



Neutral citation number: [2024] UKFTT 295 (GRC)

Case Reference: EA/2023/0112

**First-tier Tribunal  
General Regulatory Chamber  
Information Rights IC-206289-J5Y7**

**Heard by: CVP**

**Heard on: 22 March 2024  
Decision given on: 12 April 2024**

**Before**

**TRIBUNAL JUDGE CHRIS HUGHES  
TRIBUNAL MEMBER SUSAN WOLF  
TRIBUNAL MEMBER EMMA YATES**

**Between**

**JOHN MITCHELL**

**and**

**INFORMATION COMMISSIONER**

Appellant

Respondent

**Representation:**

For the Appellant: in person

For the Respondent: no appearance

**Decision:** The appeal is Dismissed

**REASONS**

1. The Freedom of Information Act 2000 created rights of access to information held by public authorities. Public authority is defined by s3:-

3 Public authorities.

(1) In this Act “public authority” means –

(a) subject to section 4(4), any body which, any other person who, or the holder of any office which –

(i) is listed in Schedule 1, or

(ii) is designated by order under section 5, or

(b) a publicly-owned company as defined by section 6.

Schedule 1 (as enacted)

Part I

General

1 Any government department other than

(a) the Competition and Markets Authority,...

Part III

The National Health Service

England and Wales

37A Health Authority established under section 8 of the National Health Service Act 1977.

38A special health authority established under section 11 of the National Health Service Act 1977.

39A primary care trust established under section 16A of the National Health Service Act 1977.

40A National Health Service trust established under section 5 of the National Health Service and Community Care Act 1990.

41A Community Health Council established under section 20 of the National Health Service Act 1977.

42 The Dental Practice Board constituted under regulations made under section 37 of the National Health Service Act 1977.

43 The Public Health Laboratory Service Board constituted under Schedule 3 to the National Health Service Act 1977.

44 Any person providing general medical services, general dental services, general ophthalmic services or pharmaceutical services under Part II of the National Health Service Act 1977, in respect of information relating to the provision of those services.

45 Any person providing personal medical services or personal dental services under arrangements made under section 28C of the National Health Service Act 1977, in respect of information relating to the provision of those services.

2. While there have been substantial organisational changes in the 24 years since FOIA was enacted relating to the configuration of health service provision, the public bodies in the health field for which the Secretary of State for Health and Social Care is responsible are either bodies within Schedule 3 of FOIA as being NHS bodies, or are part of the DHSC and are within Schedule 1 Part 1 “any government department.” The body listed at 43 above, the Public Health Laboratory Service Board has long ceased to exist. The government website indicates:

“The functions of the Board were taken over by the Health Protection Agency in 2003, which itself became part of Public Health England in 2013.”

3. Information formerly held by an NHS body in 2002 had, by the end of 2003, been transferred to the Health Protection Agency which was a part of the government department headed by the Secretary of State.
4. For a number of serious diseases there has long been a legal requirement for the reporting of a diagnosis to the government’s central registry. This reporting has been key to public health strategy to enable the identification of trends in disease and (for some diseases) possible environmental and occupational causes of disease. That central registry of disease The National Disease Registration Service was formerly part of Public Health England. This was an executive agency of the Department of Health and Social Care (DHSC). The management of the service was transferred to NHS Digital on 1 October 2021, this was described as an executive Non-Departmental Public Body (NDPB). It was not an NHS body or listed in Schedule 1 Part 6 of FOIA (Other Public Bodies: General) and therefore was another executive agency of DHSC, and therefore for FOIA rights a part of the DHSC. In turn NHS Digital was merged with Health Education England and NHS England on 1 February 2023. The Health and Social Care Act 2022 placed NHS England within Schedule 1 Part 3 (NHS) of FOIA. The Chief Executive’s overview to the annual report and accounts for NHS England 2022-23 begins:

*“Welcome to NHS England’s Annual Report and Accounts for 2022/23.*

*This report covers the performance of the organisation between April 2022 and the end of March 2023, including from 1 July 2022 onwards the legally merged constituent organisations of NHS Improvement and from 1 February 2023 onward the legally merged organisation NHS Digital.*

*This ongoing merger had, by April 2023, successfully integrated NHS Improvement, Health Education England, and NHS Digital into one unified organisation. The new NHS England has a shared purpose, leading the NHS in England to deliver high-quality services for all, and putting workforce, data, digital and technology at the heart of our plans to transform the NHS. ”*

5. On 2 April 2022 the Appellant, who for several years had been making an annual request for a set of information made his request to the National Disease Registration Service:

Subject: Request for information : Local Authority of Plymouth cancer statistics (all areas - postcode specific) from Jan 2014 to Jan 2022

Dear NDRS team,

Can you please forward this information request to NCRAS.

Can you please provide(Data to include all cancers) :

1. The complete annual Cancer statistics for the local authority of Plymouth (all areas - postcode specific ) From Jan 2014 to Jan 2022 [at a patient level -Annual individual level data to include actual numbers where 5 or below are recorded + aggregate statistics to include national rate/ population comparison ]

2. Can you also please provide the complete annual Cancer statistics for the local authority of Plymouth's Hepatico-pancreatico-biliary Cancer Centre (all areas - postcode specific) From Jan 2014 to Jan 2022 [at a patient level - Annual individual level data to include actual numbers where 5 or below are recorded + aggregate statistics to include national rate/ population comparison ]

Kind regards

John

6. On 7 April 2022 Information rights at UK Health Security Agency (another executive agency of DHSC) responded to NCRASenquiries

From: Information Rights <InformationRights@ukhsa.gov.uk>

Sent: 07 April 2022 09:02

To: NCRASenquiries [NCRASenquiries@phe.gov.uk](mailto:NCRASenquiries@phe.gov.uk)

....

Subject: Case ref: 021 - FOI - Local Authority of Plymouth cancer statistics (all areas - postcode specific) from Jan 2014 to Jan 2022

.../

Thank you for forwarding this.

You are right that our team would handle this, we have moved to this mailbox but still monitor the former FOI mailbox at PHE.

....

Therefore, nothing further will be required from yourselves but please do forward any further requests you receive, we will log and respond accordingly.

Thanks again,

7. When the Appellant became aware that his request had been sent between various email addresses he was concerned and exchanged a number of communications with the public authority. On 26 June he sent an email which appears in the bundle headed:

Received: Sun Jun 26 2022 10:41:20 GMT+0100 (British Summer Time)

To: HSCIC Enquiries <enquiries@nhsdigital.nhs.uk>; enquiries #

<enquiries@nhsdigital.nhs.uk>; Inbox <enquiries@nhsdigital.nhs.uk>;  
Subject: URGENT ACTION TO BE TAKEN - For the attention of the DPO for NHS  
Digital -DPA 2018 legislation - DPO failure to investigate breaches within statutory  
timescale -NIC-648135-Q1N5F - Request for information: Local Authority of  
Plymouth cancer statistic...

8. In the email he stated that there had been breaches of data protection legislation which amounted to criminal offences and sought information as to what had happened. He set out the text of a previous reply and then the information request (in bold). The requests for information as to how the previous request was handled were treated as requests under the Freedom of Information Act 2000. The relevant paragraphs were:

*"[1] Our enquiries have confirmed that internal guidance was followed that was unfortunately out of date. **Please substantiate this by providing the evidence to which you refer i.e. The actual forwarding emails to the information rights team...***

*"[2] Action taken following concerns being raised is that internal guidance has been updated to include the correct email address in which to internally forward FOIs. These steps have been taken in order to avoid an error of this type happening again in the future. **Please provide the full internal guidance update to which you refer as this will contain the time date and issue ref.**"*

9. The authority replied providing information in response to request 1 - the email chains - with redaction of personal information. It explained that it was redacting the Appellant's personal information and explained why it was redacting personal information of the other individuals in the email chains in accordance with data protection principles, however the domain name at which each individual personal email address was located was left in. With respect to request 2 the authority explained that the guidance document was being updated but the section relating to FOI had been updated and in use since 5 May, accordingly it was provided.
10. The Appellant was dissatisfied with the response and sought an internal review of the handling of the request. He remained dissatisfied and complained to the Information Commissioner who investigated.
11. On 22 February 2023 the Information Commissioner issued the decision notice arising from the complaint against which Mr Mitchell has appealed. It was issued to NHS Digital which at the time of the complaint was an executive agency and therefore part of DHSC - it had under FOIA no separate legal identity from the Department. At the time it was issued it had been transferred to NHS England which was in FOIA separate from the Department as a NHS body listed separately. It upheld the response to request 1:

*14. The Commissioner recognises that the complainant has concerns about the way the public authority handled his own personal data (ie. The transferred request). That interest has already been satisfied by the disclosure of a redacted version of the emails and by the public*

*authority providing an explanation as to why the request was transferred. Where email addresses have been redacted, the domain name has been left in, so it is clear which organisation is communicating with which. Adding in the names of the individuals concerned would be of no additional benefit in understanding why the situation came about.*

*15. To the extent that the complainant has a legitimate interest in knowing whether the public authority's most senior managers were aware, disclosing the withheld information would again, not serve this interest. The public authority would normally disclose the names of senior staff and has confirmed that the staff involved here are junior. Therefore the complainant has already had confirmation of the (non-) involvement of senior staff in the transfer of his request.*

12. With respect to the second part of the request:

*23. In this case, the public authority has explained that the guidance document as a whole was still being updated (and covered multiple processes beyond dealing with FOI requests), but that the particular section regarding FOI requests had been updated and could therefore be disclosed.*

*24. The Commissioner is satisfied that the request, read objectively, referred to the "full update" of the public authority's internal guidance as it related to the handling of his previous request, not the full guidance. It was therefore legitimate for the public authority to have provided the information that it did.*

*25. Whether or not the complainant considers the update made by the public authority to be adequate for the purpose is a matter for him. The Commissioner is satisfied that the public authority has provided the information that it holds in recorded form.*

13. The Appellant argued

- that the identities of the officials who had been in the email chain should be identified, that senior officials names should in any event be released (by reference to the Commissioners guidance on releasing names of senior staff)
- that there were emails from early April by senior staff which had not been disclosed,
- that UKHSA had refused the information request
- that the guidance released was not a sufficient response to the second part of the request.

14. In resisting the appeal the Commissioner noted

- that seniority was not the only factor in considering the release of names, that disclosing of the names did nothing for the public interest, that NCRA Senior Analyst Team did not necessarily meet the criteria for "senior" quoting the Commissioner's advice:-

“However, the terms ‘senior’ and ‘junior’ are relative. It is not possible to set an absolute level across the public sector below which personal information is not released. It is always necessary to consider the nature of the information and the responsibilities of the employee in question.”

“The Commissioner recognises that the complainant has concerns about the way the public authority handled his own personal data (ie. the transferred request). That interest has already been satisfied by the disclosure of a redacted version of the emails and by the public authority providing an explanation as to why the request was transferred. Where email addresses have been redacted, the domain name has been left in, so it is clear which organisation is communicating with which. Adding in the names of the individuals concerned would be of no additional benefit in understanding why the situation came about”

- There was no evidence from the Appellant that there were such missing emails
- The actions of UKHSA were not relevant
- FOIA gave a right of access to information not to documents. The information provided met the request.

15. The Appellant has submitted to the tribunal material derived from other FOIA requests relating to cancer registration. It included an email sent to an NHS address on 1 July 2023 with his tabulations of information supplied to him and which he considered showed data manipulation. The email which accompanied the table claimed to identify inconsistencies in the data between years. Also accompanying the email was an excel document from the NDRS headed:

*“Yearly counts of cancers in the Plymouth area and Plymouth Cancer Centre  
Ref: NIC-648135-Q1N5F - Freedom of Information - Plymouth cancer statistics”*

16. The detailed notes on the excel document begin to hint at some of the complexities of data capture and interpretation over time from different sources. However the Appellants e-mail in reciting his interpretation of what has been provided shows no understanding of this complexity and a rooted conviction that he is being misled and ascribing bad intent to every inconsistency:

*“The information that has been provided for 2021 has also been manipulated and falsified. It can be observed that all of these errors are deliberate acts to further withhold the postcode patient count by site information. ”*

17. The Appellant told the tribunal that he has for some years been concerned about the reporting of cancer statistics for rare cancers in the Plymouth area. He believes that figures are being manipulated to conceal the impact of an incinerator in the Plymouth area which he blames for a large number of cancer cases in that area, including his late mother. He informed the tribunal that he has requested information for four

years “each time they falsify it, the Information Commissioner knows this, the Information Commissioner wouldn’t allow me to have the information”. He explained that there are postcode patient counts and “patients disappear – rare cancer patients have disappeared.” He was convinced that senior officials had been informed of his request and were trying to suppress information about these rare cancers. This was why it was in the public interest to disclose their names.

18. The tribunal noted that the Appellant was grieving and distressed. His information request is driven by that sorrow. He strove to widen every step and mis-step in the handling of his numerous requests into evidence of misconduct. There was no evidence of any misconduct.
19. This meta request arose out of one of the many re-organisations of the Department of Health and Social Care and central NHS support functions over recent years, especially since the start of the Covid-19 pandemic. Different functions have been moved between parts of the DHSC and its agencies and NHS bodies, usually carried out by the same people but with some of the interfaces between different parts of the system changing. So it happened in this case. In providing information to the Appellant in response to the request the disclosure of the organisational domain names gave some picture of the parts of the evolving organisational landscape in which the individuals worked, knowledge of the names of the individuals was unnecessary and breached their rights. The information with domain names was sufficient. The confusion in the response to him fed further fuel to his suspicious interpretation and triggered the meta request. There is no justification for the release of the names of individuals in the email train. The justification on which the Appellant relies is a groundless conspiracy theory – he has firmly held beliefs derived over the years from a misinterpretation of the complexities of the gathering and presentation of public health statistics which he has not understood and where he has unfairly ascribed wrongful behaviour to others because of his unreasonable interpretation of what he has not understood. There is no evidence of suppressed emails. The handling of the requests by another body is not relevant. There is no public interest in disclosure of names. He has a purely private interest in those names based on his misapprehension. The Appellant has the information he requested with respect to the procedural change.
20. The appeal is entirely without merit and is dismissed.

Signed    Hughes

Date: 12 April 2024