

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 March 2018

Public Authority: Dr K.E. Hosie, Dr L.P.J. Hosie, Dr J.F. Davies,
Dr J Graham, Dr C Hart and Dr P Glatzel,
Partners at The Dicconson Group Practice

Address: Boston House
Frog Lane
Wigan
WN6 7LB

Decision (including any steps ordered)

1. The complainant has requested information relating to how Dicconson Group Practice (DGP) handle complaints about racism. DGP stated that it does not have a separate policy for complaints about racism. DGP provided the complainant with a copy of its generic complaints policy. The complainant is concerned that DGP has not complied with section 1(1), section 10(1) and section 17(1) of the FOIA.
2. The Commissioner's decision is that DGP has complied with its obligations under section 1(1), section 10(1) and section 17(1) of the FOIA.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.
4. The Commissioner notes that the medical practice itself is not a public authority for the purposes of the FOIA. Rather, each GP within the practice is a separate legal person and therefore each is a separate public authority. The Commissioner acknowledges that when an applicant makes a freedom of information request to a medical practice it is reasonable to expect for convenience that the practice will act as a single point of contact. However, each GP has a duty under section 1 of the FOIA to confirm or deny whether information is held and then to provide the requested information, subject to the application of any exemptions. For ease and clarity, this decision notice refers to the Practice where appropriate in detailing the correspondence and analysis that has taken place.

Request and response

5. On 9 January 2017, the complainant wrote to DGP and requested information in the following terms:

"Please inform me whether or not you hold the information specified below, and if you do please send me a copy of all the recorded information that you hold fitting the criteria of my requests.

1). If during a 2009 GP appointment, anytime between 01/04/09 and 31/12/09, a patient made a complaint (verbal or written) to the GP that your organisation was racist:-

- A. How should and must the GP handle such a complaint.*
- B. What should and must your organisation do with such a complaint.*
- C. Where and how would you record such a complaint.*

2). If during a 2013 GP appointment a patient made a complaint (verbal or written) to the GP that your organisation was racist:-

- A. How should and must the GP handle such a complaint.*
- B. What should and must your organisation do with such a complaint.*
- C. Where and how would you record such a complaint."*

6. DGP responded on 1 February 2017. It stated that it did not hold "a separate policy for complaints of racism" and explained that "such complaints would be dealt with in the same way as any other complaint in accordance with the generic complaint policy". DGP provided the complainant with a copy of the generic complaints policy.
7. On 1 March 2017, the complainant requested an internal review of his FOIA request, stating that DGP's response was contrary to the FOIA and the Commissioner's guidance as it had failed to provide him with the following within the 20 working days –
- Confirm or deny whether it held the information requested.
 - A copy of the recorded information it held fitting the criteria of the request.
 - A proper/valid refusal notice.
8. On 29 April 2017, the complainant followed up his request for an internal review with DGP, asking for an update on when he could expect a response.
9. DGP responded on the 2 May 2017 and explained that it did not appear to have received the complainant's request for an internal review. It advised that it had logged a call with its system suppliers to investigate.

DGP also explained that it would now carry out an internal review of the response it sent to the complainant on the 1 February 2017.

10. Following an internal review DGP wrote to the complainant on 11 May 2017 and maintained its original position.

Scope of the case

11. The complainant contacted the Commissioner on the 14 June 2017 to complain about the way his request for information had been handled, and in particular that DGP failed, within 20 working days to –
 - Confirm or deny whether they held the information of the description specified in his FOIA request of 9 January 2017.
 - Provide him with a copy of the information he requested.
 - Provide a proper/valid refusal notice.
12. The Commissioner's investigation has focussed on whether DGP has complied with its obligations under section 1(1), section 10(1) and section 17(1) of the FOIA.

Reasons for decision

Section 1 – general right of access

13. Section 1(1) of the FOIA says that an individual who asks for information from a public authority is entitled to (a) be informed whether the authority holds the information and (b) if the information is held, to have that information communicated to them.
14. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – in accordance with a number of First-Tier Tribunal decisions – applies the civil standard of the balance of probabilities.
15. In its submission to the Commissioner, DGP has stated that all complaints are dealt with using the single practice complaints policy. DGP has explained that as there is only one policy there was no search for this information as no separate policy exists or has ever existed.
16. DGP has also stated that there is a statutory requirement to have a complaints policy in place and it has one in place.

17. The Commissioner understands why the complainant may be of the view that DGP holds a policy for dealing with complaints about racism. However, DGP has stated that it only has one complaints policy, which it provided to the complainant in response to his request. The Commissioner has not been provided with any evidence to suggest that DGP holds the requested information or is required to have such a policy. The Commissioner is therefore satisfied that, on the balance of probabilities, DGP does not hold the requested information and has complied with its obligations under section 1(1) of the FOIA.

Section 10 – time for compliance

18. Section 10(1) of the FOIA says that a public authority should comply with section 1(1) promptly and no later than the twentieth working day following the date of receipt.
19. The request in question was made on 9 January 2017, therefore DGP should have provided its response to the request in compliance with section 1(1) of the FOIA by no later than the 6 February 2017.
20. DGP provided a response to the request on the 1 February 2017, in which it confirmed that it did not hold "*a separate policy for complaints of racism*" but provided the complainant with a copy of its generic complaints policy. DGP's response was provided 17 working days following receipt of the request.
21. The Commissioner is therefore satisfied that DGP has complied with section 10(1) of the FOIA.

Section 17 – refusal of request

22. Section 17(1) of the FOIA states that where a public authority refuses a request for information it must provide the applicant with a refusal notice explaining the exemption(s) relied upon within the time for compliance provided in section 1(1).
23. As DGP has confirmed that it does not hold the requested information, it would not be required to issue a refusal notice as required under section 17(1) of the FOIA. A refusal notice is only required if a public authority holds the requested information and considers some or all of it is exempt from disclosure under Part II of the FOIA.

Other matters

24. The complainant is also concerned about the fact that DGP stated it did not appear to have received his internal review request dated 1 March

2017, resulting in its internal review response taking longer than the Commissioner's guidance recommends.

25. The complainant has referred to a decision notice she issued to DGP on the 29 March 2017 (FS50616446), in which DGP had also claimed that it had not received correspondence relating to a previous FOIA request submitted to DGP by the complainant. The complainant has specifically referred to paragraph 21 of this decision notice which states that DGP *"has confirmed that it has dedicated members of staff who will now check the mailbox throughout each day."* The complainant is of the view that the above confirmation, and in particular the part about DGP's mailbox being checked throughout the day *"is evidenced as worthless"* due to the acknowledgements he received from DGP in response to his information request and internal review correspondence, which states –

"Please do not submit any clinical queries or request call backs via this form as it is not monitored on a daily basis."
26. In DGP's acknowledgement of the complainant's chaser to his internal review request dated 2 May 2017, it explained that it did not appear to have received the request for internal review. It confirmed that it had logged the matter with its systems suppliers to investigate.
27. The Commissioner asked DGP to provide her with the outcome of this investigation.
28. DGP has explained that the matter was raised with Greater Manchester Commissioning Support Group who were unable to locate this request on any back up system. It stated that it would appear that it was never received in the first instance.
29. With regards to the complainant's comments about DGP checking its mailbox throughout the day, DGP has confirmed that it does have staff who check the mailbox throughout the day and the primary intention of the disclaimer was to ensure that patients do not raise clinical queries or matters that require urgent attention.
30. DGP has stated that, as was noted by the complainant, the disclaimer previously read *"please do not submit any clinical queries or request call backs via this form as it is not monitored on a daily basis"*. However, DGP has confirmed that to reflect more accurately the intention of the 'contact us' page, it has amended the disclaimer which now includes the phrase *"please do not use this form to request call backs or ask specific clinical request questions which require an immediate response"*.

31. The Commissioner highlights that internal reviews are referred to in the section 45 Code of Practice.¹ The code provides guidance on the practice that would be desirable for public authorities to follow to meet their obligations under the FOIA. The code advises that an internal review should not take longer than 20 working days in most cases. Although, in this case, there is no firm evidence that the DGP received the first internal review request and therefore failed to carry out the internal review in a timely manner, the Commissioner would like to remind DGP of the requirements of the code for future requests.

¹ <https://ico.org.uk/media/for-organisations/documents/1624144/section-45-code-of-practice-request-handling-foia.pdf>

Right of appeal

32. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

33. 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.
34. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF