

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 22 February 2023

**Public Authority:** University College London Hospitals NHS Foundation Trust

**Address:** 250 Euston Rd  
London  
NW1 2PG

### **Decision (including any steps ordered)**

---

1. The complainant has requested information about medical records. The above public authority ("the public authority") denied holding the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority does not hold any information within the scope of the request. The public authority did however breach section 10 of FOIA in its handling of the request.
3. The Commissioner does not require further steps.

### **Request and response**

---

4. On 2 November 2022, the complainant wrote to the public authority and made a clarified request for information in the following terms:  
  
"please advise the number of neurointerventional radiology cases performed at Queen Square, in which the IRMER (Ionising Radiation (Medical Exposure) Regulations 2017) operators have not been recorded in medical records, radiology records/PACS, radiation exposure dose reports and/or in occupational health records for staff involved in these procedures, for the period 1 December 2019 to 30 June 2020 (during which the procedure was performed)?"

"You are welcome to state where the names of the IRMER operators are recorded, if not in the above systems. And you are welcome to state in how many procedures you have failed to record in any way who the IRMER operators are."

5. The public authority responded on 5 December 2022. As its answer to the request was "zero," it denied holding the requested information. It upheld this stance following an internal review.

### **Reasons for decision**

---

6. Section 1 of FOIA requires a public authority to inform a person making a request for information whether the information they have requested is held and, if it is, to provide a copy – unless an exemption applies.
7. Where there is a dispute over the extent to which information is held, the Commissioner is required to decide whether it is more likely than not that the information is held.
8. The public authority has explained to the complainant that the names of the operators for each procedure should be recorded on its in-house "Epic" patient record system. It had reviewed all its records within the time parameters and had noted that the name of the operator(s) was recorded in each case.
9. The complainant argued that some information was held. She had received a response to a Subject Access Request (SAR) for treatment records where the names of the operators were not disclosed.
10. Whilst the Commissioner recognises that the public authority may not have provided the information the complainant wanted from her SAR, that does not mean that it holds the information she is requesting.
11. There are several scenarios in which particular information may not be disclosed under SAR: the information may not fall within the scope of what the SAR requested, or may not be that requester's own personal data; secondly, there are some exemptions from the duty to provide information in response to a SAR; finally, it is possible that the data controller (in this case, the public authority) has simply not provided the information, even though it is obliged by data protection law to do so.
12. For the purposes of FOIA, it is irrelevant which of the scenarios listed above actually applies to this situation. The Commissioner cannot deal, in a decision notice issued under FOIA, with matters pertaining to the handling of a SAR. The request made under FOIA sought details of records where no operator was recorded. The complainant may not have

received the name(s) she wished to receive via a SAR, but that does not mean that the public authority does not hold them – especially when it has searched its records to establish the contrary.

13. The Commissioner is therefore satisfied that, on the balance of probabilities, the information is not held.
14. For the avoidance of doubt, the Commissioner considers that the public authority would have held information within the scope of the request if its response had been a figure of one or above. Whether a figure of zero demonstrates that no information is held in recorded form, or whether it indicates that a figure of zero is the information that is held, is not relevant to the outcome, as FOIA does not entitle a requester to challenge the accuracy of the information a public authority holds. Either the public authority has correctly informed the complainant that no records fall within the scope of her request, or the public authority has informed her that it does hold a number and that number has been provided.

### **Procedural matters**

---

15. The public authority breached section 10 of FOIA as it failed to inform the complainant, within 20 working days, that it did not hold the requested information.

### **Other matters**

---

16. The Commissioner notes that the public authority sought to clarify the request on the seventeenth working day.
17. There is no statutory time limit for seeking clarification, but the Commissioner considers that clarification should be sought as soon as possible to minimise any delays.
18. The Commissioner recognises that the clarification the public authority sought was legitimate. However, that clarification should either have been sought immediately (ie. so that the public authority could begin searches) or so that, having located the relevant information, the public authority could present the information in the format that the complainant wanted. Given that the public authority took a further 23 working days to respond to the clarified request, it would suggest that very little searching had been done by the seventeenth working day. The Commissioner considers this to be poor practice.

## **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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

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