

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 6 August 2007

**Public Authority:** The Commission for Patient and Public Involvement in Health  
**Address:** National Centre  
7<sup>th</sup> Floor  
120 Edmund Street  
Birmingham  
B3 2ES

### Summary

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The complainant asked the public authority to provide him with all the information it held about a survey into the car parking provisions at a number of hospitals in the West Midlands. The public authority provided the complainant with a number of documents, but the complainant alleged that there were further documents held by the public authority which were not disclosed to him. During the course of the Commissioner's investigation the public authority located a number of further documents covered by the scope of the request and provided these to the complainant. By failing to originally disclose these documents the Commissioner has concluded that the public authority breached section 1 of the Act. The Commissioner is now satisfied that the complainant has been provided with all of the information falling within the scope of his request and therefore does not require the public authority to take any remedial action.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. On 4 October 2006 the complainant submitted a request ('request A') to the The Commission for Patient and Public Involvement in Health ('CPPIH') for information about a survey which had been conducted into the car parking provisions at the Sandwell and West Birmingham hospitals.

3. This survey was a joint project undertaken by a number of bodies including the Patient and Public Involvement Forum (PPIF) for the Sandwell and West Birmingham Hospital Trust ('the Sandwell Forum'). A local charity, Agewell, conducted the survey and the University of Wolverhampton analysed the survey results and produced a report. The funding for the project was provided by the CPPIH, and the administration of these funds, and co-ordination of the project, was carried out by the Forum Support Organisation (FSO) for the Sandwell Forum, a body called the Black Country Housing Group (BCHG). The Sandwell and West Birmingham Hospital Trust and local Primary Care Trust (PCT) were not involved in the survey. Rather the survey was undertaken by the various bodies with the aim of influencing the car parking policy of the Trust and PCT.

4. Request A specifically asked for:

*'Please supply me with copies of all information relating to the above [i.e. the car parking survey] from 19 January 2005 to the present date, including all internal information sent to and received from the PCT, Sandwell & West Birmingham Trust and any other body who received or sent information regarding the above survey over this period. Please include copies of material which you hold in the form of paper and electronic records including emails'.*

5. The CPPIH provided the complainant with a response to request A on 1 November 2006. The CPPIH confirmed that it held some information covered by request A and provided him with copies of minutes from two Sandwell Forum meetings and a copy of an internal email.

6. The complainant contacted the CPPIH again and suggested that he had not been provided with all of the information it held covered by the scope of his request. The complainant suggested to the CPPIH that as he had written a number of letters to the CPPIH with regard to the car parking survey, and the fact that a complaint had originally been lodged with the Sandwell Forum in January 2005 regarding the car parks, it was logical that the CPPIH would hold more information than that supplied to him.

7. On 6 November 2006 the complainant also submitted a request to the BCHG. This request ('request B') was similar to request A in so far as it sought the equivalent information but instead asked for correspondence between the BCHG and related parties.

8. The CPPIH contacted the complainant on 16 November 2006 and explained that it had reviewed its position with regard to request A and concluded that it did not hold any further information covered by the scope of this request.

9. On the 27 November 2006 the CPPIH also provided the complainant with a response to request B. The CPPIH explained to the complainant that it, rather than the BCHG, was replying to request B for the following reason:

*'As the Commission is deemed to be the originating public authority any information held by the Forum Support Organisations is classed as being*

*held on behalf of the Commission. As such, your letter was passed to me as the Commission's Freedom of Information Lead to respond to'.*

10. However, in its letter of 27 November 2006 the CPPIH informed the complainant that neither it nor the BCHG held any information covered by the scope of his requests other than that previously disclosed to him on 1 November 2006.

## The Investigation

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### Scope of the case

11. On 12 December 2006 the complainant contacted the Commissioner to complain about the way both of his requests for information had been handled. The complainant suggested that it was likely that both the CPPIH and the BCHG held more information than that previously provided to him on the basis of the reasons outlined in paragraph 6.
12. Although the CPPIH is a public authority for the purposes of the Act, the BCHG is not. Nevertheless, the Commissioner agrees with the CPPIH's suggestion to the applicant (see paragraph 9) that information held by the BCHG relating to the functions of the Sandwell Forum are held on behalf of the CPPIH for the purposes of the Act. Consequently, the Commissioner has also investigated whether the BCHG holds information covered by request B.

### Chronology

13. The Commissioner wrote to the CPPIH on 20 February 2007 in order to discuss how it handled requests A and B. The Commissioner explained to the CPPIH that the complainant had alleged that it held more information covered by the scope of his requests than that already disclosed to him. The Commissioner explained to the CPPIH that having reviewed the correspondence provided by the complainant he understood that the CPPIH's position that it did not hold any further information covered by the scope was based on two reasons:
14. Firstly, all communication between the CPPIH and BCHG with regard to this issue was conducted by telephone; and secondly, the Trust and the CPPIH did not exchange correspondence on this issue and therefore no communication between these parties is held.
15. The Commissioner asked the CPPIH to respond to a number of questions in relation to this complaint. These questions were:
  - Does the CPPIH have any record of the complaint made to Sandwell Forum in January 2005 regarding this issue?
  - Please explain the steps taken to locate information held by the CPPIH and BCHG which could have fallen within the scope of these requests.
  - Was any information covered by the scope of the requests ever held by the CPPIH, but subsequently destroyed?

- What is the CPPIH's records management policy relating to records such as these?
  - Were any telephone notes made by either the CPPIH or the BCHG during the conversations discussing the parking survey? Does the CPPIH have a policy regarding staff making records of issues discussed on the telephone? If so, please explain what this policy is.
16. The CPPIH provided the Commissioner with a response to his letter on 12 March 2007. The CPPIH confirmed that it held no record of the complaint made to the Sandwell Forum in January 2005 regarding the car parking situation at the hospitals. The CPPIH informed the Commissioner that it was not aware of any information covered by the scope of the requests which was subsequently destroyed.
17. The CPPIH outlined to the Commissioner the process it had undertaken in order to locate further information *'the steps taken by the CPPIH to locate the information held by the CPPIH and BCHG was to speak to the FSO by telephone and the CPPIH Governance Lead to request they forward all copies of documentation relating to the car park survey'*.
18. The Commissioner was also provided with a copy of the CPPIH's records management policy.
19. Having reviewed this response from the CPPIH, and having considered further submissions made by the complainant, the Commissioner contacted the CPPIH again on 21 March 2007. Based upon the complainant's further submissions the Commissioner indicated to the CPPIH that he believed that it was likely that both it and the BCHG held further information covered by the requests A and B.
20. The Commissioner identified six specific pieces of information that he believed may be held. These six pieces of information were:
- i. The final copy of the report into the car parking survey held by the BCHG
  - ii. Similarly, a final copy of the report held by CPPIH.
  - iii. A fax (probably dated February 2006) from Agewell to BCHG regarding the organisation of volunteers for the survey.
  - iv. A letter dated 2 November 2006 from Agewell to BCHG regarding the survey
  - v. The BCHG wrote a bid for funding for the survey and this was submitted to the CPPIH for authorisation around the time of October 2005. Is there any record of this funding application?
  - vi. Does either the BCHG or CPPIH have any record of the process by which the funds were administered or managed by the BCHG?
21. The Commissioner asked the CPPIH to conduct a further search in order to establish whether it or the BCHG held any further information in relation to the six points above. The Commissioner suggested to the CPPIH that if it concluded that it did not hold any of the further information it would need to provide a detailed explanation of the steps taken to locate this information.

22. The CPPIH responded to the Commissioner on 17 April 2007 and explained its position with regard to information i to vi:
23. With regard to information numbered i and ii the CPPIH confirmed that it had provided the complainant with a copy of the final report on 1 November 2006.
24. With regard to information numbered iii the CPPIH stated that 'the CPPIH has liaised with the BCHG regarding the fax believed to have been sent in February 2006, BCHG cannot locate a copy of the fax'.
25. With regard to the information numbered iv the CPPIH confirmed that it had now found this letter and was prepared to provide it to the complainant.
26. With regard to v the CPPIH explained that the information relating to the bid for funding had been archived and was therefore not located as part of the CPPIH's original searches for information covered by the requests. However, the CPPIH stated that it had now located the document submitted to the CPPIH by the BCHG asking for funding and was prepared to provide this document to the complainant.
27. With regard to vi the CPPIH suggested that it would appear that it no longer held information related to how the funds were spent.
28. The Commissioner contacted the CPPIH on 24 April 2007 and asked it to provide the complainant with the information iv and v. The Commissioner also asked the CPPIH to elaborate on the steps it had taken to locate the information covered by points iii and vi. The Commissioner emphasised that in order to fully examine this aspect of the case he needed to be reassured that the CPPIH had thoroughly and accurately confirmed that it did not hold the information iii and vi. The Commissioner suggested that the CPPIH's statement regarding information vi that *'It appears that we no longer hold the information relating to the administration of these funds'* was not sufficient. In order to assist on this point the Commissioner asked the CPPIH to respond to the following questions:
  - How long would the CPPIH retain information relating to how forums spend funding they have been granted?
  - Would this type of information fall within the class of information which the CPPIH's records management brief suggests should be retained for five years?
  - Or would this information fall within the description of the CPPIH's brief which suggests that information which has no long term value can be destroyed as soon as it has served its primary purpose?
  - With regard to the fax, it would be useful if CPPIH could provide a more detailed explanation of the attempts made to find information about this issue. Perhaps it would be useful if the CPPIH could outline any official guidance/policies relating to how forums and FSO's would record complaints received from members of the public.
29. The CPPIH responded to the Commissioner on 4 May 2007 and confirmed that the BCHG had conducted further searches for the information covered by (iii) but

the fax had not been located. However, with regard to vi the CPPIH had now located some information relating to the funding supplied by the CPPIH and it was prepared to disclose this to the complainant.

30. The Commissioner contacted the CPPIH again on 15 June 2007 in order to seek clarification on two final issues. Firstly, the Commissioner suggested that although the CPPIH had explained that it had provided the complainant with a copy of the final report on 1 November 2006, it was not clear that the complainant had received a copy of this report. In order to resolve this situation, the Commissioner asked the CPPIH to provide him with a copy of this final report.
31. Secondly, the Commissioner explained to the CPPIH that the complainant had stated that he was particularly interested in being provided with copies of meeting notes and information outcomes related to discussions between the Sandwell Forum, the Trust and PCT following the publication of the final report. The complainant suggested that he believed that these meetings had been arranged with the aim of influencing the Trust and PCT's car parking policy. As has been noted above, the CPPIH were not directly involved in any such meetings and therefore if information relating to these meetings was held it was unlikely to fall within the scope of request A, i.e. information held by the CPPIH.
32. Therefore, the Commissioner suggested to the CPPIH that if any of this information was held, then it would fall within the scope of request B, i.e. information held by the BCHG. However, the Commissioner suggested to the CPPIH that it was his understanding that under section 237 of the National Health Service Act 2006 PPIFs were established as public authorities for the purposes of being covered by the Act. Therefore, the Commissioner suggested to the CPPIH that even if the BCHG held information relevant to any meetings between the Sandwell Forum and the Trust and/or PCT then, as the Sandwell Forum was a public authority in its own right, then any information held by the BCHG would be held on behalf of the Sandwell Forum rather than on behalf of the CPPIH. The Commissioner asked the CPPIH to provide some clarification on this issue.
33. The CPPIH responded to the Commissioner's letter on 27 June 2007. With this response the Commissioner was provided with a copy of the final report into the survey. This report was dated March 2006.
34. With regard to the Commissioner's second query, the CPPIH explained that its position was that information held by both the FSOs and the PPFIs was deemed to be held on behalf of the CPPIH even though the PPFIs were public authorities in their own right. The CPPIH confirmed that the BCHG held minutes of the meetings about which the complainant had expressed an interest, i.e. discussions between the Sandwell Forum and the Trust and/or PCT. The CPPIH explained that it had ensured that these minutes were provided to the complainant in response to his original request despite the fact that the minutes of the meetings were actually in the public domain by virtue of being accessible via the CPPIH's website. The CPPIH provided the Commissioner with copies of the minutes of the 12 PPIF meetings held between January 2005 and December 2006.



## Findings of fact

35. Following the Commissioner's intervention, the CPPIH provided the complainant with:
- The letter referred to in iv; and
  - Information covered by v and vi.
36. The CPPIH's position is that the complainant was provided with a copy of the final report into the car parking survey on 1 November 2006. The complainant disputes this and alleges that the only information provided to him in November 2006 were copies of two Sandwell Forum meeting notes and a copy of an internal email. With the explicit consent of the CPPIH, the Commissioner has now provided the complainant with a copy of the final report into the car parking survey.
37. The Commissioner has also established that the complainant alleges that the following information is held by the CPPIH and the BCHG but has still not been provided to him:
- A copy of the fax from February 2006 (information iii).
  - A record of the original complaint made to the forum in January 2005 regarding car parking.
  - Meeting minutes or information outcomes between the Sandwell Forum and Trust and the PCT.

## Analysis

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### Section 1

38. Section 1 of the Act creates a general right of access to information held by public authorities. Section 1(1) states 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.”
39. As has been outlined above the CPPIH provided the complainant with some information in response to his requests, copies of two meeting notes and an internal email.
40. However, as has also been outlined in the findings of fact section above (paragraph 40), the CPPIH failed to disclose additional information to the

complainant until the Commissioner intervened. Therefore, the Commissioner considers that the CPPIH breached section 1 of the Act because it failed to provide the complainant with this information in response to his requests.

