

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 September 2023

Public Authority: Northamptonshire Healthcare NHS Foundation Trust

Address: St Mary's Hospital
London Road
Kettering
NN15 7PW

Decision (including any steps ordered)

1. The complainant has requested documents provided to an independent reviewer. The above public authority ("the public authority") provided some information but the complainant considers more is held.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority has provided all the information it holds in recorded form that falls within the scope of the request. The public authority breached section 10 of FOIA as it provided some of the information it held outside of the 20 working day timeframe.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 12 May 2023, the complainant made the following request (which the Commissioner has broken into its component parts):

"Please provide

[1] copies of all documents provided to [the Reviewer] commissioned to conduct the review as briefing.

- [2] Additionally any correspondence either internally or with [the Reviewer] concerning those considered as appropriate to provide detailed input to the review.
- [3] Furthermore any documentation concerning involvement in the review of the Annex 6 appellant and Governors excluded from the termination hearing.”
5. The public authority responded to this request on 9 June 2023 and disclosed five documents. It stated that this was the only information it held that fell within the scope of the request. It upheld this position following an internal review.

Reasons for decision

6. Where there is a dispute over the amount of information a public authority holds, the Commissioner must determine whether it is more likely than not that all relevant information has been correctly identified.
7. When seeking an internal review, the complainant argued that the Trust must hold more information because:
- “It is inconceivable that correspondence between the Trust and [the Reviewer] does not exist, **a covering note** would have accompanied the documents sent to him and copied to me as part of my FoI request, [the Reviewer] must have asked for **clarifications and raised questions** as his review progressed and a **draft/s of the report** would have been sent to the Trust for comment before wider publication.” [emphasis added]
8. At the outset of the investigation, the complainant confirmed that he considered all three of these categories of information should be held and would fall within the scope of his request.
9. In respect of a covering note, the Commissioner agreed with the complainant that this appeared to be a gap in the information that had been provided. The Reviewer would have almost certainly have been sent some form of cover note (however brief) and, if they did not form part of the same correspondence, terms of reference for the review.
10. The Commissioner therefore asked the public authority to focus on this category of information to establish whether any more information was held.
11. The public authority carried out fresh searches and identified some additional emails that fell within the scope of the request. These were

disclosed to the complainant on 26 September 2023. The public authority also confirmed that, following the Commissioner's letter, it had carried out wider searches for information, but had not identified any additional information besides the emails it had now provided.

12. The Commissioner turns next to the two other categories of information that the complainant highlighted whilst requesting a review (marked in bold in paragraph 7 of this notice).
13. In the Commissioner's view such information, if held, would not fall within the scope of the request.
14. The Commissioner is not aware and has not sought to establish, whether the reviewer circulated drafts of their report prior to completion nor whether they sought clarification on any particular points of fact or policy.
15. The request does not ask for "any correspondence either internally or with [the Reviewer]." Nor does it ask for "any documentation." The terms of the request only seek correspondence or documents that relate to the selection of individuals to provide input into the review and the degree to which those individuals will provide input.
16. The Commissioner is therefore not persuaded that any drafts or requests for clarification (if indeed such information exists) would fall within an objective reading of the request.
17. The public authority has now carried out a series of searches for information, including at the direction of the Commissioner and with more targeted search terms. The Commissioner is satisfied that those searches were appropriate, relevant and likely to have identified any information falling within the scope of the request.
18. On the balance of probabilities, the Commissioner is thus satisfied that the public authority holds no further information within the scope of the request.

Procedural matters

19. The public authority breached section 10 of FOIA as it failed to identify or communicate all the non-exempt information it held within 20 working days.

Right of appeal

20. 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

21. 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.
22. 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