

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 September 2015

Public Authority: Welsh Assembly Government
Address: Cathays Park
Cardiff
CF10 3NQ

Decision (including any steps ordered)

1. The complainant has requested various items of information in respect of numbers employed by NHS Wales to provide spiritual care in Wales. The Welsh Government informed the complainant that it does not hold information relevant to the request. The Commissioner's decision is that the Welsh Government has complied with its obligations under section 1(1) of the FOIA and does not require the public authority to take any steps.

Request and response

2. On 1 March 2015, the complainant wrote to the Welsh Government and requested the following information:

"In numbers employed and whole-time equivalents, how many of those specifically employed by NHS Wales to provide spiritual care, as described in Standards for Spiritual Care in the NHS in Wales in 2010, are not ministers of religion?"

What qualifications and training do those employees, who are not ministers of religion, have for the duties they are required to perform?"

What has been done to make NHS patients in Wales aware of the existence of such spiritual carers who are not ministers of religion?"

3. The Welsh Government responded on 27 March 2015. It stated that it does not hold any information meeting the description of the request. It also informed the complainant that the individual health boards may hold some of this information and confirmed that he would need to

direct his request to each health board separately. It enclosed a list of relevant contact details for each one.

4. Following an internal review the Welsh Government wrote to the complainant on 18 June 2015. It stated that it was satisfied that the Welsh Government does not hold relevant information as the provision of spiritual care in NHS Wales is the responsibility of the individual health boards. It did however state that it was aware that at least one Health Board provides non-religious spiritual care.

Scope of the case

5. The complainant initially contacted the Commissioner on 15 June 2015 to complain about the way his request for information had been handled. The Commissioner notes that this was before he had received the outcome of the Welsh Government's internal review.
6. The complainant provided some background information in respect of his FOIA request. He explained that he had written to the Welsh Government in November 2014 claiming that the spiritual care policy for NHS patients discriminates against non-religious patients as there do not appear to be any non-religious spiritual care providers, with non-religious patients receiving any spiritual care they do receive from ministers of religion.
7. He further added that the policy amounts to discrimination under Article 9 of the ECHR and is therefore unlawful under various pieces of legislation, including the Equality Act 2010.
8. The complainant alleged that the reply he received to his letter dismissed his concerns by saying that not all spiritual caregivers were chaplains as non-religious caregivers were available to provide spiritual care for non-religious patients. The complainant further informed the Commissioner that he doubted this statement and wrote to the officer concerned on two occasions asking how many spiritual caregivers were in NHS Wales were not ministers of religion. The complainant stated that as he did not receive a reply, and therefore submitted a request for this information under the FOIA.
9. The complainant had concluded that the officer had either stated that not all spiritual caregivers were chaplains without knowing whether it was true, or has said incorrectly the Welsh Government does not hold the information.
10. The Commissioner notes that the complainant has raised concerns regarding his communications and correspondence with the Welsh

Government which pre-dates his FOIA request, and would point out that it is not within his remit to investigate or comment on this.

11. The complainant has also expressed dissatisfaction that he has received no response to his concerns about discrimination against non-religious patients. He further stated that the Welsh Government should be invited to produce a serious and substantial response to the concerns outlined in his letter of November 2014.
12. Again, the Commissioner would stress that these issues are beyond his remit and the focus of his investigation will be whether the Welsh Government has complied with its obligations under section 1(1) of the FOIA in respect of this request for information.

Reasons for decision

Section 1 – General right of access to information held

13. Under section 1(1) of the FOIA, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
14. In his consideration of whether a public authority has complied with its obligations under section 1(1) of the FOIA, the Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold relevant information therefore, the normal standard of proof to apply is the civil standard of the balance of probabilities.
15. The Commissioner's judgement in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner expects the public authority to conduct a reasonable and proportionate search in all cases.
16. The Commissioner therefore contacted the Welsh Government asking it to provide details and evidence of its search which led it to conclude that it does not hold relevant information.
17. The Welsh Government confirmed that it had approached two Directorates within its Department for Health and Social Services (DHSS) in respect of this request:

- The Directorate of Public Health (with a remit for patient safety and experience, and which is the Directorate that had previously dealt with the complainant's requests on similar topics).
 - The Workforce and Organisational Development Directorate (on the basis that it may have held records in relation to those employed by Health Boards).
18. The Welsh Government has provided evidence from each of the Directorates confirming that no relevant information is held in respect of this request. It also confirmed that no other Department within the Welsh Government, or Directorate within its DHSS, would hold any information in relation to this request.
19. In relation to the statement that at least one Health Board provides non-religious spiritual care, the Welsh Government informed the Commissioner that it would appear that the statement was a policy statement based on an understanding, rather than recorded information and apologised if this was misleading. It further informed the Commissioner that all of its Health Boards observe NHS Wales Spiritual Healthcare Standards 2010 and therefore offer both religious and non-religious spiritual care. It did however confirm that this is usually provided by the chaplaincy service.
20. The Commissioner has considered the details and evidence of the search undertaken by the Welsh Government. He considers that it was both reasonable and proportionate, and he has not seen any compelling evidence as to why this information should be held by the Welsh Government as opposed to by the Health Boards themselves (and to which the complainant had been directed). He has therefore concluded that, although the Welsh Government's comment that at least one Health Board provides non-religious spiritual care was not based on recorded information and not therefore in accordance with the procedural requirements of the FOIA, it has ultimately complied with its obligations under section 1(1) of the FOIA.

Right of appeal

21. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

22. 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.
23. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF