

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 March 2018

Public Authority: Dr S A Mushtaq & Partners at Wolverton Health Centre

Address: Gloucester Road
Wolverton
Milton Keynes
Buckinghamshire
MK12 5DF

Decision (including any steps ordered)

1. The complainant has made a request for information relating to the minutes of all internal and external meetings from 1 December 2015 to 30 December 2016. Despite the intervention of the Commissioner, Wolverton Health Centre has not provided a response to the request in accordance with the FOIA.
2. The Commissioner's decision is that Wolverton Health Centre has breached section 10(1) of the FOIA in the handling of the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Wolverton Health Centre must provide the complainant with a response to the request in accordance with its obligations under FOIA.
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.
5. The Commissioner notes that the medical practice itself is not a public authority for the purposes of the FOIA. Rather, each GP within the practice is a separate legal person and therefore each is a separate public authority. The Commissioner acknowledges that when an applicant makes a freedom of information request to a medical practice

it is reasonable to expect for convenience that the practice will act as a single point of contact. However, each GP has a duty under section 1 of the FOIA to confirm or deny whether information is held and then to provide the requested information, subject to the application of any exemptions. For ease and clarity, this decision notice refers to the Practice where appropriate in detailing the correspondence and analysis that has taken place.

Request and response

6. On 18 September 2017, the complainant wrote to Wolverton Health Centre and requested information of the following description:

"I request you and the Practice to supply me with the following information under the Freedom Of Information Act 2000. You may be aware that you have 20 working days to respond to my request failing which I will make a formal complaint to the Information Commissioner's Office.

Please supply me with the following information:

Copies of the Minutes of all the Meetings of the Wolverton Health Centre GP Practice -

a) all Internal Meeting of the Partners' Meetings from 1.12.2015 to 30.12.2016

b) all Meetings held with the external bodies like the LMC, MPS and Peninsula UK from 1.12.2015 to 30.12.2016.

Please send the information by email only, to this email ID [email address redacted]"

7. Wolverton Health Centre responded to the complainant on 27 September 2017 and stated that the information requested was actually covered by a subject access request under the Data Protection Act 1998 (the DPA). It asked the complainant to submit a request under the DPA.
8. On the 28 September 2017 the complainant wrote to Wolverton Health Centre, explaining that he did not think that the request fell under the DPA and asking Wolverton Health Centre to provide him with the reason why it thought this was the case. The complainant also maintained his request under FOIA.
9. Wolverton Health Centre wrote to the complainant on 5 October 2017, explaining that "*the Freedom of Information Act 2000 provides public*

access to information held by public authorities. It does this in two ways, public authorities are obliged to publish certain information about their activities, and members of the public are entitled to request information from public authorities. The information you have requested does not fall within the information which would need to be published by ourselves.

As such, it is felt that In relation to your request, this would be under the Data Protection Act. Information under the Data Protection Act is only required to be disclosed where it refers to personal data. In relation to the correspondence which you have requested between ourselves and third party contracts, please note that no minutes of meetings were taken and therefore there is nothing to disclose. The information that is sent between ourselves and our HR provider is bound by litigation privilege and as such will not be disclosed”.

10. On 10 October 2017 the complainant wrote to Wolverton Health Centre disagreeing with the explanation provided.
11. Wolverton Health Centre wrote to the complainant on 12 October 2017 maintaining its position.
12. To date, the complainant has not received a response to the request for information.

Scope of the case

13. The complainant contacted the Commissioner on 10 December 2017 to complain about the way his request for information had been handled.
14. The Commissioner has considered whether Wolverton Health Centre dealt with the request in accordance with its obligations under section 10(1) of the FOIA.

Reasons for decision

Section 10 – time for compliance

15. Section 1(1) of FOIA states 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.

16. Where a public authority is obliged to communicate the requested information, section 10 provides that a public authority must do so within 20 working days of the date the request was received.
17. The request was made on 18 September 2017, and a response is yet to be provided. The Commissioner therefore finds that Wolverton Health Centre breached section 10(1) of the FOIA in failing to respond to the request within 20 working days.
18. On 14 December 2017, the Commissioner wrote to Wolverton Health Centre advising it to respond to the request within 10 working days. She provided a copy of the request and informed Wolverton Health Centre to either provide the information 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 in respect of the time in which a response to a request for information should be provided.
19. On 31 January 2018, the complainant confirmed to the Commissioner that he had still not received a response to the request.
20. The Commissioner contacted Wolverton Health Centre again on 7 February 2018 and informed it that the complaint has been deemed eligible for formal consideration under section 50 of the FOIA.
21. To date, Wolverton Health Centre has not provided a response to the complainant. It is clear to the Commissioner that, in this case, Wolverton Health Centre has failed to respond to the request in accordance with the legislation.

Other matters

22. The Commissioner notes that Wolverton Health Centre has stated to the complainant that the information he is seeking falls under the DPA. In this case, it does not appear that the complainant has requested his own personal data and so we would not expect the request to be treated as a request under the DPA.
23. However, if the information being requested from a public authority is considered to be an individual's personal data then access to this will fall solely under the DPA. If none of the information being requested from a public authority is considered to be the individual's personal data then access to this will fall solely under the FOIA. If the information being requested from a public authority is considered to be a mixture of both then access to the individual's personal data will fall under the DPA and the remaining information will fall under the FOIA. The Commissioner

therefore recommends that Wolverton Health Centre reviews the FOIA guidance she has produced on personal information¹.

¹ <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf>

Right of appeal

24. 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

25. 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.
26. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF