



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 18 May 2006

Public Authority: Whipps Cross University Hospital NHS Trust

**Address: Whipps Cross University Hospital
Whipps Cross Road
Leytonstone
London
E11 1NR**

Summary Decision and Action Required

The Commissioner's decision in this matter is that the public authority has not dealt with the complainant's request in accordance with Part I of the Act in that it has failed to comply with its obligations under section 1, section 10, section 16 and section 17.

The information has since been provided and consequently, no remedial action will be required of the public authority.

1. Freedom of Information Act 2000 ('the Act') – Applications for a Decision and the Duty of the Commissioner

1.1 The Information Commissioner ('the Commissioner') has received an application for a decision whether, in any specified respect, the complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 ('the Act').

1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure; or
- the application is frivolous or vexatious; or
- the application has been subject to undue delay; or
- the application has been withdrawn or abandoned;

the Commissioner is under a duty to make a decision.

- 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

- 2.1 The complainant submitted nineteen requests for information to Whipps Cross University Hospital NHS Trust ('the Trust') over a number of months. The requests related to the treatment of the complainant's deceased mother, who was admitted to Whipps Cross University Hospital in June 2004.

The Commissioner was initially asked to investigate compliance with requests made in letters dated 11 March 2005 and 14 September 2005, however it became apparent that it was necessary to consider the requests for information in their entirety to investigate the complaint thoroughly.

Appendix 1 contains a full list of all the complainant's requests for information and the Trust's responses. The requests are referred to throughout this Decision Notice using the numbering as in Appendix 1.

3. Relevant Statutory Obligations under the Act

- 3.1 **Section 1(1)** provides 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”.

- 3.2 **Section 10(1)** provides that –

“...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt”.

- 3.3 **Section 16(1)** provides that –

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”.

- 3.4 **Section 17(1)** provides that –

“A public authority which...is to any extent relying:

- on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request; or
- on a claim that information is exempt information

must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies”.

4. Review of the case

4.1 The Commissioner has investigated only those requests which did not appear to have been dealt with in accordance with the Act. A full list of requests made and the timing of the responses given is attached, for completeness, in Appendix 1.

4.2 Request 4 concerned a Do Not Resuscitate (DNR) Order.

This information was requested of the Trust in a letter dated 11 January 2005 however was not answered until 2 December 2005. This information was provided prior to being raised as part of the Commissioner’s investigation.

The Commissioner is satisfied that section 10 of the Act has been breached in respect of this request.

4.3 Request 6 concerned the decision to withhold active treatment of the complainant’s mother’s condition. The complainant requested information which demonstrated whether there was a difference between the decision to withhold active management of her mother’s condition and the raising of a DNR Order. This information was requested on 11 January 2005.

The Commissioner asked the Trust to confirm whether there was any information held which demonstrated this distinction. He was informed that the only recorded information held by the Trust which referred to any such distinction can be found in the medical notes supplied prior to the first request being made. This distinction was not made clear until 3 April 2006.

Whilst the Trust had already provided all of the information it held on this subject, prior to the request being made, it failed to clarify the distinction until 3rd April 2006. The Commissioner is of the opinion that, if the Trust had provided greater advice and assistance to the complainant in relation to this request, it may have avoided a complaint being made in respect of it.

The Commissioner is satisfied that the Trust has breached sections 1, 10 and 16 of the Act in respect of request 6.

- 4.4 Request 7 concerned medical records held by computer. The request was made on 11 January 2005 however was not answered by the Trust until 8 March 2005.

The Commissioner is therefore satisfied that the Trust has breached section 10 in relation to this request.

- 4.5 Request 8 requested an X ray. The request was made on 11 January 2005 however was not answered until 22 September 2005. This request was answered prior to the commencement of the Commissioner's investigation.

The Commissioner is satisfied that section 10 of the Act was breached in respect of this request.

- 4.6 Request 9 asked for details relating to the second sigmoidoscopy carried out on the complainant's mother on 13 June 2004. On the 17 January 2005 the Trust provided details relating to the first sigmoidoscopy carried out on that date, however did not address the second such procedure.

The complainant had been led to believe, following a GMC hearing, that two sigmoidoscopies had been performed on her mother on 13 June 2004. The Trust has confirmed to the Commissioner that the medical notes do not make it clear whether a second examination was undertaken and therefore there is no information held which answers these questions conclusively.

This clarification was not communicated until 21 December 2005.

The Commissioner is of the opinion that, if the Trust had provided greater advice and assistance to clarify the information held and what it related to, the complainant may have been reconciled that no further information was held prior to making a complaint to the Commissioner.

The Commissioner is therefore satisfied that sections 1, 10 and 16 of the Act were breached in respect of request 9.

- 4.7 Request 10 related to the complainant's mother's fall from her hospital bed and was made on 11 January 2005.

The Trust's letter of 17 January 2005 stated that this information would not be released until a meeting had taken place to discuss the care of the complainant's mother.

Following this refusal to supply the requested information, the complainant wrote to the Trust on 28 January 2005 and requested an internal review of the decision to withhold this information. The complainant did not repeat her request for information relating to the current employers of the nurses, as she had decided to pursue this request via another channel. Therefore the Commissioner has not investigated this element of the request.

The names and RCN registration numbers were provided to the complainant in the Trust's letter of 8 March 2005.

When refusing to supply the information requested, the Trust did not cite any exemptions nor provide the complainant details of how to request a review of the decision to withhold information. As such, the Commissioner is satisfied that section 17 was breached in respect of this request.

- 4.8 Request 11 was made on 11 January 2005 and concerned a partially completed risk assessment.

