

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 September 2024

Public Authority: Northumbria Healthcare Facilities
Management Ltd

Address: Northumbria House
Silver Fox Way
Cobalt Business Park
Newcastle Upon Tyne
NE27 0QJ

Decision (including any steps ordered)

1. The complainant has requested copies of policies and procedures. The above public authority ("the public authority") disclosed some information and relied on section 21 of FOIA (reasonably accessible) to withhold the remainder.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority has now either disclosed all the information it holds or indicated where it can be found. However, as the public authority failed to communicate all relevant information or issue an adequate refusal notice within 20 working days it breached sections 10 and 17 of FOIA.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 23 November 2023, the complainant wrote to the public authority and requested information in the following terms:

"My request is for information held by [the public authority] of the classes and types envisaged to be published by the Information Commissioner's Office in its Model Publication Scheme and its related guidance Definition document for wholly-owned companies."

5. Following an exchange of correspondence aimed at narrowing the request, on 26 November 2023, with reference to the Commissioner's [definition document](#), the complainant narrowed his request to include documents of the following description:

Class 1:

- Organisational structure

Class 2:

- Financial statements, budgets and variance reports
- Loans sanctioned
- Expenditure
- Financial audit reports
- Staff pay and grading structure
- Procurement and tender procedures and reports
- List of contracts awarded and their value

Class 3:

- Strategic and business plans, aims and objectives
- Annual report
- Customer surveys - NA

Class 4:

- Board papers - agenda, supporting papers and minutes of meetings

Class 5:

- Policies and procedures for conducting business
- Policies and procedures for delivering your services
- Policies and procedures for recruiting and employing staff
- Equality and diversity policies
- Health and safety
- Customer service and complaints policies and procedures
- Records management, personal data and access to information policies
- Charging regimes and policies

Class 6:

- Information asset register
 - Disclosure logs
 - Any register of interests you keep
 - Register of gifts and hospitality provided to board members and senior staff
 - Register of people with significant control”
6. The public authority issued its first response on 5 December 2023. It relied on various different exemptions but, in respect of the class 5 documents it stated that “All recorded policies are Northumbria Healthcare NHS Foundation Trust policies.” It upheld this stance following an internal review.

Scope of the case

7. At the outset of the investigation, the Commissioner contacted the public authority to set out his initial view of the complaint. He noted that, based on the available evidence, most of the cited exemptions were unlikely to apply.
8. On 19 August 2024, the public authority issued a fresh response to the complainant. In respect of classes 1, 2, 3 and 6, it relied on section 21 of FOIA as the information was already available on either its own website or that of Northumbria Healthcare NHS Foundation Trust. In respect of class 4, it provided copies of minutes, but withheld some information which it claimed was commercially sensitive. In respect of class 5 it stated that it adopted the same policies as Northumbria Healthcare NHS Foundation Trust and it stated that it was providing copies of these policies, where they were held.
9. The Commissioner explained to the complainant that it appeared that the information had now been provided. Whilst the public authority had relied on section 43 of FOIA (commercial interests) to withhold some information, the Commissioner noted that public authorities are not obliged to include, in their publication schemes, information that would be otherwise exempt under FOIA. Given the wording of the request, such information would not therefore fall within scope, as the public authority would not be obliged to include it in its publication scheme.
10. The complainant remained unconvinced that he had received all the information he was entitled to receive. His reasons for this are set out

below. He appears to accept that that which the public authority has claimed to be reasonably accessible is accessible to him.

11. Section 50 of FOIA give a person the right to complain to the Commissioner if they feel that a public authority has failed to comply with FOIA in respect of any request they have made and to have the Commissioner make a decision about that complaint.
12. FOIA does not give a person the right to make a complaint about the operation of a public authority's publication scheme, nor the right to have a decision from the Commissioner on the matter. The Commissioner expresses no view in this decision notice about the operation of this, or any other, public authority's publication scheme.
13. This complaint only covers whether or not the public authority holds further information. Whether further information is, or ought to be, held by Northumbria Healthcare NHS Foundation Trust (or any other body) is outside the scope of the decision.

Reasons for decision

14. After having gone back and forth several times, the complainant still does not consider that he has received all the information he is entitled to receive.
15. In particular, he says he has not received a copy of the public authority's estates and facilities management policy.
16. The Commissioner is not persuaded that a company set up for the sole purpose of managing another organisation's estate and facilities would need an estates and facilities management policy of its own. Nor does the model publication scheme require the public authority to have one. Given the efforts now undertaken by the public authority to locate relevant information, the Commissioner is satisfied that, if the public authority held this information, it would have been provided.
17. Northumbria Healthcare NHS Foundation Trust may (or may not) hold a policy but such matters fall outside the scope of the request – which was made to the public authority, not the Trust.
18. If the information is held on behalf of the public authority, it will be already published. If it is not held by the Trust, the public authority will not hold it either and so cannot provide it.

19. On the balance of probabilities, the Commissioner is now satisfied that all the requested information that the public authority holds has now either been provided or correctly withheld.

Procedural matters

20. Section 10 of FOIA requires a public authority to identify all the information it holds within the scope of a request and communicate any non-exempt information within 20 working days.
21. Section 17 of FOIA requires a public authority to issue a refusal notice, stating any exemptions being relied upon to withhold information, within 20 working days.
22. The public authority did not communicate all the non-exempt information it held within 20 working days. It therefore breached section 10 of FOIA.
23. The public authority's initial response to the complainant did not meet the requirements of section 17 of FOIA. It did not inform the complainant that the reason why he was not receiving some of the information he had asked for was because the information was already reasonably accessible to him and it did not cite section 21 of FOIA as the exemption being relied upon. The Commissioner therefore finds a breach of section 17 of FOIA.

Other matters

24. The Commissioner notes that it took the public authority four months to complete its internal review – which he considers to be poor practice.
25. Internal reviews should be completed within 40 working days.

Right of appeal

26. 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

27. 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.
28. 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
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Wycliffe House
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SK9 5AF