

## **Freedom of Information Act 2000 (FOIA) Decision notice**

**Date:** 25 August 2021

**Public Authority:** University Hospitals of Derby and Burton NHS Foundation Trust

**Address:** Royal Derby Hospital  
Uttoxeter Road  
Derby  
DE22 3NE

### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to an annual self-assessment for specialised vascular surgical services.
2. The Commissioner's decision is that University Hospitals of Derby and Burton NHS Foundation Trust (the Trust), on the balance of probabilities, does not hold any further information within the scope of the request.
3. The Commissioner does not require the public authority to take any action as a result of this decision notice.

### **Background**

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4. The Commissioner issued a decision notice<sup>1</sup> on 10 December 2020 with regard to a previous request where she found that the Trust was not entitled to rely on section 14(1) FOIA, and therefore was required to issue a new response.
5. The Trust issued its new response on 21 January 2021 and provided some additional information. Following further correspondence, the

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618948/ic-45105-w8y3.pdf>

complainant believed information relating to two parts of his request remained outstanding. The complainant therefore submitted a new complaint to the Commissioner.

## Request and response

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6. On 22 January 2021, the complainant wrote to the Trust clarifying that two parts of his request had not been answered as follows:

*4. With regards to indicator: 170004S-016 - "The hospital has a policy whereby patients are managed in line with the Seven Day Services Clinical Standards policy."*

*You stated "YES" in the self-declaration, Evidence documents: "Operational Policy"*

*I would like an electronic copy of this evidence document/operational policy that was in place/use during the time period of the self-assessment.*

*Your current response: "Please see attachment 'seven-day-service-clinical-standards-september-2017 (Q4)'. The attached is what the Trust refers and responds to."*

*My comments: Thank you for sending me the Seven Day Services Clinical Standards policy (Gateway Ref – 06408) that I previously referred to. As I am sure you are aware it contains a set of standards to be implemented/followed, some of which require governance/protocol documentation which would form part of your operational policies, aiding delivery of these services.*

*It is your evidence/operational policy regarding indicator 170004S-016 that supported your positive declaration that I have requested.*

*If you cannot provide the operational policy/evidence document that supported your positive declaration then can you either specify which exemption you are using in order not to release it or can you please clarify if you also made a mistake with regards to this service indicator as otherwise I believe you should be able to produce the required/requested documents? – Pending Clarification.*

*5. With regards to indicator: 170004S-017 - "There are patient pathways in place"*

*You stated "YES" in the self-declaration, Evidence documents: "Operational policy including pathways"*

*I would like electronic copies of these evidence documents/operational policy that was in place/use during the time period of the self-assessment including the pathway(s) for Peripheral Arterial Disease.*

*Your current response: "Vascular surgery is not a surgical speciality that lends itself to pathways. The training and examination process for vascular surgeons provides them with the working skills to manage very complicated scenarios which have to be bespoke for individual patients as and when the patient presents. The Vascular Society QIP and Guidance, along with other sources such as Royal College of Surgeons [www.rceng.ac.uk](http://www.rceng.ac.uk) is there for clinicians to refer to as and when; as part of keeping knowledge updated. Therefore, The Trust does not have specific operational policies in place for vascular surgery."*

*My comments: The service indicator 17004S-017 descriptor is quite explicit with regards to what is required and clearly states what pathways should be in place. I list a fragment of the service indicator descriptor below (relevant to my request) for your convenience.*

7. The Trust responded on 5 February 2021 as follows:

*Q4. As a Trust, we clearly adhere to the set of standards inherent within the Seven Day Services Clinical Standards policy (Gateway Ref – 06408); but we do not have internal separate written documentation. We are in conversation with NHS England (NHSE) as the indicator only allows us to enter 'yes' or 'no' and we have chosen yes as we clearly manage patients in line with the Seven Day Services Clinical Standards policy.*

*The decision was taken that if 'no' was chosen it would imply that our patients are NOT managed in line with the Seven Day Services Clinical Standards policy which is not the case.*

*We are seeking clarification and can respond to you when NHSE has clarified.*

*Q5. As a Trust, we clearly adhere and have patient pathways in place, but as explained previously the training and examination process for vascular surgeons provides them with the working skills to manage very complicated scenarios which have to be bespoke for individual patients, as and when the patient presents. The Vascular Society QIP and Guidance, along with other sources such as Royal College of*

*Surgeons [www.rceng.ac.uk](http://www.rceng.ac.uk) is there for clinicians to refer to as and when; as part of keeping knowledge updated. Therefore, The Trust does not have specific written operational pathways in place for vascular surgery.*

*As per the Trust's answer to Q4, we are in conversation with NHS England, as the indicator only allows us to enter 'yes' or 'no' and we have chosen yes as we clearly manage patients along a pathway. The decision was taken that if 'no' was chosen it would imply that our patients are NOT managed in line with pathways.*

*We are seeking clarification and can respond to you when NHSE has clarified.*

8. Following further correspondence the Trust issued its final response on 9 February 2021 and stated:

*Further to our response to your queries raised from the Trust's reply to the ICO's Decision Notice, regretfully, it appears that whilst we have exhausted all avenues of providing information and attachments, we have not been successful in satisfying your answers.*

*As a Trust, the department have confirmed that there is nothing further we hold which we are able to offer, as everything relevant has been disclosed.*

*We note your comments regarding you approaching the ICO again, which of course, is your legal right to do so. However, the Trust can confirm that there is nothing further, in relation to this matter, which we can provide to either yourself or to the ICO.*

*In view of the above the Trust are, regrettably, not in a position to maintain constant communication in relation to this particular FOI and will not be able to respond further.*

## **Scope of the case**

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9. The complainant contacted the Commissioner on 9 February 2021 to complain about the way his request for information had been handled.
10. The Commissioner considers the scope of this case to be to determine if the Trust holds any further information within the scope of the request.

## **Reasons for decision**

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11. Following the Commissioner's decision notice the Trust issued its response on 21 January 2021.

12. For brevity, the Commissioner has only provided the salient information in this decision notice. Full details of all the correspondence can be found at [https://www.whatdotheyknow.com/request/specialised\\_vascular\\_surgical\\_se](https://www.whatdotheyknow.com/request/specialised_vascular_surgical_se)

### **Section 1 – right of access**

14. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
15. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
16. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

### **The complainant's position**

17. In his correspondence to the Commissioner the complainant stated:

*"It is not a simple tick box, it is a declaration of meeting the requirements as outlined in the assessment. If the Trust is not compliant with the specification then they should have added comments in their submission and then formulated a plan of action to rectify any deficiencies.*

*By incorrectly completing the assessment it is not possible for the Surveillance team to be able to monitor the situation as from their understanding the Trust is 100% compliant and have nothing to rectify which is not the case. It is a requirement that this Trust have certain documents given the affect this can have on patient safety, this Trust not only does not have the documentation but also declared that they have it negating the very process in place to check on such things.*

*The Trust has only admitted to making a mistake with questions one and two of my request, they have not formally admitted others so at*

*this moment in time I will take the same stance of NHS England the organisation paying for these services that they are 100% compliant as of their own declaration.*

*I requested clarification but they did not provide it. The services they provide and the way in which they are provided affect thousands of people and the public have a right to know that this Trust despite declaring as having all the proper procedural documents, care/patient pathway etc in place do NOT.*

*The patient leaflets are also a part of the declaration of which they declared as having so where are they? These leaflets are relied on by thousands of people, so let's look at things realistically, the Trust does not have various vascular documents in place for its own staff and it appears, unless I ask them to try and confirm this, that they also do not have various vascular patient information leaflets, again that they have declared to their funders/commissioners as having."*

18. The Commissioner approached the Trust to ask if it had any further comments or arguments to support its position, over and above those already provided to the complainant.
19. The Trust confirmed that it had nothing to add and so the Commissioner based her decision on the information detailed at WDTK.
20. The Commissioner acknowledges the genuine concern of the complainant that the Trust has incorrectly completed the assessment, and the way in which services are provided affect a large number of people.
21. Nevertheless the Commissioner also recognises that the Trust has acknowledged its mistake and will take steps to rectify it as soon as possible. She further notes that the Trust has offered to meet with the complainant to attempt to clarify any misunderstandings that may have arisen, and resolve outstanding concerns.
22. Having considered all the information available to her, the Commissioner considers that, on the balance of probabilities, the Trust does not hold any further information within the scope of the request.

## Right of appeal

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23. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

24. 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.
25. 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

**Susan Duffy**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**