The Trust informed the complainant in its letter of 17 January 2005 that this information would not be supplied.

The complainant's letter of 28 January 2005 constitutes a request for internal review of the decision to withhold this information. The request for the current employers of the staff members was not repeated as the complainant had decided to pursue this request for information via another channel.

The Trust provided the information on 8 March 2005.

When refusing to supply the information requested, the Trust did not cite any exemptions nor provide the complainant details of how to request a review of the decision to withhold information. As such, the Commissioner is satisfied that section 17 was breached in respect of this request.

- 4.9 Request 12 (c) concerned an injection given to the complainant's mother.

The Trust responded on 17 January 2005, however refused to provide information in response to this request.

The complainant requested an internal review of this decision on 28 January 2005.

This information was communicated to the complainant in the Trust's letter of 8 March 2005.

When refusing to supply the information requested, the Trust did not cite any exemptions nor provide the complainant details of how to request a review of the decision to withhold information. As such, the Commissioner is satisfied that section 17 was breached in respect of this request.

- 4.10 Request 13 was made on 11 January 2005 and concerned an Incident Report.

The Trust informed the complainant in its letter of 17 January 2005 that this form could not be located.

The Commissioner asked the Trust to give more detailed information about this form.

The usual administrative practice for such a form is as follows:

- a copy of the form is stored in the Ward Office;

- a copy of the form is sent to the Clinical Governance Unit where the details are inputted into a database; and
- a copy of the form is stored in the Clinical Governance office.

In the complainant's mother's case, the form was created in handwritten form by [name redacted], shortly after the fall. The form was seen by the complainant's sister on the ward within their mother's notes on 14 June 2004 however it could not be located by early July 2004 when the hospital began its formal investigations into the complainant's mother's care.

The Trust confirms that extensive searches have been carried out to locate the form:

- a search of the Clinical Governance database has been undertaken however the details cannot be located. This implies the details were never entered into the database;
- a search of the Clinical Governance office has been undertaken; and
- a detailed physical search of the Lister Ward office and its files has been carried out.

Despite these searches, the form cannot be located. It is on this basis that the Commissioner has concluded that this form is no longer held by the Trust. Therefore the Commissioner is satisfied that the Trust did not breach section 1 of the Act in this respect.

- 4.11 Request 14 concerned treatment received by the complainant's mother in the Hospital's Accident and Emergency Department and was made on 28 January 2005.

This information was provided on 8 March 2005.

The Commissioner is satisfied that section 10 of the Act was breached in respect of this request.

- 4.12 Request 16 queried information given in response to a previous FOI request. Request 16 was made on 11 March 2005.

The Trust answered this request on 21 December 2005 following the Commissioner's intervention.

The Commissioner is therefore satisfied that sections 1 and 10 of the Act were breached in relation to this request.

- 4.13 Request 17 queried how many sigmoidoscopies in total were performed on the complainant's mother. This request was made on 11 March 2005.

The information was not provided until 21 December 2005 following the Commissioner's intervention.

The Commissioner is therefore satisfied that the Trust breached sections 1 and 10 of the Act in relation to this request.

- 4.14 Request 18 was made on 11 March 2005 and was for a paragraph the complainant believed was missing from a letter sent in response to one of her earlier requests.

The omitted paragraph was supplied on 11 August 2005.

The Commissioner is satisfied that section 10 of the Act was breached in this respect.

5. The Commissioner's Decision

- 5.1 The Commissioner's decision in this matter is that the public authority has not dealt with the complainant's requests in accordance with the following requirements of Part I of the Act:

Section 1 – in that it failed

- 1(1)(a) to inform the complainant in writing whether it held information of the description specified in the complainant's requests.
- 1(1)(b) to communicate to the complainant such of the information specified in his requests.

in respect of those requests detailed in section 4 of this Decision Notice.

Section 10 - in that it exceeded the statutory time limit for responding to requests made under section 1(1).

in respect of those requests detailed in section 4 of this Decision Notice.

Section 16 – in that it failed to offer the complainant advice and assistance by way of clarifying that the information it had already provided prior to requests being made was the only information held which answered the requests. The Trust also failed to advise which parts of the information provided answered which requests for information.

in respect of those requests detailed in section 4 of this Decision Notice.

Section 17 – in that it refused the complainant's requests for information but when communicating this to the complainant failed to

- 17(1)(a) state that the information claimed was exempt information.
- 17(1)(b) specify, where the refusal was made in reliance upon the requested information being exempt information, the exemption being relied upon.

- 17(1)(c) state, where it was not otherwise apparent, why the exemption being relied upon to refuse the request for information applied.
- 17(7) include particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure or include particulars of the right to apply for a decision of the Information Commissioner under section 50.

in respect of those requests detailed in section 4 of this Decision Notice.

6. Action Required

- 6.1 Section 50(4) of the Act provides, *inter alia*, that, where the Commissioner decides that a public authority has failed to comply with any of the requirements of section 17, a decision notice “must specify the steps which must be taken by the authority for complying with that requirement”.
- 6.2 In this particular case, although the Commissioner has decided that there was a failure to comply with the requirements of section 17, it is also clear that the information the Trust holds which answers the requests has now been provided and that there are no steps which could now be taken by the authority to bring it, albeit retrospectively, into compliance. The Commissioner finds therefore that there are no steps which must be taken for complying with the requirements of section 17.

7. Right of Appeal

- 7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (‘the Tribunal’). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

- 7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated 18th of May 2006

Reference: FS50081951

Signed.....

**Phil Boyd
Assistant Commissioner**

**Information Commissioner
Wycliffe House
Water Lane**

**Wilmslow
Cheshire
SK9 5AF**