41. Further, as outlined in the findings of fact section there are three pieces of information that the complainant alleges that the CPPIH or BCHG may hold but have still not been provided to him. The Commissioner has outlined his findings as to whether this information is held below:

A copy of the fax from February 2006 (information iii)

42. The Commissioner has established that a member of Agewell sent a fax to the BCHG regarding the organisation of volunteers who were going to undertake the car park survey. Despite conducting a number of searches the BCHG was unable to locate a copy of this fax within its records related to the car parking survey. The Commissioner accepts that the information contained on the fax was only of value for a relatively short period of time, i.e. the information was only used for the organisation of volunteers in February and March 2006. The CPPIH's policy on the retention and disposal of information suggests that 'as a general rule, trivial or information that has no operational or evidential use can be destroyed or deleted'. The Commissioner accepts that it is likely that fax was destroyed once the survey had been conducted and therefore by the time of the complainant's request in November 2006 was no longer held.

A record of the original complaint made to the forum in January 2005 regarding car parking.

43. The complainant has suggested that a note of this complaint was taken by an employee of the BCHG when the complaint was made in January 2005. The Commissioner has established that following a number of searches of their records, the BCHG could not locate a copy of this complaint note. The Commissioner notes that there was a time lag of nearly two years between when the record of this complaint was made, January 2005, and when the complainant submitted his request to the BCHG in November 2006. Therefore, the Commissioner accepts that it is likely that in this intervening period the record of this complaint note was destroyed by the BCHG.

Meeting minutes or information outcomes between the Sandwell Forum and the Trust and the PCT

44. With regard to this information the Commissioner accepts that the CPPIH did not hold any meetings or enter into any discussions with the Trust or the local PCT with regard to the car park survey. The CPPIH's role with regard to the car parking survey was limited to providing the funds for the survey; the CPPIH was not involved in discussions with the Trust or PCT following the production of the report which were designed to influence the debate surrounding the car parking situation. As the CPPIH was not involved in any meetings involving the Sandwell Forum, the Trust or the PCT on this issue the Commissioner considers that it is reasonable to conclude that it does not hold any information related to these issues.



45. However, as the CPPIH has acknowledged, the BCHG held a number of meeting minutes involving the Sandwell Forum and these minutes fell within the scope of the request B. The CPPIH's letter to the Commissioner of 27 June 2007 suggested that these meeting minutes were passed to the complainant in response to his requests. However, the Commissioner was informed in response to his enquiries that the complainant was only provided with copies of two meeting notes and not copies of all 12 meeting notes which were held by the BCHG. The Commissioner notes that all 12 of these meeting minutes make reference to the car parking provisions at the hospitals or the car parking survey itself and therefore fall within the scope of request B.
46. The Commissioner has noted the complainant was specifically interested in being provided with notes which related to meetings between the Sandwell Forum and the Trust and/or PCT. The Commissioner has established that the Sandwell Forum meetings of 22 June 2006, 15 August 2006 and 21 September 2006 were attended by members of the PCT and Trust and the outcome of the car parking survey was discussed. The Commissioner has also established that copies of these meeting notes were not provided to the complainant by the CPPIH when it originally responded to his request. For ease, and with the permission of the CPPIH, the Commissioner has now provided the complainant with a copy of all 12 meeting notes.

## The Decision

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47. The Commissioner's decision is that the public authority breached section 1 of the Act because it failed to provide the complainant with all of the information covered by the scope of his requests when it initially provided him with a response to his requests. However, following the further disclosures of information made during the course of the Commissioner's investigation, the Commissioner is now satisfied that the neither the CPPIH nor BCHG hold any further information covered by the complainant's requests.

## Steps Required

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48. As the Commissioner has concluded that all of the information covered by the scope of the requests has now been provided to the complainant, the Commissioner requires no steps to be taken.

## Other matters

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49. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

In this case it was not until the Commissioner's involvement that the complainant was provided with all of the information the CPPIH held which was covered by the scope of his request. Furthermore, the Commissioner had to ask the CPPIH to conduct a number of further searches, not just one further search, to ensure that all the relevant information was found. As has been noted in the main body of this notice the CPPIH's failure to identify what information it held led directly to a breach of the Act. Therefore, the Commissioner considers that the CPPIH should ensure that its records management policies conform to the section 46 Records Management Code of Practice in order to improve its ability to respond to requests for information promptly and accurately.

## Right of Appeal

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50. Either party has the right to appeal against this Decision Notice to the Information 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](mailto:informationtribunal@dca.gsi.gov.uk)

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

**Dated the 6<sup>th</sup> day of August 2007**

**Signed .....**

**Gerrard Tracey  
Assistant Commissioner**

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SK9 5AF**