologised for failing to provide the information in its initial response and internal review response. It explained to the complainant that:

"Unfortunately there appears to be some ambiguity in respect of exactly what information was required by you, especially in respect of the time period you wished to receive information. In retrospect, due to this ambiguity then ideally further clarification should have been sought to ensure you received the information that you actually wanted and for this omission I can only apologise".

10. The complainant does not consider that there was any ambiguity in respect of the time period covered by his request. He considers that the wording of his request ie for information for *"financial years 2014 and 2015"* clearly indicated that he wanted information for two financial years. The Health Board confirmed that, on receipt of the original request, it interpreted the request as being for information for the financial year 2014/15 only
11. It is the Commissioner's view that public authorities must interpret information requests objectively and should avoid reading into the request any meanings that are not clear from the wording. If the request clearly specifies exactly what information or documents the requester wants, the authority will comply by providing this information

(unless it is exempt from disclosure). If an authority receives an unclear or ambiguous FOIA request its duty under section 16 of the FOIA to provide advice and assistance will be triggered and it must ask the requester for clarification

12. The request in this case referred to "*financial years 2014 and 2015*". The Commissioner is of the view that the request was open to interpretation as it could refer to financial years 2013/14 and 2014/15, 2014/15 only or financial years 2014/15 and 2015/16. The Commissioner therefore considers that, on receipt of the request, the Health Board should have contacted the complainant in accordance with its obligations under section 16 to clarify what period(s) he was referring to in the request.
13. The Commissioner notes that, in his internal review request the complainant clarified the exact periods covered by the request, confirming that he was seeking information for "*financial years 2014 (ie 2014/15) and 2015 (2015/16)*". Despite providing this clarification the Health Board did not provide information for the period 2015/16 until after the Commissioner's involvement in the case. The Health Board has confirmed that the failure to provide information for the period 2015/16 was an oversight caused by human error.
14. The failure on the part of the Health Board to seek clarification of the period covered by the request and then provide the specific information following the clarification provided by the complainant has led to a breach of section 10 of the FOIA, which is covered later in this notice.

Section 1 – general right of access

15. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public 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.
16. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and she will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held; she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.

17. The Health Board confirmed to the Commissioner that it is not party to, or aware of, how the Welsh Government apportions its funding allocations. As such it does not hold information as to which part/division of the Welsh Government the funding comes from. The Health Board has indicated that such information may be available from the Welsh Government itself.
18. The Health Board advised the Commissioner that all information relating to funding and finance is held entirely within its Finance Department. The Health Board confirmed that enquiries were made with its Finance Department, and the senior finance manager to determine the information held relevant to the request. The Health Board confirmed that its senior finance manager has the sufficient experience and knowledge to ensure that all the recorded information was provided in response to the request. Appropriate searches were conducted of the financial ledgers utilised by the Health Board to identify information held relevant to the request. All of the information that was identified for both financial years has now been disclosed and the Health Board has confirmed that it does not hold any additional information relevant to the request.
19. The Health Board advised the Commissioner that the funding it receives from the Welsh Government is based on historic allocations and uplifted each year. The funding is physically transferred to the Health Board from the Welsh Government by bank transfer (BACS). It is then allocated to budget holders in accordance with the Health Board's financial plan. The Dental Clinical Board receives its funding in accordance with that process.
20. Based on the representations from the Health Board the Commissioner is satisfied that it has carried out adequate searches of where relevant information would be held. There is no evidence of any inadequate search or grounds for believing there is any motive to withhold information. The Commissioner has also considered the Health Board's representations in relation to the subject matter of the request, and the processes involved in the transfer of funding from the Welsh Government. Based on the searches undertaken and the other explanations provided, the Commissioner is satisfied that, on the balance of probabilities, the Health Board does not hold any further recorded information relating to which department/part of Welsh Government the Health Board's funding comes from.

Section 10(1) – time for compliance

21. Section 10(1) of the 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.
22. The request in this case was made on 14 March 2016. The Health Board provided some information in its initial response of 12 April 2016. Additional information held relevant to the request was provided on 7 April 2017, after the Commissioner commenced her investigation. In failing to provide this information within 20 working days of receipt the request, the Commissioner finds that the Health Board breached section 10(1) of the FOIA.

Other matters

Internal reviews

23. There is no explicit timescale laid down by the FOIA for completion of internal reviews. However, the Code of Practice issued under section 45 explains that such reviews should be completed within a reasonable timeframe. The Commissioner believes that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
24. The Health Board apologised to the complainant for the delay in completing its internal review and for failing to provide an acknowledgement of the internal review request to the complainant. The Health Board explained to the Commissioner that the delay was due to *“the complexity and volume of correspondence that needed to be considered and was further compounded by staff availability and resource issues”*.
25. In this case the complainant requested an internal review on 24 April 2016 and the Health Board did not respond until 24 August 2016. Whilst the Commissioner notes the Health Board’s explanations for the delays experienced in this case, she does not consider that any exceptional circumstances existed to justify the delay. The Commissioner would like to take this opportunity to remind the Health Board of the expected standards in this regard and recommends that it aims to complete its future reviews within her recommended timescale of 20 working days.

Right of appeal

26. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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

David Teague
Regional Manager (Wales)
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