

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 February 2010

Public Authority: East Midlands Ambulance Service NHS Trust
Address: 44 Castle Gate
Nottingham
Nottinghamshire
NG1 7BJ

Summary

The complainant made three requests under the Freedom of Information Act 2000 (the "Act") to East Midlands Ambulance Service NHS Trust (EMAS) between August and December 2007 for various pieces of information supplied to Vale First Responders (VFR) from EMAS; copies of EMAS's board minutes for July 2007 and September 2007; and finally, he specifically requested the minutes of meetings relating to discussions of Community Responder Schemes (CFR) and a particular incident involving VFR and its subsequent follow-up. Some information was provided to the complainant but after considering the case the Commissioner is satisfied that the outstanding information requested is not held by EMAS. Furthermore the Commissioner considers that section 10(1) of the Act was breached as EMAS did not comply with section 1(1)(a) within 20 working days of the request.

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.

Background

2. The Commissioner understands that the Community First Responders are teams of volunteers who are trained by the Ambulance Service to a nationally recognised level and provide life saving treatment to people in their local communities. Vale First Responders are one of these voluntary charitable groups managed and controlled by EMAS.

3. The Commissioner has also been provided with additional information concerning the workings of the responder schemes by Browne Jacobson, solicitors acting on behalf of EMAS:

“ Each responder scheme has a co-ordinator. These co-ordinators meet with the EMAS representative 2 or 3 times a year to discuss how things are going etc. No formal minutes are taken of these meetings. However, a feedback sheet is completed and sent to each co-ordinator. There is no statutory requirement to have these meetings - EMAS considers it to be good practice. Therefore, there is no statutory requirement to hold the information. CFR schemes do not attract a budget. These schemes are used as a support to the Trust in order to assist with patient care.”

The Request

4. **First Request – 28 August 2007**

This request was sent to EMAS by email:

“I now have to formally ask for copies of the documentation supplied to VFR [Vale First Responders] from EMAS, and need to request this under the Freedom of Information Act. In particular all e-mails and letters between representatives of EMAS and members of VFR to include SMS messages. In particular apparently taking ownership of the actions regarding the attempt by VFR to restrict membership, and the contact report on the meeting with [named person] and [another named person] a couple of days before this. I understand from discussions with the VFR trustees that there is also an e-mail (apparently from [a named person] according to one of the trustees) accepting liability for the actions of May 22nd by EMAS.”

5. On 9 October 2007 the complainant chased EMAS for a response to an email he had sent on 25 September 2007. Amongst other issues, he asked about the response to his FOI request of 28 August 2007 and pointed out that EMAS was outside the statutory timeframe for a response. Again on 22 October 2007 the complainant sent an email chaser asking about the lack of a response. This was acknowledged by EMAS the following day and the issue of the response to his request addressed:

“...as far as I am aware any documentation that was connected with this was either copied or forwarded to you. I am not aware of any information that you have not had sight of. If you could let me know of any documentation you feel you have not had access to, I will gladly send your request through to the department that deals with Freedom of Information requests.”

6. The complainant replied on 23 October 2007:

“...with the exception of the letter you wrote to VFR (sic) which I now have a copy...I have not had sight of any correspondence as yet (other than that

between myself and VFR or myself and EMAS). The letters and emails from VFR state that EMAS have accepted liability for this matter based upon your letter, although as far as I can see your letter does not say this. I assume therefore there is other correspondence..."

The complainant provided the Commissioner with the letter from EMAS to VFR, dated 28 June 2007 and the letter from VFR to its members, dated 28 August 2007 but no further correspondence between EMAS and VFR.

7. **Second Request – 24 October 2007**

This request was sent to the FOI officer at EMAS:

"Please can you supply copies of the board minutes for July 2007 and September 2007 which I believe are the last sets. Copies do not appear to have been added to the website. Also a copy of the AGM report held on 17th September."

8. The complainant reminded EMAS on 14 November 2007 that they had 5 working days to respond to his request for board minutes. He also reminded EMAS again that he had not received any response to his 28 August 2007 request.

9. In a long letter to EMAS, dated 14 November 2007, the complainant addressed various issues unrelated to freedom of information but also mentioned outstanding issues related to this FOI request. On the same day EMAS wrote back to tell the complainant that the September Board minutes had not been ratified but would be available with the July minutes and sent to the complainant within a few days. These documents were sent to the complainant on 19 November 2007

10. **Third Request – 20 November 2007**

"I was specifically looking for the minutes of meetings relating to discussions of Community Responder Schemes, and in particular relating to the incident last June regarding VFR and its subsequent follow-up. I understand from a source Att (sic) EMAS that the report on this was presented at the September Board/Exec meeting, and also from other published documents [not provided by the complainant], that the area of governance and management of Community First Responder schemes was also discussed at other meetings in EMAS. I also note that the policy documents regarding CFR schemes have been updated since this incident, the last update being scheduled for sign off in October 2007, and I would be grateful for a copy of this new policy. I would therefore like to extend my FOI request to have copies of all board and management meeting minutes where CFR schemes have been discussed since June 2007, and in particular meetings relating to the incident as at June and its follow-up processes, and a copy of the report on the incident that was presented to the executive of EMAS. I would also be grateful for any further documents that arise connected to this matter following the date of this FOI request...Lastly, also under FOI, there was a recent CFR co-ordinators day. Please can I have copies of any presentations, minutes, documents and hand-outs relating to this meeting."

11. On 20 November 2007 EMAS responded to the request for Board Minutes as if it were a request to be put on a mailing list. EMAS suggested that the complainant look regularly at the internet for this information.
12. EMAS instructed a firm of solicitors, Browne Jacobson, to respond with the complainant regarding his FOI requests and various correspondence took place from November 2007 onwards.
13. An email was sent to the complainant on 7 December 2007 by EMAS. This email provided responses to various aspects of the complainant's requests. EMAS stated that the new policy on CFR schemes was withheld under section 22 as information intended for future publication. It was suggested that the complainant looked at EMAS's website for the minutes of Board and Management meetings. However, the complainant had requested informal or internal minutes of meetings. EMAS stated that there was no report generated from an internal review of the incident in question though the complainant refuted this, asserting that EMAS's lawyers had confirmed the existence of this report. EMAS sent the complainant an attachment of a presentation but it was pointed out by the complainant that there were no handouts sent and therefore it did not fully answer this aspect of his request.
14. On 17 December 2007 EMAS confirmed that there were no minutes, documents or handouts accompanying this presentation. EMAS said that the remainder of the complainant's email was being investigated. He replied on the same day accepting that no accompanying documents to the presentation were held and that this aspect of his request had been fulfilled.
15. The complainant wrote to Browne Jacobson and EMAS on 27 December 2007 to ask for an internal review of all of his requests. No specific points were made regarding the subject of the review by the complainant though it had been made clear on 7 December 2007 that:
 - The complainant did not accept that the meeting mentioned in his first request on 28 August 2007 had not been minuted (para.4)
 - He queried the publication date of the policy documents which he said had been due for publication in October 2007 (see para.10)
 - He asked for the informal meeting minutes claiming that there was documentary evidence for their existence (see para.7)
 - He claimed that an internal review had taken place which generated a report on the complaint made about "the incident" in June 2007 mentioned in the third request (detailed above at para.10)
 - The complainant felt that his FOI request had not been fulfilled because he had received no handouts from the presentation (see para.10). However, he subsequently accepted that this aspect was fulfilled (see paragraph 14 above).
 - He also asked about the copies of emails, sms messages, and internal reports connected with this matter and documentary evidence supporting a named person's evidence which was "at the root of this issue".

16. In the internal review, dated 10 July 2008, EMAS reviewed the requests made by the complainant and their responses:
- *“The initial FOI request received in August 2007 was responded to. Dialogue between [the complainant] and [a named person] took place. [The complainant] was informed that our Solicitors were in receipt of the concerns raised. There is no indication of the conclusion of this element.*
 - *[The complainant] requested copies of the Board minutes in October. These were supplied.*
 - *Follow on request from [the complainant] November 07. Request was for specific information in relation to CFR schemes and reference to a specific incident. A response was given which directed [the complainant] to the relevant information on our web site and advised that there was no evidence of reports or minutes of the nature [the complainant] believed.”*
17. The internal review also addressed points relating to another of the complainant's cases which is handled by the Commissioner under case reference FS5020478 but noted that –
- “Throughout this there have been a number of occasions where the Records Manager has reviewed the information supplied in relation to [the Complainant's] requests. There has also been the necessary required correspondence to identify any relevant documentation to be made available from other parties... Obviously this case is complex and has been over a protracted period of time. The subsequent repeated request for additional information would be expected in the context of [the complainant's] original concerns. I feel we have supplied all information which has been available, and where not this has been explained to the requester.”*
18. Browne Jacobson also stated that there were no outstanding documents remaining from the complainant's first request for information. It would appear that there were non-public minutes but there were no references to the complainant or the First Responders Scheme, according to EMAS, and therefore it did not consider these non-public minutes fell within the scope of this request.
19. Browne Jacobson confirmed that there had been some non-compliance with the Act in a letter of 6 August 2008:
- *“In all the complainant's requests for information from 28 August to 7 December 2007 he was not provided with details of his rights under the Act to have an internal review or his right to appeal to the ICO.*
 - *He was not provided with details regarding the exemption from disclosure relating to his request of 20 November 2007. EMAS relied on section 22 on the basis that the policies had not been ratified but did not state that it had considered the public interest test. EMAS felt that the public interest was best served by non-disclosure as it felt that unratified policies could confuse the public.*
 - *EMAS did not meet the 20 working day deadline for the complainant's first request.”*

20. The complainant replied to EMAS on 8 August 2008 with his reflections on the internal review and what matters he considered had been left unfulfilled. The Commissioner has outlined what he considers these unfulfilled matters to be in the 'scope of the case' section of this Notice.

The Investigation

Scope of the case

21. On 14 January 2008 the complainant contacted the Commissioner to complain about the way his requests for information had been handled. He particularly mentioned the request made on 28 August 2007 as not having been responded to. The complainant was also unhappy with the response to several of his other requests but was not specific about exactly what aspects he felt had been fulfilled or otherwise. Due to the lack of clarity as to what aspects of his requests the complainant wished to be addressed, the Commissioner wrote to the complainant on 26 February 2009 outlining the various points of his three requests that he considered to be outstanding. The complainant responded by email on 10 March 2009 confirming that he was happy with the issues identified by the Commissioner as requiring investigation. The investigation therefore centred around what was held or not held by EMAS in relation to the following points:

First request of 28 August 2007:

- copies of the documentation supplied to VFR [Vale First Responders] from EMAS.... In particular all e-mails and letters between representatives of EMAS and members of VFR to include SMS messages.
- The contact report on the meeting with [named person] and [other named person] a couple of days before this.
- the e-mail (apparently from [named person] according to one of the trustees) accepting liability for the actions of May 22nd by EMAS.

Second request of 24 October 2007:

- The non-public board minutes for July 2007 and September 2007
- Copy of the AGM report held on 17th September 2007

Third request of 20 November 2007:

- ...minutes of meetings relating to discussions of Community Responder Schemes, and in particular relating to the incident last June regarding VFR and its subsequent follow-up.
- a copy of the report on this incident (presumably the June incident) which was presented at the September Board/Exec meeting.

- a copy of the new policy documents regarding CFR schemes which were updated since this incident, the last update being scheduled for sign off in October 2007.
 - ...copies of any presentations, minutes, documents and hand-outs relating to this CFR co-ordinators' day.
22. EMAS applied section 22 (future publication) to the new policy document on CFR schemes as detailed in paragraph 10 and 13 above which was asked for as part of the complainant's third request (20 November 2007). However during the course of the investigation the information was supplied to the complainant on 15 June 2009. Therefore the Commissioner does not intend to consider the application of section 22 any further.
23. EMAS also confirmed that there were no accompanying written materials from the power point presentation delivered by the named person. EMAS felt that the complainant had accepted that this request was fulfilled in an email to them on 17 December 2007 in which he stated that he would reluctantly accept that this issue had been resolved although he found it surprising. The complainant was asked by the Commissioner in light of EMAS's response to confirm if this was the case in an email to him dated 15 April 2009, stating that unless he was able to provide evidence that further documentation was held the Commissioner would not be pursuing this issue any further. The complainant did not provide any evidence to support this issue and therefore this aspect of his third request is not considered any further in this notice.
24. On 15 May 2009 the complainant was told that it was not possible under FOI to ask for information that is not held at the time of the request. In this case, future copies of all meetings regarding CFR would have to be requested as and when each meeting took place.
25. The Commissioner also considered whether EMAS had responded to the complainant's request in compliance with section 10(1) of the Act.

Chronology

26. On 10 March 2009 the Commissioner wrote to inform EMAS that he had received a complaint from the complainant and that the case was eligible for investigation. He asked for the following questions to be answered:
- *"Please confirm if all the information from the three requests – 28 August, 24 October and 20 November 2007 - as specified in this letter has been provided to the complainant. If not, please specify in detail which sections/exemptions you have relied upon to withhold each item.*
 - *In the complainant's request of 24 October 2007 he asked for "copies of the board minutes for July 2007 and September 2007". He says that he has received the "open Trust papers, not the closed Trust board papers". Are there "closed" Trust board papers and, if so, have they been exempted or provided to [the complainant] as per his request of 24 October 2007?*

- *How can you be satisfied that there were no accompanying written materials from the power point presentation? Were any searches done to ensure that this was the case?"*
27. On 16 April 2009 EMAS confirmed that all information had been provided from the 3 requests, dated 28 August, 24 October and 20 November 2007, other than the 'closed' board papers requested on 24 October 2007 and clarified by the complainant on 20 November 2007. It was confirmed that, whilst there were 'closed' board papers, they did not refer to the incident the complainant specified or discussions of CFR schemes since June 2007.
 28. In the complainant's letter, dated 3 March 2009, he stated that he agreed to "shelve" matters with EMAS after some breaches of the FOI were acknowledged in the internal review. He also said that the agreement to shelve was based on the additional documents being provided to him. He said that, although these documents had not been provided, "I have no intention to resurrect the matter". However he wanted the Commissioner to consider the tardiness, non-compliance and incomplete answers he felt he had been given. Additionally he requested that the Commissioner keep any outstanding information on file in case of future breaches.
 29. The Commissioner wrote to the complainant on 15 May 2009 and, amongst other matters, referred to the request of 28 August 2007 where SMS messages had been requested. He stated that they are an electronic record and he would expect them to have been provided if they are held but that EMAS had stated that SMS messages were not used (see paragraph 43)
 30. In his 4 May 2009 letter to the Commissioner the complainant did not feel that all the information has been sent to him and wanted Browne Jacobson to resend it all, in view of their comments. It was confirmed by EMAS through Browne Jacobson on 6 August 2008 that, whilst there were 'closed' board papers, they did not refer to the incident the complainant specified or discussions of Community Responder Schemes since June 2007 and for that reason it had not been disclosed to him.
 31. The complainant was informed by the Commissioner in his letter of 15 May 2009 that he could not ask for all the 'closed' board papers as this was not the wording of the complainant's request of 20 November 2007 which had specified that he had only requested those board papers where CFR schemes were discussed. The complainant was informed that he would need to make a new request for this information.
 32. Further clarification was sought from Browne Jacobson by the Commissioner on 30 June 2009 in order to establish the level of searches that had been conducted and the general records management policy adopted by EMAS. The following questions were asked:
 - *What steps were taken to determine what recorded information is held relevant to the scope of the request? EMAS must provide a detailed account of the searches that it has conducted to determine this.*

Browne Jacobson replied (undated, but received on 1 July 2009), having spoken to the relevant staff, to the effect that the majority of communication is carried out over the telephone as the CFR schemes are informal. The matter was also discussed on a face to face basis with [a named person] who confirmed that everything that could be sent had been sent.

In relation to the meeting that took place between [named persons]. [A named person] was asked for a copy of the contact report and was informed by [the named person] that there was no report. [Named person] had written a letter to [named persons] outlining their meeting. No further clarification was requested. A copy of this letter was sent to the Commissioner (via Browne Jacobson) in May 2009.

Browne Jacobson also stated that there is no record of an email being sent from [named person] accepting liability. Letters contained within the file state that EMAS accepts no liability. These letters are between a variety of sources including the complainant's solicitor and also the Trust solicitor.

Enquiries were made with the relevant individuals and Browne Jacobson was advised that no report was produced. This is also supported by the fact that no mention is made in the September Board/Executive minutes of a report being produced.

33. • *If the information were held would it be held as manual or electronic records?*

Browne Jacobson replied that, if held, information may have been electronic or manual. The letter sent from [named person] to [named persons] is held in electronic format. A copy is also held in a manual file. If an email existed, it would have been electronic. However, a copy may have been included in the manual file (relating to the whole issue of CFR schemes) for completeness. However, no record of the information exists. If a report had been produced, it would have been held electronically and possibly also a paper copy held in the file for completeness. However, no report appears to have been completed. There has been a considerable amount of correspondence about the issues in question, the majority of which have been instigated by the complainant, therefore he would already have copies of these and any email responses to him.

34. • *Was any recorded information ever held relevant to the scope of the complainant's request?*

Browne Jacobson replied that all the information held in relation to the specific three requests referred to had been released (Legal Professional Privilege was cited for some of the requested information, however, the Commissioner decided that the information to which this had been applied was, in fact, personal data and it was passed to our data protection section). Browne Jacobson asserted again that a letter is still held detailing the meeting referred to in the complainant's first request, but no minutes were ever taken of this meeting. It also clarified again that the email referred to by the complainant in his first request does not exist. Finally after extensive enquiries with the relevant staff, it appears that, in relation

to the third request, no formal report of the incident referred to by the complainant was produced.

35. • *If recorded information was held but is no longer held, when did EMAS cease to retain this information?*

Browne Jacobson replied stating that this question was not applicable for the reasons given above.

36. • *Does EMAS have a record of the document's destruction?*

Browne Jacobson stated that that this question was not applicable as it believed no documents had been destroyed.

37. • *What does EMAS's formal records management policy say about the retention and deletion of records of this type? If there is no relevant policy, can EMAS describe the way in which it has handled comparable records of a similar age?*

Browne Jacobson sent the Commissioner a copy of the Trust 'Retention and Disposal of Information Policy'. This details the timescales for the retention of documentation and is based on the Department of Health guidance – 'Records Management – NHS Code of Practice 2009'.

38. • *Is there a business purpose for which the requested information should be held? If so what is this purpose?*

Browne Jacobson stated that EMAS does not have a formal policy on the capture of minutes, meetings and reports. Minutes of formal committees/groups etc. are captured and retained in accordance with the 'Retention and Disposal of Information Policy'. It is down to the discretion of the Chair of an informal meeting as to whether official minutes or notes are taken. With regard to the matter in question, meetings are informal and often take place in the evenings and away from an office environment. Minutes or notes are rarely taken. Reports will be generated if it is deemed necessary.

39. • *Are there any statutory requirements upon EMAS to retain the requested information?*

Browne Jacobson told the Commissioner that there is no obligation to retain the requested information.

Analysis

40. The full text of the sections of the Act which are referred to can be found in the Legal Annex at the end of the notice, however the relevant points are summarised below.

Substantive Procedural Matters

41. 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.”*

42. The Commissioner has considered whether EMAS has complied with section 1(1)(a) and (b) of the Act.

43. In investigating cases involving a disagreement as to whether or not information is in fact held by a public authority, the Commissioner has been guided by the approach adopted by the Information Tribunal in the case of *Linda Bromley & Others v The Information Commissioner and The Environment Agency (EA/2006/0072)* in which it was stated that, “there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority’s records”. It was clarified in that case that the test to be applied as to whether or not information was held was not certainty but the balance of probabilities. In deciding where the balance lies the Commissioner’s general approach is to consider the scope, quality, thoroughness and results of the searches carried out by the public authority, in this case EMAS, as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held.

44. In the later case of *Ames v The Information Commissioner and The Cabinet Office (EA/2007/0110)*, Mr Ames had requested information about the September 2002 ‘Iraq’s Weapons of Mass Destruction’ dossier. The Tribunal said that the Iraq dossier was “...on any view an extremely important document and we would have expected, or hoped for, some audit trail revealing who had drafted what....” However, it said that the evidence of the Cabinet Office was such that the Tribunal could nonetheless conclude that they did not “....think that it is so inherently unlikely that there is no such audit trail that we would be forced to conclude that there is one...”

45. **First Request - 28 August 2007**

EMAS has confirmed that all of the information held which it considers is caught by the scope of the complainant’s 3 requests, dated 28 August, 24 October and 20 November 2007 has been provided.

Given the checks carried out and the reply by Browne Jacobson (undated, but received on 1 July 2009) that the majority of communication is carried out over the telephone as the CFR schemes are informal, the Commissioner has concluded that in relation to emails and letters referred to in the first request of 28 August 2007, on the balance of probability, no further information is held.

SMS messages are an unusual method of official communication, transient, and likely to have been deleted, if used. On 22 April 2009 Browne Jacobson confirmed that SMS messages were not used and were therefore not held. The complainant held to his opinion. The Commissioner has based his decision on the balance of probability and concluded that, without evidence to the contrary, SMS messages do not appear to have been used and were not therefore held.

Concerning the contact report on the meeting which took place between [named persons] the Commissioner concludes that, on the balance of probability, no such report was held. Browne Jacobson's enquiries were unable to identify any record of an email being sent from [named person] accepting liability for events which occurred on 22 May 2007 and, as stated earlier, letters contained within the file state that EMAS accepted no liability. Again, for the reasons stated above the Commissioner concludes, on the balance of probability, that no such email was held.

46. **Second Request - 24 October 2007**

All the public board minutes have been disclosed to the complainant. The complainant subsequently enquired about non public (or closed) minutes. It was confirmed by EMAS through Browne Jacobson on 6 August 2008 that, whilst there were 'closed' board papers, they did not refer to the incident the complainant specified or discussions of Community Responder Schemes since June 2007 and for that reason it had not been disclosed to him.

EMAS also subsequently confirmed to the Commissioner on 6 August 2009 that there was no AGM Report, dated 17 September 2007, as EMAS was unaware of any meeting taking place on that date. The Commissioner has concluded, on the balance of probability, that no further information is held by EMAS which falls within the scope of the complainant's request.

47. **Third Request – 20 November 2007**

EMAS has disclosed all public minutes it holds falling within the scope of the complainant's request. Once again it was confirmed by EMAS through Browne Jacobson on 6 August 2008 that, whilst there were 'closed' board papers, they did not refer to the incident the complainant specified or discussions of Community Responder Schemes since June 2007 and for that reason it had not been disclosed to him. The Commissioner considers that, on the balance of probability, the requested information relating to CFR Schemes did not exist and as a result could not be provided to the complainant.

48. Having considered the specific responses of EMAS in paragraphs 45-47, the responses outlined in paragraphs 32-39, and the previous Tribunal decisions highlighted, at paragraphs 43 and 44 above, the Commissioner considers that, on the balance of probabilities, there is no further information held other than that which has been disclosed to the complainant. The Commissioner, having considered EMAS's formal policy on the retention of information (see paragraph 37), is satisfied that there is nothing to suggest non-compliance with that policy or which would lead him to conclude there is likely to be further information held.

Therefore the Commissioner considers that EMAS has complied with section 1(1)(a) and (b) of the Act.

Procedural Requirements

Section 10

49. Section 10(1) of the Act requires that a public authority must comply with section 1(1)(a) and (b) promptly and in any event not later than the twentieth working day following the date of receipt of the request.
50. As EMAS did not confirm all of the information it held relevant to the scope of the request, nor did it disclose information requested on 28 August 2007 within 20 working days, the Commissioner considers that it breached section 10(1) of the Act.

The Decision

51. The Commissioner's decision is that EMAS complied with section 1(1)(a) and (b) of the Act.
52. However the Commissioner has decided that EMAS did not comply with the requirements of section 10(1) of the Act, as it did not fully respond to the complainant's request within twenty working days.

Steps Required

53. The Commissioner requires no steps to be taken.

Other Matters

54. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters:
55. The complainant submitted requests on 28 August 2007, 24 October 2007 and 20 November 2007. On 27 December 2007 the complainant formally asked EMAS to conduct an internal review. However the internal review result was only completed on 6 August 2008 in response to a request by the Commissioner.

56. The Commissioner's awareness guidance on internal reviews comments on the time it should take a public authority to complete an internal review.¹ The guidance suggests that in most cases 20 working days will be sufficient to conduct a review and even in more complicated and involved cases the time taken should not exceed 40 working days.
57. Clearly by taking over 7 months to complete the internal review EMAS failed to meet the deadlines recommended in the Commissioner's guidance.

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http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/foi_guidance_practice_guidance_5.pdf

Right of Appeal

58. 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
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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 16th day of February 2010

Signed

**Gerrard Tracey
Assistant Commissioner**

**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.”