

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 August 2018

Public Authority: Kettering General Hospital NHS Foundation Trust

Address: Rothwell Road
Kettering
Northamptonshire
NN16 8UZ

Decision (including any steps ordered)

1. The complainant requested information relating to employment tribunals and the Trust's use of consultants.
2. The Commissioner's decision is that Kettering General Hospital NHS Foundation Trust ("the Trust") failed to respond to either request within 20 working days and has therefore breached Section 10 of the FOIA.
3. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the FOIA, to both requests.
4. The Trust 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 FOIA and may be dealt with as a contempt of court.

Background

5. On 21 November 2017, the complainant made two requests to the trust as follows:

Request 1

"I am writing to request the following information under the freedom of information act (FOIA):

- 1) *How many Employment tribunal claims (ET1's) have been served upon the trust by the employment tribunal during the following periods and irrespective of the final outcome:*
 - A) *1/4/15 -31/3/16*
 - B) *1/4/16 - 31/3/17*
 - C) *1/4/17 - date*
- 2) *What is the value of expenditure to Capsticks or other representation for matters relating to ET - (irrespective of whether the claim proceeded to full hearing) - specifically for the following periods:*
 - A) *1/4/15 -31/3/16*
 - B) *1/4/16 - 31/3/17*
 - C) *1/4/17 – date"*

Request 2

"I am writing to request the following information under the freedom of information act (FOIA).

- 1) *During the financial year to date (1/4/17 to date) How many Theatre sessions scheduled to run under Medinet have:*
 - A) *been cancelled by the trust with Medinet still paid although no clinical activity was delivered*
 - B) *Please confirm the Total value of payments made during the current financial year (1/4/17 to date) to Medinet where the theatre session to which the payment related delivered zero benefit to patients/"clinical activity"*

- 2) *Please provide a copy of any report to the trust from [redacted], HR consultant. And Specifically the Report referenced in The response submitted to the court by Capsticks as part of (ET3) in the matter where the respondent is KGH and the claimant is [complainant's name]*
- 3) *Please provide copies of all invoices submitted to the Trust and paid to HR consultant [redacted] for the period covering October 2016 to date*
 - A) *Please confirm on what date and how [redacted], HR consultant was first contacted by the trust*
 - B) *please confirm on what date [redacted] was instructed by the trust and what the terms of engagement were.*
 - C) *please confirm how [redacted] became known to the trust and to be selected to provide HR consultant services*
 - D) *please provide clarification of details of the organisational process and standards for procurement of goods and services and how this was complied with in commissioning the services [redacted].*
- 4) *Conflicts of interest*
 - A) *Please confirm the number of consultants within current Surgery & Anaesthesia CBUs who have expressly declared "private clinical practise" conflicts of interest including details of the private practise Provider name, location, and the detail of the conflict of interest per NHS England publications on the same*
 - B) *Please confirm whether the trust maintains records of declarations of conflicts of interest of non-executives of the trust and administrative and clerical staff for governance and audit purposes*
- 5) *Please provide a copy of the registered conflicts of interest to include all declared "private clinical practise" and "loyalty" conflicts as referenced in NHS England documentation on the same. Summarised by staff group as follows:*
 - A) *consultants - clinical*
 - B) *directors - current or former*
 - i) *"business unit director"*
 - ii) *"clinical director" or "business unit clinical lead"*

- C) *service leads or "lead clinician"*
- D) *other Admin & clerical staff*
- 7) *Please confirm how many consultants have made a "nil return/ nothing to declare" return as regards "conflicts of interest"*
- 8) *how many staff have made neither a declaration of conflict of interest or a "nil return" by staff group as follows*
 - A) *"business unit director"*
 - B) *"clinical director" or "business unit clinical lead"*
 - C) *"service lead" or "lead clinician"*
- 9) *specifically how many clinical staff within surgery and anaesthesia CBU whose role includes role "clinical lead", "lead clinician", "clinical director responsibilities" has declared "private clinical practise" or "loyalty" conflicts specifically*
 - A) *how many staff who have declared conflicts of interest have declared they are family members of senior partners / leads In gp federations where the staff member has performed work in direct conflict with kgh/nhs work*
 - B) *how many staff have declared loyalty conflicts as a result of membership or leadership of external fraternities/clubs/organisations and on what dates*
- 10) *specifically how many board members, directors and non-executive directors have declared "loyalty" conflicts per NHS England*
- 11) *please confirm the number of clinical staff whose job title include "clinical director" or "medical director responsibilities" and who have declared a nil return insofar as conflicts of interest as referenced in NHS England documentation on the same*
- 12) *please confirm the number of clinical staff whose job title include "clinical director" or "medical director responsibilities" and who have neither made a nil return insofar as conflicts of interest as referenced in NHS England documentation on the same or declared conflicts of interest*
- 13) *could you please confirm to whom subject access requests should be submitted to as I would like to make a separate request in that regard."*

6. The Trust issued a holding response to both requests on 20 December 2017 stating that it needed further time to compile all the information.
7. The Commissioner is aware that the complainant has a broader dispute with the Trust. It is not necessary to set out the terms of that dispute in this notice, except inasmuch as to note that other processes around the dispute appear to have caused the complainant to decide not to pursue her request.

Request and response

8. On 30 March 2018, the complainant wrote to the Trust and referenced the requests set out above in the following terms:

"I now reinstate my request for the same information as originally requested via FOI in November 2017 (which you acknowledged in the thread below)

"The requests remain as they were originally.

"I confirm at this time that I would be happy to receive a partial response although I would hope that as we are now almost on April 2018 that all the information will be readily available."

9. The Trust had not issued a response to either request at the date of issuing this notice.

Scope of the case

10. The complainant contacted the Commissioner on 31 May 2018 to complain about the failure, by the Trust, to respond to the request.
11. In line with her usual practice, the Commissioner contacted the Trust on 20 July 2018 to highlight the outstanding response. She requested that the Trust respond to the request within 10 working days. The correspondence was neither acknowledged nor responded to.
12. The Complainant contacted the Commissioner on 7 August 2018 to request a decision notice considering the Trust's compliance with the FOIA.
13. The scope of this DN and the following analysis is to consider whether the Trust has complied with Section 10 of the FOIA.

Reasons for decision

14. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

15. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

16. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.

17. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"

18. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the Trust has breached Section 10 of the FOIA.

Right of appeal

19. 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

20. 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.
21. 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

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