

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 30 July 2008

Public Authority: West Hertfordshire Hospitals NHS Trust
Address: Hemel Hempstead General Hospital
Hillfield Road
Hemel Hempstead
Hertfordshire
HP2 4AD

Summary

The complainant made a request under the Freedom of Information Act 2000 (the "Act") to the West Hertfordshire NHS Hospitals Trust (the "Trust") for information relating to a document called "Comparison of Centralising Acute Services at Hemel Hempstead General Hospital or Watford General Hospital". The Trust failed to respond to this request despite repeated reminders to do so. The Commissioner has therefore decided that the Trust has failed to comply with section 1(1)(a) and (b) of the Act and must now do so within 35 days of the date of the notice. Furthermore the Commissioner has decided that the Trust failed to comply with the time for compliance under section 10(1) of the Act.

The Commissioner's Role

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

2. On 29 January 2008 the complainant made a request for the following information relating to a document called "Comparison of Centralising Acute Services at Hemel Hempstead General Hospital or Watford General Hospital".
3. In relation to costs, the complainant stated that the figure of £167 million in favour of Watford in the 2007 'comparison' paper was massively inflated over the estimates given in 2006, just one year earlier, when the difference was said to be

just £35 million. The complainant therefore asked for the detailed information on which this new estimate is based.

4. In relation to land, the complainant explained that he had not seen any previous assessment of the characteristics of the Hemel site. He stated that reference had been made to a report by a firm of surveyors but no detailed information was given on how they reached their conclusions nor the complainant asserted it is clear whether the summary provided in the Trust's paper is an accurate one. The complainant therefore asked for the information to enable him to assess these two points, such as the surveyors report itself.
5. Finally the complainant highlighted that no comparison was made between the characteristics of the Watford and Hemel sites, despite it being a 'comparisons' paper. The complainant asked whether any comparison between the sites was made or if not whether there had been any assessment of the Watford site which would enable a comparison to be made.
6. The complainant received no response from the Trust. The complainant sent the Trust a reminder of his request on 25 February 2008 but the Trust still failed to provide a response.

The Investigation

Scope of the case

7. On 13 March 2008 the complainant contacted the Commissioner to make a complaint as the Trust had failed to respond to his request for information.

Chronology

8. The Commissioner contacted the Trust on 27 March 2008 and reminded it of its duty to respond to a request for information under the Act. On 30 April 2008 the complainant contacted the Commissioner as he had still not received a response from the Trust. On 8 May 2008 the Commissioner contacted the Trust again asking it to respond to the complainant's request for information. On 31 May 2008 the complainant again contacted the Commissioner as he had still received no response from the Trust despite the two letters sent by the Commissioner reminding the Trust of its responsibilities under the Act.
9. In an email dated 10 July 2008 to the Commissioner, the Trust asserted that the complainant's letter of 29 January 2008 was a "normal exchange of letters and not an FOI request". The Commissioner directed the Trust to section 8 of the Act which defines what should be regarded as a request and explained that the complainant's letter of 29 January 2008 did amount to a request under the Act. The Trust accepted that the complainant had made his request under the Act and stated that it would be dealt with accordingly. However at the date of writing the Commissioner had received no response from the Trust.

Analysis

Procedural matters

Section 1

10. Section 1(1) of the Act 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.”*

11. The Commissioner has considered whether the Trust has complied with section 1(1) (a) and (b) of the Act.
12. In reaching a decision on this case the Commissioner has considered the fact that the Trust has provided no response at all to the complainant.
13. Furthermore the Trust had assured the Commissioner that it would respond to the complainant's request in response to letters sent to it from the Information Commissioner's Office in the course of the investigation. However the Trust's response was unforthcoming.
14. Having considered the above the Commissioner is satisfied that the Trust has not responded to the complainant's request in accordance with section 1(1)(a) of the Act as it failed to confirm or deny whether the information is held. Furthermore it did not respond in accordance with section 1(1)(b) as it failed to communicate any information held or state which exemption(s) applied.

Section 10

15. Section 10(1) of the Act states that:

“Subject to subsections (2) and (3), 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.”

16. The Commissioner has considered whether the Trust has complied with section 10(1) of the Act.
17. In reaching his decision, the Commissioner has considered that the Trust has provided no response at all to the complainant and therefore has not complied with section 1 of the Act within 20 working days.

The Decision

18. The Commissioner's decision is that the Trust did not comply with section 1(1)(a) and (b) of the Act.
19. Furthermore the Commissioner has decided that the Trust failed to comply with section 10(1) of the Act.

Steps Required

20. The Commissioner requires the Trust to respond to the complainant's request in accordance with section 1(1)(a) and (b) of the Act. The Trust needs to confirm whether or not it holds the requested information and if so, it must either communicate that information to the complainant or issue an adequate refusal notice.
21. The Trust must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to Comply

22. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court pursuant to section 55 of the Act and may be dealt with as a contempt of court.

Right of Appeal

23. 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@tribunals.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 30th day of July 2008

Signed

**Nicole Duncan
Head of FOI Complaints**

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

Legal Annex

General Right of Access

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.”

Section 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), 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.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or

(b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”