

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 March 2023

Public Authority: Tavistock and Portman NHS Foundation Trust
The Tavistock Centre
London
NW3 5BA

Decision

1. The complainant requested information from Tavistock and Portman NHS Foundation Trust ("the Trust") relating to communications between the Trust and the CEO of Mermaids UK between 2014 and 2018.
2. The Commissioner's decision is that, on the balance of probabilities, the Trust does hold information within the scope of the request. Consequently, the Commissioner finds that the Trust breached section 1(1) of FOIA.
3. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation.
 - The Trust must conduct fresh searches into the requested information and provide a new response which is adequate for the purposes 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. The complainant made the following information request to the Trust on 17 June 2021:
6. "1. Copies of all emails sent to the Trust by Susie Green of Mermaids UK in 2014, 2015, 2016, 2017 and 2018;
2. Replies by Trust staff to these emails;
3. Copies of records, notes or minutes of any meetings held between Susie Green of Mermaids UK and Trust employees in 2014, 2015, 2016, 2017 and 2018.?"
7. The Trust refused the request on 3 November 2021, citing section 14(1) of FOIA.
8. On 1 March 2023, the Commissioner requested submissions from the Trust, asking it to justify its position.
9. The Trust responded on 10 March 2023, stating that it had withdrawn its reliance on section 14(1) and that following "an extensive search of emails ... the Trust does not hold the requested information."

Reasons for decision

Section 1 FOIA - determining whether information is held

10. Section 1(1) of the FOIA states: "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." If a public authority does not hold recorded information that falls within the scope of the request, the Commissioner cannot require the authority to take any further action.
11. In cases where there is a dispute as to the information held by a public authority, the Commissioner will use the civil standard of proof, i.e., the balance of probabilities. In order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request.

12. The complainant considers that the Trust has not provided a meaningful and comprehensive response despite being instructed to do so by the Commissioner.
13. The Commissioner considers that the Trust did not provide the complainant with an adequate response to the request. The Trust failed to advise of the basic tasks it had undertaken in order to find information relevant to the scope of the request. For example; what searches it had undertaken to check no information was held within the scope of the request, why these searches would have likely retrieved relevant information or not and if the information were held would it be held manually or electronically.
14. In its submissions to the Commissioner, the Trust has advised that "there is the potential that some information may be provided". This implies clearly that some information is likely to be held within the scope of the request.
15. The Commissioner's decision is that the Trust does, on the balance of probabilities, hold information within the scope of the request. The Commissioner requires the Trust to provide the complainant with a fresh response to their request which is based on more extensive and thorough searches than those carried out thus far. The Trust should either provide the complainant with the requested information, if held, or an adequate refusal notice should be provided stating why any held information is exempt from disclosure.

Right of appeal

16. 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

17. 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.
18. 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

Michael Lea
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