

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 February 2019

Public Authority: Dr Collins & Partners
Address: Beccles Medical Centre
St Mary's Road
Beccles
Suffolk
NR34 9NX

Decision (including any steps ordered)

1. The complainant has requested information relating to communications from Great Yarmouth and Waveney Clinical Commissioning Group (the CCG) to Beccles Medical Centre (the Practice) instructing doctors that they are no longer allowed to prescribe Liothyronine Sodium to their patients. The Practice has stated that it does not hold the requested information.
2. The Commissioner's decision is that the Practice does not hold the requested information. However, she has recorded a breach of section 10 of the FOIA, as the Practice failed to respond to the complainant's request within 20 working days of receipt.
3. The Commissioner does not require any further steps to be taken as a result of the 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 13 March 2018, the complainant wrote to the Practice and requested information in the following terms:

"Under the Freedom of Information Act could you please send me a copy of the communications from the Great Yarmouth and Waveney Clinical Commissioning Group instructing doctors that they are no longer allowed to prescribe Liothyronine Sodium to their patients."

6. On 20 March 2018, the Practice wrote to the complainant acknowledging the request, explaining to the complainant that it was liaising with the CCG with regards to the communications that the complainant had requested, and advising that it would contact the complainant when it had further information.

7. On 12 April 2018, the complainant wrote to the Practice chasing a response to her request. She explained that she did not see why the Practice needed to ask the CCG for this information, as she had asked for information the CCG sent to the Practice, and the Practice should surely be able to provide the communications.

8. On 16 April 2018, the Practice wrote to the complainant acknowledging receipt of her letter and explaining that it had *"received information about Liothyronine Sodium from the CCG on Friday 6th April"*. The Practice advised the complainant that it was clarifying with the doctor about how he would have received the information.

9. On the 4 May 2018, the Practice wrote to the complainant stating that it was trying to establish how the information was received by the surgery.

10. On 5 May 2018, the complainant wrote to the Practice requesting an internal review. The Practice acknowledge receipt of the internal review request on 18 May 2018.

11. The Practice responded to the request on 21 May 2018 and explained that:

*"I have spoken to the staff who deal with the Prescribing Incentive Scheme and they advise that they received communication via email from the CCG advising of changes required to drug items and giving guidance on what to do, but they do not have a copy of a specific email with regard to Liothyronine. They also have access to the Eclipse system which gives alerts on changes to drugs and on this system it states: **Patients on Liothyronine** - please review history and consider change to levothyroxine as this drug is not licensed for long-term use."*

The Practice apologised to the complainant for not being able to provide her with the requested communications.

12. On 23 May 2018, the complainant wrote to the Practice and requested an internal review.

Scope of the case

13. The complainant initially contacted the Commissioner on 28 April 2018 to complain about the Practice's failure to respond to her request for information.
14. On 10 May 2018, the Commissioner wrote to the Practice advising it to respond to the request within 10 working days. The Practice responded to the request on 21 May 2018.
15. On 24 May 2018, the complainant contacted the Commissioner to advise about the Practice's response and that she had still not received an answer to her question.
16. The Commissioner contacted both the complainant and the Practice again on 20 June 2018, informing them that the complaint had been deemed eligible for formal consideration under section 50 of the FOIA.
17. It is noted that the Practice has not carried out an internal review in this case. The Commissioner contacted the Practice about responding to the complainant's internal review request. The Practice advised that it did not respond to the internal review request because it had received a letter from the Commissioner stating that she was now looking into the matter. The Practice also advised that it was not sure what else it could say about the matter.
18. The Commissioner does have discretion to accept a complaint for full investigation without an internal review and she exercised her discretion in this case. This is because the request for internal review was made by the complainant, and in this case the Commissioner felt there would be no benefit in asking the complainant to start the process again.
19. The Commissioner considers the scope of this case is to determine whether the Practice is correct when it says that it does not hold the requested information.

Reasons for decision

Section 1 – general right of access

20. Section 1(1) of 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.
21. In scenarios where there is some dispute between the nature or amount of the information identified by a public authority, and the nature or 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.
22. The Practice has stated in its submission to the Commissioner, that the searches it carried out to locate information falling within the scope of the request included searches of past emails received from the CCG by staff members that are involved in the Prescribing Incentive Scheme, advising of changes required to drug items and giving guidance on what to do. The Practice has confirmed that the searching of these emails would have been likely to have included any guidance regarding Liothyronine if it was held. The Practice has stated that it also carried out searches of the Eclipse system, which it says gives alerts on changes to drugs.
23. In particular, the Practice has stated that searches were made for emails received from the CCG relating to the Prescribing Incentive Scheme and drug changes, and for Liothyronine on the Eclipse system
24. The Practice has confirmed that if the requested information was held, it would be held electronically.
25. The Practice has stated that it has been unable to find a copy of a specific email relating to Liothyronine. The Practice has explained that it is not known whether this was received and deleted once actioned, or whether the information was received via other means.
26. The Practice has explained that its Records Retention Policy does not cover records of this type. It went onto explain that its standard procedure for information of this type that it receives is to only retain the information for as long as it is needed. The Practice has advised that, as the information is not directly connected to a patient, it is not scanned onto their medical records. However, the guidance received would be actioned for those patients on the particular medication. The Practice has stated that if the information were needed again, it would search for it on the Eclipse system.

27. The Practice has stated that it is not aware of any statutory requirements which require it to retain the requested information.
28. In conclusion, the Practice has confirmed that its position remains as stated in its response to the request i.e. that it does not hold the information being sought.
29. The Commissioner wrote to the complainant on the 16 January 2019 outlining the Practice's response and providing a preliminary view that, on the balance of probabilities, the Practice does not hold any information falling within the scope of the request.
30. On the 19 January 2019, the complainant responded to the Commissioner advising that she cannot accept the Commissioner's preliminary view of her complaint. The complainant referred to the Practice's letter to her dated 16 April 2018, which stated that the Practice had "*received information about Liothyronine Sodium from the CCG on Friday 6th April*". The Commissioner understands that the complainant is of the view that the information the Practice received from the CCG on the 6 April 2018 is the information she is seeking.
31. The Commissioner wrote to the complainant on 31 January 2019 and explained that the FOIA gives an individual the right to access recorded information held by public authorities at the time the request for that information is received.
32. In this case, any information provided by the CCG to the Practice on the 6 April 2018 would not fall within the scope of the complainant's request of the 13 March 2018, because the information was not held by the Practice at the time of receiving the complainant's request for information. The Commissioner can only consider whether the Practice held the communication at the time of receiving the complainant's request for information on 13 March 2018.
33. On the 6 February 2019 the complainant responded to the Commissioner advising that it is her understanding of the Practice's letter of 6 April 2018 that this is the same information she was seeking. The complainant is of the view that the information the Practice received from the CCG on the 6 April 2018 is the same information that the Practice has previously received, so she does not see that the dates matter here.
34. The complainant has also advised that she understands that the CCG sent a notification to all GP Practices in February and March 2016, giving GPs discretion on whether to stop a patient's prescription of Liothyronine or send the patient for review.

35. The complainant therefore finds it hard to accept the Commissioner's view and would like to appeal to the First-tier Tribunal.
36. The Commissioner understands the reasons why the complainant considers the information should be held. However, she can only consider what information was actually held at the time the request is received.
37. As the Commissioner has not been provided with any evidence to show that the Practice held the requested communications at the time of the request, and having considered the response from the Practice, it is the Commissioner's view that, on the balance of probabilities, the Practice did not hold the requested information at the time of the request.

Procedural matters

Section 10 – Time for compliance

38. The Commissioner notes that the Practice's response to the request for information exceeded the time limit of 20 working days from receipt of the request. The Commissioner has recorded a breach of section 10 of the FOIA against the Practice as a result.

Right of appeal

39. 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

40. 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.
41. 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
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