

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 December 2022

Public Authority: Salisbury NHS Foundation Trust ('the Trust')

Address: Salisbury District Hospital
Odstock Road
Salisbury
SP2 8BJ

Decision (including any steps ordered)

1. The complainant has requested information about the Trust's Emergency Preparedness, Resilience and Response plans and arrangements. The Trust refused to confirm or deny holding the information but failed to specify under which exemption(s).
2. The Commissioner's decision is that the Trust is not entitled to refuse to confirm or deny holding the information and has therefore breached section 1(1)(a) of FOIA.
3. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation:
 - Confirm or deny whether the Trust holds the requested information in accordance with section 1(1) of FOIA. If it holds the information, the Trust should either disclose it to the complainant or issue a refusal notice in accordance with section 17 of FOIA.
4. The Trust must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 13 July 2022, the complainant wrote to the Trust and requested information in the following terms:

"Under the provisions of the Freedom of Information Act 2000, I am writing to request the following information. This information relates to the NHS England Emergency Preparedness, Resilience and Response Framework in general and section 10, "Cycle of preparedness", subsection 2, "Planning", and subsection 4, "Exercising", and section 12, Incident Response", in particular.

Please note that the much of the information requested is only records of the existence of current plans, reviews, updates, training and tests and not the contents of the plans, reviews, updates, training and tests themselves.

For clarity, to minimise the cost of my request and to prevent the disclosure of any sensitive information, I have enumerated the information I am requesting and specified how it could be provided.

If you do not hold some of this information then I ask you to confirm explicitly that you do not hold it.

Given the potentially sensitive nature of this information, I ask you to redact any exempt information instead of refusing disclosure. This would be in accordance with guidance on best practice from the Information Commissioner's Office.

Hospital emergency and disaster response and recovery planning

Hospital emergency or disaster response plan

1. Any record of how the plan(s) is to be accessed in an emergency.
2. The date(s) of the most recent review(s) or update(s) of the plan(s). (Can be answered with a date or dates.)

Hospital hazard-specific subplans (for example CBRN)

3. Any record of the existence of current documented hazard-specific response subplans for the most likely external and internal emergency scenarios. (Can be answered yes / no.)
4. Any record of how the plans are to be accessed.

5. The date(s) of the most recent review(s) or update(s) of the plan(s). (Can be answered with a date or dates.)

Procedures to activate and deactivate plans

6. Any record of the existence of current procedures for when, how and by whom emergency response plan(s) are activated and deactivated. (Can be answered yes / no.)

7. Any record that staff who can activate or de-activate the emergency response plan(s) have been trained in this. (Can be answered yes / no.)

8. The date(s) of the most recent test(s) of the above procedures. (Can be answered with a date or dates.)

Hospital emergency and disaster response plan exercises, evaluation and corrective actions

9. The date(s) of the most recent test(s) of the emergency response plan(s), including date(s) of test(s). (Can be answered with a date or dates.)

10. Any record that the emergency response plan(s) have been updated because of the results of tests. (Can be answered yes / no.)

Hospital recovery plan

11. Any record of the existence of a current documented all-hazards hospital recovery plan or plans that define(s) actions to be taken to recover normal functions of the hospital after an emergency or disaster. (Can be answered yes / no.)

12. Any record of how the plan(s) is to be accessed.

13. The date of the most recent review(s) or update(s) of the plan(s). (Can be answered with a date or dates.)"

6. The Trust's final position was to refuse to confirm or deny whether it holds the requested information. The Trust did not cite any exemption(s).

Reasons for decision

7. This reasoning covers whether or not the Trust is entitled to refuse to confirm or deny whether it holds the requested information.

8. Section 1(1)(a) of FOIA requires a public authority to confirm in writing whether or not it holds recorded information of the description specified in the request. It is then obliged to either communicate that information to the applicant or issue a refusal notice in accordance with section 17 of FOIA. The refusal notice should outline clearly what exemption(s) apply and, if not already obvious, why.
9. The Trust has refused to confirm or deny whether it holds the requested information but it failed to specify under which exemption(s) outlined in Part II of FOIA it is refusing to confirm or deny.
10. The refusal to confirm or deny if information is held is used in cases where that simple refusal or confirmation of whether information is held would reveal withheld information itself or would, or would be likely to, prejudice the matters or functions outlined in the particular exemption cited by the public authority.
11. This request concerns the NHS England Emergency Preparedness, Resilience and Response (EPRR) Framework, which the Commissioner understands was first published in 2015. The aim of the Framework is to ensure that effective arrangements are in place to deliver appropriate care to patients affected during an emergency or incident. Under the Civil Contingencies Act 2004 the Trust is designated a primary responder (an organisation at the core of emergency response and which is subject to the full set of civil protection duties). Amongst other things, it is required to put in place emergency plans and business continuity management arrangements. It is also required to put in place arrangements to make information available to the public about civil protection matters and maintain arrangements to warn, inform and advise the public in the event of an emergency.
12. In their request for an internal review the complainant stated that at that point three other trusts had provided similar information to similar requests. The Commissioner notes, too, that some trusts publish information about the EPRR Framework and how they meet the relevant requirements on their websites.
13. The request is mostly for high level information about the existence of specific arrangements or mechanisms implemented by the Trust to meet the EPRR requirements. The Framework specifies that the Trust should have emergency plans in place. It also states that the Trust should then have arrangements in place to inform the public about those emergency plans.
14. As stated above, the Trust has not cited any exemption; it has simply refused to confirm or deny holding the information. For the above reasons, the Commissioner does not agree the Trust is entitled to refuse

to confirm or deny holding the requested information. He does not agree that this simple confirmation (yes, we hold the information or no, we do not) would reveal withheld information itself or prejudice the matters or functions outlined in the various exemptions under FOIA.

15. The Commissioner does not consider the Trust is entitled to refuse to confirm or deny holding the requested information for the reasons given above. The Trust is therefore in breach of section 1 of FOIA. The summary section of this notice outlines the steps the Commissioner now requires the Trust to take.
16. The Commissioner notes that the Trust did carry out an internal review but this simply stated that it upheld its original refusal notice. As a bare minimum, the Commissioner would have expected the Trust to have picked up on the fact that the refusal notice it upheld had not cited any exemption.

Right of appeal

17. 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

18. 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.
19. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF