

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 February 2024

Public Authority: Chelsea and Westminster Hospital NHS Foundation Trust (the trust)

Address: 369 Fulham Road
London, SW10 9NH

Decision (including any steps ordered)

1. The complainant has requested the trust to disclose information relating to its decision to take down a piece of artwork. The trust provided some information but withheld other information under section 21 of FOIA. It also confirmed that it does not hold recorded information relating to other aspects of the request.
2. During the Commissioner's investigation the trust withdrew its application of section 21 and released the information to the complainant. In terms of additional information being held, it confirmed that no further recorded information falling within the scope of the request is held.
3. The Commissioner's decision is that on the balance of probabilities no further recorded information falling within the scope of the complainant's request is held. He has however recorded a breach of section 1(1)(b) and 10 of FOIA.
4. The Commissioner does not require any further action to be taken.

Request and response

5. On 3 March 2023, the complainant wrote to trust and requested information in the following terms:

"We write concerning the Chelsea and Westminster Hospital's ("the Hospital") decision to remove the Crossing Borders – A Festival of Plates ("the art display") from the hospital, as recently reported.

We are concerned that in making this decision, the Hospital did not uphold its duty under s 149 Equality Act 2010 ("EqA") or its obligation to protect freedom of expression under Article 10 European Convention on Human Rights ("ECHR").

Therefore, we request the following information under s 1 of the Freedom of Information Act 2000:

- 1) When was the decision made to remove the art display?
- 2) On what date was the art display taken down?
- 3) Who made the decision to remove the art display? Is that decision-maker an employee or agent of the Hospital? If so, what is their legal relationship with the Hospital?
- 4) What were the reasons underpinning the decision to remove the art display?
- 5) What information and/or evidence informed the decision? Were any meetings held to discuss whether the art display should be taken down? Please provide a copy of all recorded information that informed the decision and notes from any meetings held about the decision.
- 6) How was this information and/or evidence obtained? If it was from external, third-party sources, please detail which third parties provided the hospital with this information? Please provide a copy of all correspondence with third parties in relation to this decision.
- 7) Did the decision-maker consult any relevant staff members (of the Hospital or The Chelsea Community Hospital School), patients or other third parties before making the decision? If so, please identify these individuals and third parties. Please also provide a copy of all recorded information in relation to consultations with staff, patients or other third parties.
- 8) Did the Hospital consult staff, patients or members of the public of Palestinian or Arab-descent prior to making the decision to remove the

art display? Please provide all recorded information of such consultation(s).

9) Did the Hospital consult patients or members of the public from any other group of people they deemed may have been impacted prior to making the decision to remove the art display? Please provide all documented information of such consultation(s) and the Hospital's rationale for believing these groups were so impacted.

10) Did the Hospital consult the curator of the art display and/or children involved in making the display? Please provide all recorded information of such consultation(s).

11) Did the Hospital conduct an equality impact assessment, or its equivalent, prior to the removal of the art display? If so, who conducted the assessment?"

6. The trust responded on 8 June 2023 . It provided a short response, addressing some of the questions. It confirmed that it does not hold any correspondence or minutes of meetings regarding the decision to remove the display. It also withheld its press statement relating to the matter and a letter it received from UKLI in January 2023 under section 21 of FOIA, advising the complainant that this information was already available via its own website and that of UKLI.
7. The complainant requested an internal review on 28 June 2023.
8. The trust carried out an internal review on 9 August 2023. It went through the complainant's points in turn but essentially upheld its initial handling of the request.

Scope of the case

9. The complainant contacted the Commissioner on 24 August 2023 to complain about the way their request for information had been handled. They believe the trust holds more information to that provided and they dispute the application of section 21 of FOIA to the UKLI letter.
10. During the Commissioner's investigation the trust withdrew the application of section 21 of FOIA and disclosed a copy of the UKLI letter to the complainant. The Commissioner therefore regards this element of the complaint resolved.
11. The remainder of this notice will address the complainant's concerns that they believe further recorded information must be held, namely

correspondence with third parties in relation to the decision to remove the artwork. It will also address any procedural breaches of FOIA.

Reasons for decision

Section 1 – general right of access

12. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to them.
13. In cases where a dispute arises over whether recorded information is held by a public authority at the time of the request, the Commissioner - following the lead of a number of First-tier Tribunal decisions - applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
14. The complainant believes the trust must hold further recorded information to that already identified around its discussions and consultation with third parties in relation to its decision to take down the artwork. They advise that the trust's initial correspondence refers to such discussions and consultation and therefore they believe the trust must hold some record of these interactions.
15. The Commissioner asked the trust to explain what searches it had undertaken.
16. The trust advised that it conducted a document search, including an email search, for key executive directors, including the chief executive, director of communications and the director of corporate governance. It also contacted its PALS and complaints department to obtain any correspondence received in relation to this issue. Additionally, it searched its corporate governance records for any meeting minutes, file notes and so on relating to any meetings. The trust also spoke to the chief executive to ask whether she had any other records or notes of any conversations she had with third parties and its estates team. It also repeated these searches at the internal review stage. No additional recorded information was identified.
17. In terms of consultation with stakeholders, the trust confirmed that no records exist of these consultations as they took place by phone and no notes were made of those calls. It explained how its director of communications contacted the local borough council to ask for contact details of local community groups and they then spoke to respective

leads for two community groups, representing both Gazan and Israeli communities, by phone and fed back the outcome of those conversations but only orally.

18. The trust clarified that it received emails following the publication of its decision to remove the artwork. It also received 230 complaints but again all these post dated the decision. Considering the wording of the complainant's request and this being for information about steps taken before the decision was made or for information which 'informed' that decision, it felt this information fell outside the scope of the complainant's request.
19. The Commissioner agrees with the trust that the request is limited to information which 'informed' its decision to remove the artwork, so all information received and considered beforehand and which informed the trust's decision. He received a good sample of the said emails and complaints and notes that they were received by the trust prior to its decision. He is therefore satisfied that this information falls outside the scope of the complainant's request.
20. In terms of further recorded information being held, the Commissioner is satisfied from the submissions he has received from the trust that it has carried out appropriate and thorough searches of its records. He notes that these were also repeated at the internal review stage too. With regards to consultation with stakeholders, it has confirmed that these conversations took place over the telephone and no formal note or record was made of them. The director of communications instead fed back orally. Whether there should or should not be a formal record of such conversations is not the relevant consideration here. If recorded information is not held, it is not held and cannot be provided.
21. For the above reasons, the Commissioner is satisfied that the trust has now complied with the requirements of FOIA. On the balance of probabilities no further recorded information, falling within the scope of the request, is held.

Procedural matters

22. The trust failed to respond to the complainant's request within 20 workings of receipt. It therefore breached section 10 of FOIA.
23. The trust also communicated information to which the complainant was entitled late, the Commissioner has therefore recorded a breach of section 1(1)(b) of FOIA.

Right of appeal

24. 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

25. 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.
26. 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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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