

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 August 2023

Public Authority: Northamptonshire Healthcare NHS Foundation Trust

Address: St Mary's Hospital
London Road
Kettering
NN15 7PW

Decision (including any steps ordered)

1. The complainant has requested copies of legal advice. The above public authority ("the public authority") denied that any information was held.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority does not hold any information within the scope of the request.
3. The Commissioner does not require further steps to be taken.

Background

4. On 31 January 2023, the Commissioner issued decision notice IC-150104-J7V3, in which he found that the public authority had breached section 10 of FOIA when responding to a different request.¹ As the requested information had since been provided, the decision did not require the public authority to take any remedial steps.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4023949/ic-150104-j7v3.pdf>

5. During the course of that investigation, the public authority agreed to disclose information it had originally withheld. The complainant was unhappy that it had taken so long for him to receive a copy of the information – which he claimed to be “time critical.” In correspondence with the Commissioner, the complainant argued that the public authority had:

“in conjunction with its legal advisors sought to avoid providing that information until a few days ago...[and] deliberately acted to evade the provisions of the act.”

6. Given the gravity of such an accusation², the Commissioner considered it necessary to record in his decision that he had seen no evidence to support the complainant’s assertion. The relevant section read as follows:

20. “In their representations to the Commissioner, the complainant has stated that the information originally requested was time critical and their belief that the Trust, in conjunction with its legal advisors, sought to avoid providing the information until 23 January 2023.³ The complainant stated that the legal advisors in question are the same legal advisors whose invoices were the subject of the FOIA request. The complainant has stated their belief that the Trust has deliberately acted to evade the provisions of FOIA.

21. Whilst the Commissioner notes the complainant’s concerns, he has not been provided with evidence to suggest that the Trust’s failure to respond correctly at the time of the request was in any way deliberate.”

Request and response

7. On 12 February 2023, the complainant wrote to the public authority and, referring to the previous decision notice, requested information in the following terms:

² Section 77 of FOIA makes it a criminal offence to take certain actions that would deliberately prevent a requester from receiving information that they would otherwise have been entitled to receive.

³ The Commissioner acknowledges that the correct date should have been 16 January 2023 – though nothing turns on this.

"please confirm whether the Trusts legal advisors Hempsons, were consulted in relation to the content of paragraphs 20 and 21 of that notice or subsequently and if so please provide copies of both the request/s and response/s.."

8. The public authority responded on 10 March 2023. It stated that:

"Paragraphs 20 and 21 of the decision notice relate to the two-week extension requested by the Trust. The Trust can confirm that legal advice was not sought on this subject. As such, the Trust does not hold the information being requested"

9. The complainant sought an internal review on 13 June 2023, noting that the paragraphs in question had not referred to any extension of time. Following an internal review the public authority wrote to the complainant on 7 July 2023. It stated that:

"no legal advice was sought in relation to the timing of the Trust responses to your request."

Reasons for decision

10. Where there is a dispute over the extent of information a public authority holds, the Commissioner must decide whether the public authority is more likely than not to hold additional information.
11. In the Commissioner's view, the complainant has advanced no argument that would undermine the public authority's argument that no information was held.
12. The Commissioner accepts that the complainant is correct in noting that the paragraphs in question did not refer to an extension of time – as the public authority erroneously claimed in its initial response.
13. However, that does not in itself explain why the public authority would need to seek (and pay for) external legal advice about any part of decision notice that did not require it to take any further action – let alone the part of that decision notice in which the Commissioner set down his opinion that he had seen no evidence of inappropriate behaviour from the public authority.
14. The public authority confirmed in its responses that it held no information within the scope of the request. The complainant has provided no arguments that would undermine that assumption and the Commissioner can see no reason why such information would exist.

15. The Commissioner therefore considers that, on the balance of probabilities, the public authority does not hold the information.

Other matters

16. The Commissioner would draw the complainant's attention to his guidance on vexatious requests.⁴ Whatever matter of public interest the complainant may originally have been pursuing, when the focus begins to shift towards making requests about requests, it can be an indication of vexatiousness by drift. Vexatiousness by drift describes a situation in which a requester starts out with a serious purpose in mind but, over the course of several requests, loses sight of that purpose and begins to focus obsessively on process, or on the settling of previous scores with the public authority.
17. If future requests are considered to lack a serious purpose or be of little value to the public, they are more likely to be refused by the public authority as vexatious.
18. The Commissioner may also choose to refuse complaints where he considers that the request lacked a serious purpose or value.

⁴ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/>

Right of appeal

19. 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

20. 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.
21. 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
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF