

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 October 2021

Public Authority: Homerton University Hospital NHS Foundation Trust

Address: St Leonard's Hospital
Nutall Street
London
N1 5LZ

Decision (including any steps ordered)

1. The complainant has requested details of policies relating to patient behaviour. Homerton University Hospital NHS Foundation Trust ("the Trust") disclosed some information and stated that this was the only information it held within the scope of the request.
2. The Commissioner's decision is that the Trust does not hold any further information beyond that which has already been disclosed. However, the Trust did not identify all the recorded information it held within 20 working days and therefore breached section 10 of the FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 27 December 2020, the Commissioner submitted a request to the Trust in the following terms:

"[1] In the response to my complaint date 11 December 2020 Tracey Fletcher Chief executive mentioned 'national policy for all patients being admitted to hospital ... are required to undertake a Covid 19 swab test'. As Mrs. Tracey Fletcher refused to make me acquainted with such a policy please provide me with this information.

"[2] 22 December 2020 in the response to my complaint Puja Sharma Head of Legal Services wrote 'If you wish to have your treatment here you will need to adhere to our protocols'. However she refused to send me those protocols. It is quite difficult to adhere the protocols that you never got a chance to see. So I am asking you to send me those protocols.

"[3] Please provide me with proofs of the existence of so called Coronavirus (SARS-CoV-2).

"[4] Please provide me with proofs that the tests that are used in the Homerton Hospital are safe and accurate.

"[5] Please inform me how much tests the Homerton NHS Trust bought, when, where (what organisation sold its) and at what price."

5. The Trust responded to this request on 5 March 2021. In respect of elements [1], [2], [3] and [4] it provided some information. It denied holding information within the scope of element [5].
6. On 9 March 2021, the complainant disputed the Trust's response. Specifically, he considered that the information provided in response to elements [1] and [2] did not satisfy his request. On 10 March, the Trust responded and provided some additional information, but the complainant still did not consider that his request had been satisfied.

Scope of the case

7. The complainant contacted the Commissioner on 10 March 2021 to complain about the way his request for information had been handled.
8. On 21 July 2021, the Commissioner commenced her investigation with letters to both parties setting out the scope of the investigation she intended to pursue in respect of this complaint and another about a similar request that the complainant had made to the Trust. She advised the complainant that, in respect of the present request, she was only intending to look at the way the Trust had responded to elements [1] and [2] of the request. The complainant did not dispute the Commissioner's intended scope.
9. The Commissioner considers that the scope of her analysis is to consider whether the Trust held further information relevant to the complainant's request.

Reasons for decision

10. 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.*

11. 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 any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.

12. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

The Trust's position

13. In its initial response to element [1], the Trust provided the complainant with a link to national guidance regarding Covid-19 tests for patients who were anticipating a hospital visit. It did not properly address element [2] in its initial response but, in its response of 10 March 2021 it directed the complainant towards a Department of Health and Social Care press release (dated 5 June 2020) announcing that from 15 June 2020 all outpatients and hospital visitors would be required to wear face coverings at all times.

14. In her investigation letter, the Commissioner accepted that the Trust might not hold a document that had the word "protocols" in its title, but that it should nevertheless consider whether it held any further information regarding the wearing of face coverings within the hospital or that set out, in more general terms, the standards of behaviour expected of patients and visitors – such as a Patient Charter or equivalent.

15. The Trust explained that:

*"The Patient Information Lead and Engagement Coordinator advised that the Trust does not have a specific Patient Charter, but we do have a Patient Visiting Policy that is available via our. Also in all patient facing areas, **there are large posters and banners explaining visiting policy and guidance with regard to Covid precautions.**" [emphasis added]*

16. When the Commissioner explained that the documents described in the emboldened passage above would likely fall within the scope of the request, the Trust disclosed these to the complainant on 7 October 2021.

The Commissioner's view

17. Having considered the available evidence, the Commissioner is satisfied that, on the balance of probabilities, the Trust has identified all the information it holds, in recorded form, that would fall within the scope of the request.
18. The Commissioner is aware that the complainant is involved in a broader dispute with the hospital – but such matters fall outside of her remit. Nor is it her role to consider whether the information provided is accurate. Her sole concern is to ensure that all information that the Trust holds in recorded form is communicated to the complainant.
19. In respect of element [1], the webpage the Trust drew the complainant's attention to is clear and detailed. Given that this appears to represent national NHS policy in England, the Commissioner considers it unlikely that the Trust would hold its own local policy and therefore no further information is likely to be held.
20. In respect of element [2], whilst the Trust appears to have initially interpreted the request too narrowly, it has now revisited that response and disclosed some further information to the complainant – although the Commissioner notes that all this information would already have been reasonably accessible to him as it is either published on the Trust's website or posted prominently around the hospital site.
21. The complainant has not presented any compelling reason to suggest why the Trust would hold any further information beyond that which it has already disclosed and the Commissioner sees no obvious reason to suspect that more information would be held.
22. The Commissioner is therefore satisfied, on the balance of probabilities, that the Trust has disclosed, to the complainant, all the information it holds in recorded form.

Procedural Matters

23. Section 10 of the FOIA states that a public authority must comply with its obligations under section 1(1) "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
24. The Trust informed the Commissioner that it did not receive the request until the Commissioner intervened – but that it had responded to the request within 20 working days of being notified of the request.
25. Having looked at the copy of the request that the complainant provided, the Commissioner sees no reason why the Trust would not have received this request – as the complainant had submitted another request five days earlier using the same method.
26. However, given that the Trust did not disclose all of the recorded information it held until 7 October 2021, the exact date on which the request was received is irrelevant. The date on which a public authority has complied with its duty under section 1(1) is the date on which it has identified all the information it holds and has communicated, to the requestor, all non-exempt information.
27. The Commissioner is satisfied that the Trust did not discharge its duty under section 1(1) within 20 working days of receiving the request and therefore breached section 10 of the FOIA.

Other matters

28. The complainant noted in his correspondence with the Trust that he intended to raise what he considered to be the Trust's failure to comply with the FOIA with the ICO and that:

"I am going to ask for compensation" [sic]
29. The Commissioner notes that there is no mechanism within the FOIA for the awarding of costs, the provision of compensation or the levelling of fines against either party to a request.

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: 0203 936 8963

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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF