

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 September 2021

Public Authority: University Hospitals Plymouth NHS Foundation Trust

Address: Bircham House
William Prance Road
Derriford
Plymouth
PL6 5WR

Decision (including any steps ordered)

1. The complainant requested data regarding cancer treatments. University Hospital Plymouth NHS Foundation Trust ("the Trust") initially withheld some information, relying on section 41 (breach of confidence) and section 40(2) of the FOIA (personal data) to do so, before later disclosing it.
2. The Commissioner's decision is that the Trust has now disclosed the information it holds and has therefore complied with its duty under section 1(1) of the FOIA. However, as it failed to provide some of the information within 20 working days, the Trust breached section 10 of the FOIA.
3. The Commissioner does not require any further steps.

Background

4. On 7 December 2020, the complainant requested information of the following description:

"Can you please provide :

"The complete Cancer statistics for Plymouth (all areas - neighbourhood specific) From Jan 2014 to Nov 2020."

5. The Trust responded on 18 December 2020. It stated that it did not hold the requested information as it only held data on patients that it had treated, but that the full data might be available from Public Health England.
6. On 21 December 2020, the complainant contacted the Trust again and refined his request as follows:

"Please supply the complete Cancer statistics for Plymouth (all areas - neighbourhood specific) from Jan 2014 to Dec 2020 for patients treated at University Hospitals Plymouth NHS Trust."
7. On 24 December 2020, the Trust responded. It provided some information but withheld numbers fewer than 5 – which it stated would be likely to identify the individuals concerned. Where those individuals were still alive, the information would be their personal data (and thus exempt under section 40(2) of the FOIA) and for those who were deceased, there was a possibility that disclosing the information would be an actionable breach of confidence and hence the information would be exempt under section 41 of the FOIA.

Request and response

8. On 24 December 2020, the complainant wrote to the Trust and, referring to the previous response, requested information in the following terms:

"[1] Are the Plymouth Hepatico-pancreatico-biliary Cancer Centre figures included in the data provided ?

"[2] Can you please indicate what recorded categories represents the data Provided for

 - a) Primary liver cancer (Hepatocellular carcinoma) - cancer starting in the liver*
 - b) Secondary liver cancer (Metastatic cancer) – cancer which started in another part of the body and has spread to the liver.*
 - c) Pancreatic cancers*
 - d) Ampullary Cancer*
 - e) Duodenal cancer*
 - f) Bile duct cancer (cholangiocarcinoma)*
 - g) Gall bladder cancer*
 - h) Neuroendocrine disease*
 - i) Non-Hodgkin's lymphoma*

9. The Trust responded on 27 January 2021. It provided some information and stated that it did not hold the information within the scope of element [2b] of the request. As with its previous response, it withheld all numbers fewer than 5 and relied on sections 40(2) and 41 of the FOIA to do so.
10. Following an internal review the Trust wrote to the complainant on 17 February 2021. It provided some further explanations about the information that it did and didn't hold. It noted that the complainant's requests were becoming vexatious and that it would rely on section 14(1) of the FOIA to refuse further requests.

Scope of the case

11. The complainant contacted the Commissioner on 17 February 2021 to complain about the way his request for information had been handled. He was not satisfied with the Trust's explanations and did not accept that the cited exemptions would apply. Finally, he was upset with the reference to section 14 of the FOIA.
12. At the outset of her investigation, the Commissioner wrote to the Trust on 6 August 2021. Pointing to recent decisions, she explained that it was unlikely that individuals would be identifiable from the data and therefore neither exemption would apply. Having reconsidered the matter, the Trust wrote to the complainant on 2 September 2021 and disclosed the requested information.
13. The following day, the Commissioner wrote to the complainant and invited him to withdraw his complaint on the basis that it had been informally resolved. However, the complainant refused to withdraw and argued that his original grounds of complaint had not been fully considered.
14. The Commissioner is only obliged to consider the Trust's response to the request highlighted above. As the Trust no longer seeks to withhold any of the requested information, the Commissioner will not be further considering whether exemptions were originally applied correctly. Equally, as the Trust has not relied on section 14 to refuse this request – only indicated that it may do so in respect of future requests – the Commissioner will not speculate on whether any future request might be vexatious.
15. The Commissioner therefore considers that the only outstanding matter that she is able to investigate is whether the Trust has complied with its duty under section 1(1) of the FOIA.

Reasons for decision

Section 1 (Held/Not Held)

16. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

17. 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.
18. 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.
19. The complainant argued that he had requested the data broken down by neighbourhood, not postcode. He did not believe that the Trust did not hold any data within the scope of element [2g] for one particular year. He did not accept that the Trust did not hold information within the scope of element [2h] and found it "hard to believe" that the Trust held no information within the scope of element [2b].
20. The Commissioner considers that the Trust's position was set out adequately in its internal review. It explained that it did not classify tumours by histopathology (ie. the *type* of cancer that had caused it), but by the site, within the body, where the primary tumour appeared. Therefore it did not hold separate data on secondary tumours. Any tumours caused by neuroendocrine disease would be reported against the site where the tumour occurred. Similarly, tumours caused by non-hodgkins lymphoma would be recorded in the haematology results

The Commissioner's view

21. The Commissioner considers that the Trust has provided convincing explanations as to why it does not hold some of the particular data that the complainant has requested.
22. The Commissioner also notes that FOIA places her under no obligation to determine the accuracy of any response the Trust provides – only to ensure that the Trust has provided the information it holds.
23. The complainant appears aggrieved that the Trust does not record information in the manner that would be useful to him. He may well consider that the Trust *ought* to hold the information he requested, but has put forward no persuasive argument to explain why the Trust *does*, as a matter of fact hold the information.
24. Whilst the Commissioner notes that the complainant's request sought "neighbourhood" statistics and not statistics by postcode, she also notes that the postcodes can be used to show the distribution of these tumours within a geographic area. That is the information the Trust holds and that is the information it is required to provide.
25. The Commissioner is therefore satisfied that the Trust has now provided all the information it is required to provide and has thus complied with its duty under section 1(1) of the FOIA.

Procedural matters

26. Section 10 of the FOIA states that a public authority must comply with its duty under section 1(1) of the FOIA "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
27. The Commissioner recognises that the Trust's response was provided within 20 working days – however, the initial response did not disclose all of the information that the complainant was entitled to receive.
28. The Commissioner therefore records a breach of section 10 of the FOIA in dealing with this request.

Other matters

29. Should the complainant choose to submit a further request for information along similar lines, it will be a matter for the Trust to determine whether or not it wishes to refuse any such request as vexatious. The Commissioner offers no opinion as to whether such an exemption would or would not be appropriate in the circumstances.
30. If such a request is submitted and refused as vexatious, the complainant has the option, once he has exhausted the Trust's internal review process, to make a complaint to the Commissioner if he feels that the exemption has not been applied correctly. The Commissioner will then make a determination taking into account all the relevant circumstances.

Right of appeal

31. 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

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

32. 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.
33. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
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SK9 5AF