

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 October 2022

Public Authority: Sandwell and West Birmingham Hospital NHS Trust

Address: City Hospital
Dudley Road
Birmingham
B18 7QH

Decision (including any steps ordered)

1. The complainant requested information from the Sandwell and West Birmingham Hospital NHS Trust ("the Trust") By the date of this notice the Trust had not issued a substantive response to this request.
2. The Commissioner's decision is that the Trust has breached section 10(1) of FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires the Trust to take the following step to ensure compliance with the legislation.
 - The Trust must provide a substantive response to the request in accordance with its obligations under FOIA.
4. The Trust must take this step 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 1 August 2022, the complainant wrote to the Trust and requested information in the following terms:

"1) Which departments & specialties are paying additional session rates at or in excess of the above agreed rates ?

2) When did such rates in these departments become effective?

3) What activity is performed for such rates?

4) Which departments do not pay the above LNC agreed sessional rates ? Eg: pay per unit of output such price as per scan, (CT / MRI / ultrasound) , per individual operation, per patient seen in clinic, per each pathology specimen)

What are the specific arrangements for each of these department?

5) Which departments pay such sessions as PAYE payments & which use limited companies & outsourcing?

6)

a) What amount has been spent on extra-sessional activity / outsourcing per individual department for the 8 months before the collective agreement

&

b) The amount of extra-sessional activity for the 8 months after the collective agreement.

7) How does each department determine which staff members are to participate in waiting list initiative lists?

8) What rates are offered to Consultants, registrars & SAS grades in each department ? "

6. The Trust acknowledged the request on 3 August 2022. To date, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 9 September 2022 to complain about the Trust's failure to respond to their request.
8. The Commissioner has considered whether the Trust has complied with its obligations in relation to the time for compliance at section 10(1) of FOIA.

Reasons for decision

9. Section 1(1) of 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."
10. Section 10(1) of FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".
11. On 21 September 2022, the Commissioner wrote to the Trust, reminding it of its responsibilities and asking it to provide a substantive response to the complainant's request within 10 working days.
12. Despite this intervention the Trust has failed to respond to the complainant.
13. From the evidence provided to the Commissioner in this case, it is clear that the Trust did not deal with the request for information in accordance with FOIA. The Commissioner finds that the Trust has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with FOIA.

Right of appeal

14. 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

15. 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.
16. 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

Michael Lea
Team Manager
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Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF