

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 March 2021

Public Authority: Powys Teaching Health Board
Address: Bronllys Hospital
Bronllys
Brecon
Powys LD3 0LS

Decision (including any steps ordered)

1. The complainant requested information exchanged between officers of the Powys Teaching Health Board with each other, and with officers of the Betsi Cadwalladr University Health Board, about the care and treatment of his late mother and their later reviews of that treatment.
2. The Commissioner's decision is that the Powys Teaching Health Board does not hold undisclosed information within the scope of the request and has complied with section 1(1) FOIA (general right of access to information).
3. The Commissioner does not require Powys Teaching Health Board to take any steps.

Request and response

4. On 31 July 2019, the complainant wrote to the Powys Teaching Health Board (PTHB) and requested information about internal communications and communications between itself and the Betsi Cadwalladr University Health Board (BCUHB), including the NHS Community Health Council (CHC) Independent Review Panel (IRP) review on 25 July 2019 of his late mother's care and treatment, in the following terms: *"Provide us with all email and other communications between Powys staff and*

BCUHB staff regards myself, my late Mum [name redacted] ... and specifically the NHS CHC review process relating to Mum's case:

- *Between 1/4/18 and 25/10/18;*
 - *Using the following keywords: [names redacted], [filing reference number redacted]*
 - *Between PTHB staff: [names redacted], and BCHUB staff: [names redacted], BCU.CHCRetrospectiveTeam@wales.nhs.uk, [names redacted]"*.
5. On 5 February 2020, PTHB replied that it held no emails between PTHB and BCUHB regarding the complainant himself. For correspondence regarding his late mother ("the deceased"), PTHB found that some information was held and withheld it relying on the section 41(1) FOIA (information provided in confidence) exemption. For correspondence regarding the CHC review process and IRP, PTHB said that when the All Wales CHC Project closed, all of its records, including those relating to the deceased, had been transferred to the respective health boards. PTHB therefore did not hold any relevant information. Following further correspondence, PTHB provided the complainant with copies of relevant emails.
6. The complainant remained dissatisfied with the PTHB responses to him and PTHB subsequently carried out an internal review. The outcome of this was reported to the complainant on 9 June 2020. PTHB again told him that it held no information regarding himself. Some information regarding the deceased had been withheld relying on the section 41(1) FOIA (information provided in confidence) exemption; this information was subsequently disclosed to him outside of the remit of FOIA. PTHB said that further information about the care and treatment of the deceased was not held by it, but may be held by BCUHB. PTHB added that information about the IRP process was also not held by PTHB as it had been transferred to BCUHB following closure of the All Wales NHS CHC project on 30 April 2019.
7. On 31 July 2020 the complainant met remotely with PTHB officers for a conference call to discuss his outstanding concerns. PTHB then wrote to him again, on 10 August 2020, about the conduct and findings of the NHS CHC Panel.

Scope of the case

8. The complainant first contacted the Commissioner on 6 February 2020 to complain about the delay and the way in which his request for information had been handled by PTHB and also BCUHB. The complainant later told the Commissioner that he felt let down by both public authorities.

9. The Commissioner has considered what information is held by PTHB coming within the scope of the request and his access rights to it.
10. The Commissioner considered the evidence provided by both parties, together with their representations. She has considered the steps taken by PTHB to find relevant information. She has also had regard for her guidance on information about deceased persons which is set out at: <https://ico.org.uk/media/for-organisations/documents/1202/information-about-the-deceased-foi-eir.pdf>.
11. The Commissioner recalled that there are no specific FOIA exemptions for information about deceased people. However, in cases where information about the deceased requires protection, certain exemptions may apply. Information about the deceased may contain information about living individuals so that the section 40 FOIA (personal information) exemption may apply. For example, in certain circumstances, such as a request for the medical records of the deceased. The section 41(1) FOIA (information provided in confidence) exemption may also apply for the reasons set out in her guidance.
12. In a connected matter, her case reference IC-75225-S5L3, the Commissioner is considering the complainant's concerns regarding his connected information requests to BCUHB.

Reasons for decision

Section 1 (General right of access to information)

13. Section 1(1) 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".

14. In cases where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner considers the complainant's evidence and arguments. She also considers the actions taken by the public authority to check what information is held and the reasons offered by the authority to explain why information is not held. She also considers any reason why it is inherently likely, or unlikely, that information is not held.

15. For the avoidance of doubt, the Commissioner makes clear that she is not expected to prove categorically whether or not the information is held. She is only required to make a judgement on whether or not the information is held on the civil standard of the balance of probabilities.

The Complainant's view

16. The complainant told the Commissioner that PTHB and BCUHB had exchanged information about treatment of the deceased. He said PTHB had told him that he was entitled to the information requested as it related to the health records of the deceased and that there were various legitimate mechanisms for access of which the ICO and FOIA were cognisant.
17. The complainant said he was entitled to information exchanged between BCUHB and PTHB, which PTHB had needed for their investigation. He added that PTHB had confirmed his entitlement to information but had then told him that BCUHB had refused to provide it.
18. The complainant added that he remained concerned that the IRP took place at a time when he had not had the opportunity to make his case to the review panel as he was then still waiting for key documents (provided by the Caldicott Guardian in July 2019) which BCUHB had been denying to him.
19. He concluded that he remained dissatisfied and felt utterly let down by the parties. The remedy he now wanted was for PTHB to obtain further information from BCUHB about the deceased's case and provide it to him.

The Powys THB view

20. PTHB told the Commissioner that the request was for a large amount of information connected with the IRP process. The content of the request was complex and PTHB had needed to clarify parts of the request on several occasions. Despite reminders, it said that the complainant had not provided the information it needed and so delays had occurred. PTHB said that, over the course of its' conversations with the complainant, the scope of the request continued to change with additional questions being sent in. Although some exemptions had been applied initially, PTHB had decided to release all the information it held outside the scope of FOIA. However, despite that, the complainant had remained adamant that PTHB was withholding information and an internal review had therefore been provided.
21. PTHB said it held very little information regarding individual patients who went through the All Wales Continuing Healthcare Project (one of which had been the deceased). Once the project had closed on 30 April

2019, all the records once held by the project, which PTHB had hosted, had been returned to the respective health boards. Both paper and electronic records had been transferred from PTHB to BCUHB. The records PTHB had once held on this case had therefore been returned to BCUHB. No local files had been retained by PTHB as it had no business need for them.

22. PTHB said that a later email search of its own records had brought back a very small amount of information which it had disclosed to the complainant. A second search had been conducted but no further information had been found.
23. PTHB said that, in its efforts to respond to the requests for information received from the complainant, it had met with him and discussed his continuing concerns and a further response had then been issued to him.
24. PTHB told the Commissioner that it had confirmed with BCUHB that, as the information holder, the matter had become solely a matter for itself.

The Commissioner's findings

25. In the light of her investigation, in which she reviewed PTHB's evidence, and considered the complainant's comments, the Commissioner found that PTHB had carried out reasonable steps to search its records. She therefore decided that, on the balance of probabilities, PTHB holds no further information within the scope of the request that it has not yet disclosed.
26. The complainant has told the Commissioner that he wanted PTHB to obtain information from BCUHB on his behalf. However the duty of PTHB within FOIA is to disclose information that it holds and which is not exempt. FOIA does not require PTHB to create new information or obtain information it does not already hold on behalf of an applicant.
27. The Commissioner therefore decided that PTHB has complied with the requirements of section 1(1) FOIA.

Other matters

28. The Commissioner recalled from her guidance on information about the deceased that certain applicants may have rights to access information under the Access to Health Records Act 1990 (AHRA) and associated legislation that they cannot access under FOIA since, unlike AHRA disclosures, FOIA disclosures are made to 'the world', ie to any member of the public. Essentially these give a right of access to the health

records of the deceased to the personal representatives of the deceased, or to persons who may have a claim arising out of the death of the individual.

29. The Commissioner noted that the complainant in this matter has benefitted from some disclosures of PTHB information under AHRA that he was unlikely to have received under FOIA.

Right of appeal

30. 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@justice.gov.uk

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

31. 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.
32. 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

Dr Roy Wernham
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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