

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 December 2013

Public Authority: Monitor
Address: Wellington House
133-155 Waterloo Road
London
SE1 8UG

Decision (including any steps ordered)

1. The complainant has requested particular pieces of correspondence and documents from Monitor. Monitor provided the complainant with all of the information requested apart from one letter which it said it does not hold.
2. The Commissioner's decision is that Monitor does not hold the letter under section 1(1)(a) of the Freedom of Information Act 2000 (FOIA). The Commissioner does however consider Monitor breached section 10(1) FOIA as it did not provide the information it does hold within 20 working days of the request being made.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 11 January 2013, the complainant wrote to Monitor and requested information in the following terms:
 1. I realise that Monitor is well aware of the information in the preamble to the request, but it is necessary to specify the information requested.
 2. On 3rd May 2010 Janet Soo-Chung, Chief Executive of North Lancashire Teaching Primary Care Trust, wrote to Tony Halsall, Chief Executive of University Hospitals of Morecambe Bay NHS Trust about 'service issues at UHMB'.

3. PCT documents show that there had been no reply from Halsall by 24th May, and a written response was not forthcoming until 14th June.
 4. On 26th May, a paper entitled 'Patient Safety and Clinical Quality Issues at University Hospitals of Morecambe Bay NHS Trust' was presented at the PCT Trust Board meeting.
 5. On 1st June there was a formal meeting between Soo-Chung, Halsall and their respective teams specifically concerned with the 'service issues at UHMB'.
 6. On 3rd June Soo-Chung wrote again to Halsall about the 'service issues' and the meeting of 1st June.
 7. On 14th June, Halsall replied to Soo-Chung.
 8. On 15th June Soo-Chung attended a meeting with Monitor about the UHMB application for authorisation as a Foundation Trust.
 9. On 1st October 2010 Monitor authorised UHMB.
 10. On 11th October 2011 Monitor intervened at UHMB.
 11. This FoI request is for the documents specified in points 2, 4, 6 and 7.
5. Monitor responded on 14 February 2013. It said that it did not hold item 6 of the information request. It withheld item 2 of the request in its entirety (although it clarified that the letter held was dated 5 May 2010). It disclosed a redacted version of the information requested at part 4 and 7 of the request. The information was withheld and redactions were made under section 31(1)(c) FOIA which relates to the administration of justice and section 33 FOIA which relates to audit functions.
 6. The complainant requested an internal review on 25 and 27 March 2013. Monitor sent the outcome of its internal review on 9 May 2013. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 17 May 2013 to complain about the way his request for information had been handled.
8. During the course of the Commissioner's investigation, Monitor disclosed items 2, 4 and 7 of the request in full.

9. The Commissioner has considered whether or not Monitor holds the information requested at part 6 of the request under section 1(1)(a) FOIA and whether Monitor breached section 10 FOIA in the way in which it handled this request.

Reasons for decision

Section 1

10. Section 1(1)(a) of FOIA states that, "Any person making a request for information to a public authority is entitled – to be informed in writing by the public authority whether it holds information of the description specified in the request".
11. Monitor explained that if it had held the letter, it would most likely have been received as part of an information request made by Monitor to University Hospitals of Morecambe Bay NHS Trust (the Trust). It said that it usually receives this type of information in electronic form and this is consistent with the way it received the other three items of correspondence that it has disclosed to the complainant. However, it said that occasionally it may receive manual documents which are then filed manually. It confirmed that the assessment team do not store documents on laptops and laptops are only provided occasionally to the assessment team to facilitate note taking. Therefore the information it receives electronically would either be located on its email system or filed in its electronic central filing system. In terms of the assessment of applicant foundation trusts, it said it has a systematic filing system that the team uses to file the data relating to the assessment. It also said that information requests made by Monitor to a Trust are clearly logged onto its system and one of the key responsibilities of the assessment team is to file the information received as part of the evidence for the assessment decision.
12. It said that in terms of the search for the information, at the time of the original request, a thorough search of its records, electronic and manual, to identify whether it held the correspondence requested was conducted. It said that this is in accordance with Monitor's standard practice in respect of all FOI requests. It also checked its records to confirm that Monitor had made an information request to the Trust on 22 June 2010 for its correspondence with North Lancashire PCT about concerns on quality. It said that the information it requested was received later that day via an email from the project lead at the Trust and contained the following information:

Document type

Letter	Janet Soo Chung	Tony Halsall	05-May-10
Letter	Janet Soo Chung	Tony Halsall	27 May-10
Letter	Tony Halsall	Janet Soo- Chung	28-May-10
Board report	North Lancs PCT	Received Morecambe Bay	10 Jun -10
Letter	Tony Halsall	Janet Soo- Chung	14 Jun 10

13. It said that it would be logical to conclude if it had received the 3 June letter it would have been included as part of this information request as it included correspondence both pre and post 3 June 2010 and was directly related to the request Monitor made. Monitor also checked that the dates on the electronic letters were correct in case the files were wrongly named to be sure that it did not have a letter dated 3 June 2010.
14. Monitor confirmed that its records management policy means that decisions relating to the destruction of records fall within the responsibility of directors, which in turn means that staff would not unilaterally delete any records. Such deletion would require consultation with senior managers. It said that no senior managers have been consulted about the retention or destruction of this letter because it was never held by Monitor.
15. Based upon the submissions provided by Monitor, the Commissioner is satisfied that it has conducted a thorough search for the letter described at item 6 of the request dated 3 June. Monitor has set out the information that was provided to it relating to the issues to which the complainant's request relates. It has provided the complainant with the information it does hold which falls within the scope of the request but has concluded that it does not hold a letter dated 3 June from Janet Soo-Chung to Tony Halsall. The Commissioner therefore considers, on the balance of probabilities, item 6 of the original request is not held by Monitor under section 1(1)(a) FOIA.

Section 10

16. Under section 10(1) FOIA a public authority should disclose the information held within the scope of a request within 20 working days of that request being received unless it is exempt from doing so.
17. In this case, Monitor did disclose the information requested at parts 2, 4 and 7 of the request but it did not do this within 20 working days of the request being made. Monitor therefore breached section 10(1) FOIA in its handling of this request.

Right of appeal

18. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

19. 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.
20. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF