



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 2 May 2006

Public Authority: Commission for Healthcare Audit and Inspection (the 'Healthcare Commission')
Address: Finsbury Tower
103-105 Bunhill Row
London
EC1Y 8TG

Summary Decision and Action Required

The Commissioner's decision in this matter is that the Public Authority has dealt with the Complainant's request in accordance with Part I of the Act.

In the light of this decision, the Notice specifies no remedial steps to be taken by the public authority.

1. Freedom of Information Act 2000 – 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- the application has been withdrawn or abandoned,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 has advised that on 13 May 2005 the following information was requested from the public authority in accordance with section 1 of the Act:

“a Photostat copy of the full [file] index, together with Photostat copies of the minute sheets attached to the file.”

- 2.2 The file in question relates to a complaint made to the Commission for Health Improvement (one of the forerunners to the Healthcare Commission) about an NHS Trust.
- 2.3 On 6 June 2005 the public authority advised the complainant that it did not hold the information requested, although it had provided a typewritten file index to the complainant on 22 April 2005, in response to an earlier request for information. The complainant disputed this and on 10 June 2005 made a complaint to the Commissioner.

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.”

4. Review of the case

- 4.1 The Commissioner put the arguments advanced by the complainant to the public authority, particularly that the documents on the file were numbered, suggesting that an index existed. The Commissioner also asked the following additional questions:

- Do files of this type (i.e. one that contains documents relating to a complaint about a particular NHS Trust made to the Healthcare Commission) routinely contain indices?
- Does the Healthcare Commission’s records management policy contain any reference to file indices?
- Was a file index ever attached to this particular file?
- If so, when was it destroyed? And why?

- 4.2 These questions were put to the public authority by letter on 19 January 2006 and explored further in subsequent telephone conversations. The public authority responded as follows:

- The documents were numbered in order to create an index after the original request for information was received. The numbering does not indicate that a file index had always existed.
- Files of this type held by the public authority do routinely contain an index. However, this particular file was created by the Commission for Health

Improvement (one of three organisations that merged to form the Healthcare Commission on 1 April 2004). There will inevitably be discrepancies in file composition and structure where an archive includes documents previously held under a different records management regime.

- The public authority's archive policy does mention indices. It directs staff to instructions which state that staff are required to complete an electronic index listing of information to be archived.
- No file index was ever attached to this particular file and therefore no index was destroyed.

5. The Commissioner's Decision

- 5.1 The public authority continues to maintain that the information in question is not held. The Commissioner has considered the response given to the questions put to it.
- 5.2 The Commissioner cannot be completely certain that the information requested by the complainant is not, in fact, held by the public authority. He notes that files of this type held by the public authority should contain an original file index. However, he considers it reasonable that not all historic files will contain indices, especially given that the public authority was formed by the merger of three separate bodies, each with differing records management policies.
- 5.3 The Commissioner notes that the documents held on the file, together with a typewritten file index, have already been released to the complainant. He is also mindful of the fact that the complainant has not brought forward any further evidence to suggest that the public authority holds the information requested.
- 5.4 In the light of the absence of clear evidence that the public authority holds the information requested, the Commissioner is unable to conclude that there has been a failure to comply with the requirement of section 1.

6. Action Required

- 6.1 In the light of the matters set out above, the Commissioner requires no remedial steps to be taken by the public authority.

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

Reference: FS50079498

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 the 2nd day of May 2006

Signed

**Phil Boyd
Assistant Commissioner**

**Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**