

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 June 2017

Public Authority: East and North Hertfordshire NHS Trust
Address: Lister Hospital
Coreys Mill Lane
Stevenage
SG1 4AB

Decision (including any steps ordered)

1. The complainant has made two requests for information relating to various pre-operative policies and information about the handling of subject access requests. Despite the intervention of the Commissioner, East and North Hertfordshire NHS Trust (the Trust) has failed to provide a response to the requests in accordance with the FOIA.
2. The Commissioner's decision is that the Trust has breached section 10(1) of the FOIA in the handling of these requests.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - The Trust must provide the complainant with a response to these requests in accordance with its obligations under FOIA by either providing the requested information or issuing a valid refusal notice under section 17(1).
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 22 January 2015, the complainant wrote to the Trust and requested information in the following terms:

Copies of policies and procedures relating to:

- *pre-operative patient safety procedures;*
- *pre-operative imaging to select the appropriate vessel for fistula formation;*
- *mapping the venous system by Doppler Ultrasound before surgery.*

6. On 29 April 2016, the complainant wrote to the Trust and requested information on the following terms:

Copies of:

- *a contemporary record of your oral complaints policy;*
- *your Health Records Management Policy, version 11, issued December 2012 and associated guidance provided by the Health Records Department;*
- *your pre-operative vascular assessment policy;*
- *your contemporary policy for the administration and recording of pre-operative Doppler scan results including electronic records;*
- *What information does the Trust record to monitor and evaluate their compliance with DPA 1998 Subject Access Request response times and non-compliance within the statutory 40 day response time required? a) how many subject access requests has the Trust received from 21/11/2012? b) of the subject access requests received, how many were responded to within 40 days or less? c) of the subject access requests received, how many were not responded to within 40 days required?*

7. Both the requests were part of on-going correspondence between the Trust and the complainant and so would have been received.

8. To date, the complainant has not received a response to either request for information.

Scope of the case

9. The complainant contacted the Commissioner on 1 December 2016 to complain about the way his requests for information had been handled.

10. The Commissioner has considered whether the Trust dealt with these requests in accordance with its obligations under section 10(1) of the FOIA.

Reasons for decision

Section 10 – time for compliance

11. Section 1(1) of FOIA states that any person making a request is entitled to be told whether the information they have asked for is held and, if so, to have that information communicated to them, subject of course to the application of any exemptions that are appropriate.
12. Where a public authority is obliged to communicate the requested information, section 10 provides that a public authority must do so within twenty working days of the date on which the request was received.
13. The requests in question were made on 22 January 2015 and 29 April 2016, and a response is yet to be provided. The Commissioner therefore finds that the Trust breached section 10(1) of the FOIA in failing to respond to these requests within 20 working days.
14. On 17 January 2017, the Commissioner wrote to the Trust asking it to assist in respect of a complaint made by the complainant about the handling of his requests for information under the FOIA. The Commissioner asked the Trust to confirm if the request of the 22 January 2015 and the first four bullet points listed above of the request of the 26 April 2016 were formally responded to under the FOIA.
15. On 17 January 2017, the Trust confirmed to the Commissioner that the request had not been received through its FOI routes. It went onto explain that the complainant has continued to correspond with its Complaints Department, and it was its understanding that the Complaints Department has provided the complainant with the information that it held. The Trust also advised the complainant on the information which was not held. However it was still clarifying this position with the Complaints Department and would come back to the Commissioner to confirm.
16. On 30 January 2017, the Commissioner wrote to the Trust to request an update on whether it had been able to confirm the status of the complainant's requests with its Complaints Department. The Commissioner also referred to a further request to those highlighted in her email of 17 January 2017, namely the request for information

relating to subject access requests, which was included in the complainant's correspondence of 29 April 2016.

17. On 23 March 2017, the Commissioner wrote to the Trust, requesting that it respond to the requests within 10 working days. She informed the Trust to either provide the information requested or issue a refusal notice in accordance with the requirements of section 17 of the FOIA. She also provided links to her Guide to Freedom of Information and guidance issued on the time limits for responding to a request for information.
18. On 1 April 2017, the complainant confirmed to the Commissioner that he had still not received a response to either request.
19. To date, the Trust has not provided a response to the complainant. It is therefore clear to the Commissioner that, in this case, the Trust has failed to respond to the requests in accordance with the legislation.

Other matters

20. The Commissioner notes that the Trust advised her that the requests had not been received through its FOI routes but there had been ongoing correspondence with the complaints team. From the correspondence the Commissioner has had sight of she is aware that on occasion it is not clear when an information request is being made. However, it is incumbent on every public authority to ensure that all staff are made aware of its procedures for dealing with information requests and recommends that the Trust review the Section 45 code of practice¹.

¹ <https://ico.org.uk/media/for-organisations/documents/1624144/section-45-code-of-practice-request-handling-foia.pdf>

Right of appeal

21. 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

22. 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.
23. 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

Andrew White
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Information Commissioner's Office
Wycliffe House
Water Lane
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Cheshire
SK9 5AF