

Freedom of Information Act 2000 (FOIA) Decision notice

Date: 8 October 2021

Public Authority: St George's University Hospitals NHS
Foundation Trust

Address: Blackshaw Road
Tooting
London
SW17 0QT

Decision (including any steps ordered)

1. The complainant has requested all emails that the chief nurse has sent/received in relation to "do not resuscitate" (DNR) discussions during the Covid pandemic. St George's University Hospitals NHS Foundation Trust (the Trust) has confirmed that no information is held falling within the scope of the request under section 1(1)(a) FOIA.
2. The Commissioner considers that on the balance of probabilities, there is no recorded information held by the Trust under section 1(1)(a) FOIA falling within the scope of the request.
3. The Commissioner requires no steps to be taken.

Background

4. On 26 August 2020 the complainant requested information of the following description:
 - "1. Documents relating to St. George's University Hospital's policy on "do not resuscitate" (DNR) orders for patients infected with covid-19 during 2020.
 2. E-mails between hospital administrators discussing DNR policy/orders for patients infected with covid-19 (N.B. please redact the names of any individuals who are not in public facing roles).

Please provide the afore-mentioned information via e-mail."

5. On the 28 August 2020 the complainant revised the second question as follows:

"2. Please provide emails sent by Ward Managers in relation to DNR policy/orders for Covid 19 patients."

6. On 26 October 2020 the Trust responded. It indicated that the request may exceed the cost limit under section 12 FOIA and asked the complainant to refine the request.
7. The Trust later followed up the response on 9 November 2020, explaining that, "The Trust does not hold information requested as there was no action taken pertaining to your request. We do not give names of staff under section 40 of FOIA as this is regarded as personal information".
8. The complainant replied on the same date, explaining that, "I do not want the names of the members of staff who are discussing DNR policy. I would simply like their job titles. I would be grateful for this information". On the same date the Trust responded, "Under FOIA information requested is not held as it's not held in a structured form."

Request and response

9. Following the above correspondence between the complainant and the Trust, on 9 November 2021 the complainant made a refined request for the following information:

"In which case, I will ask for all emails that the chief nurse has sent/received in relation to DNR discussions during the Covid pandemic. You stated in a previous e-mail, dated 26 October 2020, that "There was a discussion about Covid-19 DNR". I would greatly appreciate this email, too. Please redact the chief nurse's name (along with the names of any other individuals who are not in public-facing roles) from the correspondence to ensure compliance with FOI rules."

10. On 10 November 2020 the Trust explained that, "Discussions of some sort took place (and discussions can happen in various form e.g. verbal) reliant on national guidelines, this did not progress and the matter closed. Under FOIA information is not held if discussions are not held in a structured form. NB: Emails were transient and we are not required to

file transient emails. I am afraid we are unable to progress your request for these reasons.”

11. On the same date the complainant confirmed he was dissatisfied with the Trust’s response and asked what the Trust meant by ‘structured form’ and ‘transient’ and whether it considered it was not legally obliged to comply with the request. Essentially asking the Trust to review its response. The complainant chased this up on 16 and 21 November 2020. The Trust did not respond.
12. The ICO wrote to the Trust on 14 December 2020 asking it to conduct an internal review.
13. On 8 February 2021 the Trust wrote to the complainant with the result of the internal review it had conducted in relation to the original request made on 26 August 2020. In relation to part 1 of the request made on 26 August 2020 it provided the complainant with the Trust’s ‘do not attempt resuscitation policy’. However it clarified that whilst these policies are due for review they are currently in use at the Trust. It confirmed that the Trust did not create a new or different policy for Covid-19 patients. In relation to part 2 of the request refined on 28 August 2020 it provided the following response: “The Trust has a number of ward managers and to examine each of these staff members email address would indeed take over 18 hours, Appropriate Limit, to complete therefore the Trust would need to apply an exemption in line with section 12 of the Freedom of Information Act. It was however important to note that it was unlikely that any Ward Manager would be discussing DNR policy/orders for patients infected with Covid-19 which falls outside the Trust’s policies which we have attached for your information. Any deviation from this policy would require approval by the Trust Board and I can confirm that there was no new DNR policy adopted by the Board specifically related to Covid-19 patients.”

Scope of the case

14. The complainant wrote to the ICO to confirm he was dissatisfied with the Trust’s internal review as in the review the Trust had claimed that no discussions surrounding DNR policy in relation to Covid-19 took place however this was contrary to the statements made by a member of Trust staff in previous responses to him.
15. On 10 August 2021 the Commissioner wrote to the Trust to explain that it was the refined request made on 9 November 2020 the complainant wished to pursue. This was refined in response to the Trust’s application

of section 12 FOIA to the request made on 26 August 2020 and initially refined on 28 August 2020. The Commissioner asked the Trust to confirm whether section 12 FOIA remained applicable to the 9 November 2020 request.

16. On 24 August 2021 the Trust wrote to the complainant with the result of an internal review it conducted in relation to the refined request dated 9 November 2020. It provided some information to the complainant.
17. The complainant subsequently wrote to the Commissioner to confirm that he remained dissatisfied with the Trust's response, this was because the information provided was not the information he requested and he remained of the view that the Trust held information falling within the scope of his refined request dated 9 November 2020.
18. The Commissioner therefore investigated whether the Trust holds any information falling within the scope of the request made on 9 November 2020 under section 1(1)(a) FOIA.

Reasons for decision

Section 1

19. 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". Section 1(1)(b) of FOIA states that, "If that is the case, to have that information communicated to him".
20. The Commissioner explained to the Trust that the six emails dated between 30 June 2021 and 22 September 2020 disclosed do not relate to the Trust's handling of DNR policy during the Covid-19 pandemic. The emails were between the FOI team and various members of staff regarding the request made by the complainant. The information provided was not therefore the information requested by the complainant.
21. The Commissioner confirmed to the Trust that the complainant does not accept that the Chief Nursing Officer holds no information relating to the Trust's DNR policy over the course of the pandemic. The complainant's belief is based the fact that on 26 October 2020, a member of Trust staff stated the following, "There was a discussion about Covid-19 DNR, but there are no national guidelines to this effect. The Trust has not adopted

and/or changed current DNACPR policies, hence under FOIA information not held”.

22. On 10 November 2020, the member of staff added the following:
“Discussions of some sort took place (and discussions can happen in various form e.g. verbal) reliant on national guidelines, this did not progress and the matter closed [sic]. Under FOIA information is not held if discussions are not held in a structured form. NB: Emails were transient and we are not required to file transient emails”.
23. The Commissioner went on to explain that the complainant was not satisfied with the searches conducted of the Chief Nursing Officer's email account and he considers the following search terms would have been more appropriate (without adding the word policy):
 - DNA
 - Do not attempt
 - DNAR
 - DNR
 - DNACP
24. The Commissioner asked the Trust to consider the issues raised by the complainant and whether a search of the Chief Nursing Officer's mailbox using the search terms suggested by the complainant would be likely to locate any recorded information falling within the scope of the request. The Commissioner also asked the Trust to explain what it was alluding to when it referred to 'transient' emails and whether these emails still exist. The Commissioner also explained that verbal conversations that were not recorded (either in audio or written format) would not be recorded information held under FOIA. She asked the Trust to confirm if all conversations regarding DNR policy during the pandemic were verbal and not recorded. The Commissioner reiterated that the Trust was only required to search for any recorded information held falling within the scope of the request which was already in existence at the point the request was made.
25. On 30 September 2021 the Trust responded to the Commissioner. In relation to the six emails it had provided, it explained that the Trust provided these emails following a search of the Chief Nursing Officer's mailbox for the following terms:
 - DNA Policy
 - Do not attempt resuscitation Policy
 - DNAR Policy

- DNR Policy

It said that the emails were provided to the ICO and the respondent as evidence of what emails were found. The search of the Chief Nursing Officer's mailbox confirmed that there were no emails sent/received pertaining to DNR or any of aforementioned terms in relation to discussions during the Covid-19 period.

26. The Trust reiterated that it does not hold any information relating to the Trust's DNR policy during the course of the pandemic and the complainant was provided with a copy of the current DNAR Policy which was published in 2018 with no changes made to the document.
27. The Trust confirmed that the statements made by the member of staff set out paragraph 21 and 22 above were not correct and apologised for any confusion or misstatements made.
28. Finally the Trust explained that the Chief Nursing Officer conducted a further search of his mailbox for the following terms (without adding the word policy) and confirmed that beyond the six emails already provided (which don't fall within the scope of the request) there were no recorded (emails) information held falling within the scope of the request which was already in existence at the point the request was made.
 - DNA
 - Do not attempt
 - DNAR
 - DNR
 - DNACP
 - Do not attempt resuscitation
 - Do not attempt cardiopulmonary resuscitation
 - Do not resuscitation
 - Do not attempt cardiopulmonary
29. Given that the Trust has now clarified the statements made by a member of Trust staff set out at paragraph 21 and 22 were incorrect and further searches have now been conducted of the Chief Nursing Officer's email account without locating any information falling within the scope of the refined request dated 9 November 2020, the Commissioner considers, on the balance of probabilities, that there is no recorded information held falling within the scope of the request under section 1(1)(a) FOIA.

Right of appeal

30. 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@justice.gov.uk

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

31. 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.
32. 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.....

Gemma Garvey

Senior Case Officer

Information Commissioner's Office

Wycliffe House

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Wilmslow

Cheshire

SK9 5AF