

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 September 2023

Public Authority: London Ambulance Service NHS Trust
Address: 220 Waterloo Road
London
SE1 8SD

Decision (including any steps ordered)

1. The complainant has requested from the London Ambulance Service NHS Trust ("LAS") information about its Cycle to Work scheme. LAS originally provided some information and also applied section 21 of FOIA (information reasonably accessible to the applicant by other means) to the request. However, LAS subsequently identified additional information which it has not provided to the complainant.
2. The Commissioner's decision is that LAS has, on the balance of probabilities, failed to identify and disclose all of the information it holds within the scope of the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Conduct a fresh search to identify all of the information within the scope of the request, including within the Human Resources department, and issue a fresh response to the complainant's request. Of any further information it identifies, it must either disclose it or provide a valid refusal notice compliant with section 17 of FOIA.
 - Either disclose the further information already identified or provide a valid refusal notice compliant with section 17 of FOIA.

4. The public authority 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 21 March 2023, the complainant wrote to LAS and requested information of the following description:

"1. Any & all information held regarding the LAS Cycle to work scheme, the choice of current and any previous supplier/s and why those choices were made.

2. I would also like any & all information covering the number of staff who make use of the scheme for all years the information is held for."
6. On 20 April 2023, LAS responded to the request. It confirmed that 'Cycle Solutions' is its only supplier. It applied section 21 of FOIA (Information reasonably accessible to the applicant by other means) and provided a link to where this information is available on the internet. It also confirmed that it had received a total of 777 orders.
7. On 30 April 2023, the complainant wrote to LAS and asked it to carry out a review of its response. He said that it had not answered all parts of the request and would like to see any documentation that covers the decisions around choosing the cycle to work scheme supplier.
8. On 18 July 2023, LAS carried out a review and wrote to the complainant. It agreed that the link did not provide all the information that had been requested. It said that its 'subject matter experts' explained that the supplier was selected as they were on a 'staff benefits framework' covering cycle to work schemes, and that its Procurements Department does not hold any documentation or information about the selection of the supplier.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled. In regard to point one of the request, although he accepts that LAS has provided the identity of the current supplier, he said that it has failed to provide all other recorded information held about the cycle to work scheme, including why suppliers were selected. In regard to point two of the request, he is satisfied that the figure 777 answers this part of the request.
10. The Commissioner considers the scope of his investigation, is to determine whether LAS has identified and communicated to the complainant, all the information it holds relating to point one of the request.

Reasons for decision

11. Section 1(1) of 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.”

12. When a public authority receives a request for information it has two obligations under section 1(1) of FOIA. Firstly it must explicitly confirm or deny whether it holds the information in question. Secondly, if it does hold that information, it must either provide a copy to the requester or issue a refusal notice. If it receives a request that contains multiple elements, its response must be clear about which information it holds and which it does not.
13. 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 arguments. He 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, he will consider any reason why it is inherently likely or unlikely that information is not held.
14. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he 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

15. The complainant said he has asked for 'any and all' information about the cycle to work scheme (including reasons why the current and previous suppliers were selected), and because LAS is currently operating the scheme and it has confirmed that it has received 777 orders, it is likely that at least some further information within the scope of the request is held.

LAS' position

16. As part of his investigation, the Commissioner asked LAS to satisfy itself that it had carried out appropriate searches (including carrying out additional searches) and to set out what these searches were.
17. LAS said that any information within scope of the request would be held in procurement records, that are only held electronically in SharePoint files. It carried out searches of these records and also its online contract register using the keyword "cycle".
18. LAS said that all information held in procurement 'has been located', specifically; the current and previous contracts, documents related to the framework used, and a paper presented at the Trust executive committee meeting related to the contract. It provided the Commissioner with a copy of the 'Contract for Salary Sacrifice (Cycle-to-work)' relating to the current supplier.
19. LAS said that the NHS Retention Policy (covering business and statutory requirements) requires that procurement records such as contracts and tenders must be kept for six years after the contract end date. LAS also confirmed that no records have been deleted / destroyed and current and previous contracts are still held by the Procurement Department.
20. In regard to information about why suppliers were selected, LAS said that it had consulted with its subject matter experts again who further explained "the reality is the information requested by the enquirer on the reasons why the current and any previous suppliers were chosen was never held in procurement" and it is therefore satisfied that no further information is held.

The Commissioner's view

21. In the Commissioner's view, LAS has not, on the balance of probabilities, identified and communicated all the information that it holds in recorded form.
22. The Commissioner notes that the scope of the request was 'any and all' information about the cycle to work scheme, including information about the current and previous suppliers, and reasons why they were selected. He also notes that, whilst carrying out further searches within the Procurement Department, LAS identified further information that it holds within the scope of the request but that has not been disclosed to the complainant, e.g., current and previous contracts, documents relating to the framework, and the paper presented in the Trust executive committee meeting relating to the contract.
23. The Commissioner also notes that LAS limited its searches to the Procurement Department. He also notes that the subject matter experts said in the review outcome and then again in its submission to the Commissioner that no further information is likely held about reasoning why supplier was selected.
24. The Commissioner has also reviewed the 'Contract for Salary Sacrifice (Cycle-to-work)' and notes that Human Resources was the 'originating department' of this document, which, it sent to the Director of Finance for approval. It also indicates that alongside the Procurement Department, the Human Resources Department undertook work relating to supplier selection and was involved in the decision to select the supplier, the reasons why the supplier was selected are contained within the document itself, however, LAS appears to be unaware of this.
25. The Commissioner has decided, on the balance of probabilities, that as the request was for 'any and all' information and the Human Resources Department carried out work around and were involved in the selection of the supplier, but no searches of this department were carried out, LAS has not conducted sufficient searches where all the requested information is likely to be held.
26. Even if all information has now been identified (if not yet disclosed), the Commissioner cannot agree that on the balance of probabilities LAS has identified all of the information that would fall within scope without conducting searches within HR, which has been involved in the work the complainant is concerned with.
27. It is therefore the Commissioner's view that, by failing to disclose or provide a refusal notice concerning the further information identified, and carry out appropriate searches, LAS has failed to issue the

Reference: IC-244518-J7P0



complainant with a response that complies with the requirements of section 1(1) of FOIA.

Right of appeal

28. 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@hmcts.gsi.gov.uk

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

29. 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.
30. 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

**Alice Gradwell
Senior Case Officer
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**