

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 September 2023

Public Authority: United Lincolnshire Hospitals NHS Trust
Address: Lincoln County Hospital
Greetwell Road
Lincoln
LN2 5QY

Decision (including any steps ordered)

1. The complainant requested information about responses to a consultation. The above public authority ("the public authority") initially relied on section 40(2) of FOIA (personal data) to withhold the information, but disclosed it during the Commissioner's investigation.
2. The Commissioner's decision is that the public authority disclosed information outside of the 20 working day timeframe and therefore breached section 10 of FOIA.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 30 May 2023, the complainant wrote to the public authority and requested information in the following terms:

"could you please provide the following information in respect of the recent restructure consultation process within the Clinical Governance department Risk and Governance team:

"[1] How many responses were received during the consultation process?"

"[2] Of those responses, how many specifically said that they were in favour of or expressed a positive view about removing the post of Head of Risk and Governance from the department structure?"

"[3] Of those responses, how many specifically said that they were in not favour of or expressed a negative view about removing the post of Head of Risk and Governance from the department structure?"

"[4] How many of those responses did not make any specific reference to the removal of the Head of Risk and Governance post in their feedback?"

"Could you please break these numbers down by whether the respondent was employed within Clinical Governance or outside of Clinical Governance."

5. The public authority responded on 28 June 2023. It provided the information within the scope of element [1], but did not break the number down further. It relied on section 40(2) of FOIA to withhold the remaining information – a stance it upheld following an internal review.

Scope of the case

6. The complainant contacted the Commissioner on 1 August 2023 to complain about the way his request for information had been handled.
7. On 4 September 2023, the Commissioner wrote to the public authority to outline his initial view of the complaint. He explained that it seemed unlikely that anyone would be able to identify any individual from the numbers – however small they were.
8. On 18 September 2023, the public authority disclosed the information it had initially withheld.
9. The Commissioner contacted the complainant the following day, noting that the information had now been disclosed and suggesting that the complaint could now be resolved informally.
10. The complainant contacted the Commissioner on 22 September 2023 as he did not wish to withdraw his complaint. He drew the Commissioner's attention to a document containing the content of responses provided to the consultation which the public authority had previously disclosed. He argued that this demonstrated that the public authority had not accurately classified comments as being positive or negative and

therefore may hold further information. He also raised concerns about the procedural handling of his request.

11. The Commissioner responded to say that he was not responsible for the accuracy of the response the public authority provided. He also noted that whether particular comments should be classed as neutral or negative was, to a certain extent, a subjective test. In any case, the complainant apparently had the comments, so could make a determination for himself.
12. Rather than continue to investigate whether further information was held, the Commissioner suggested that a more proportionate response was to close the complaint via a decision notice that focused on the procedural handling of the request. The complainant agreed to this suggestion.

Reasons for decision

13. Section 10 of FOIA requires a public authority to disclose any non-exempt information promptly and within 20 working days of receiving a request.
14. Whilst he accepts that section 40(2) of FOIA was cited in good faith, the Commissioner is of the view that this exemption did not apply to the requested information. The public authority was therefore under an obligation to provide the information within 20 working days.
15. As the public authority provided the information outside of the 20 working day timeframe, it breached section 10 of FOIA.

Other matters

16. The complainant raised a series of further concerns about the way his request was handled. Some of these concerns do not amount to statutory breaches or are not matters over which the Commissioner has jurisdiction. However, the Commissioner considers it may be helpful to both parties to provide the following observations.
17. The Commissioner is not responsible for the contents of a public authority's responses – except insofar as the correspondence meets the requirements set out in FOIA. Providing that the correspondence complies with the obligations of sections 1, 16 and 17 of FOIA, it is for the public authority to decide what additional information or other

matters it wishes to include. FOIA neither requires nor prevents a public authority from adding to its correspondence.

18. It is for each public authority to decide on the appropriate process for carrying out an internal review, when a requester challenges a response to an information request. That includes deciding on an appropriate person to conduct or lead the review. Whilst the Commissioner would recommend that that person be different to and, ideally, more senior than, the person who signed off the original response, neither FOIA nor the section 45 Code of Practice require any specific person or office holder to be responsible for internal reviews.
19. If the complainant has concerns about the way other requests have been dealt with, he can bring complaints about those requests to the Commissioner's attention – providing that these complaints are submitted within six weeks of the last meaningful contact with the public authority.

Right of appeal

20. 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

21. 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.
22. 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
Cheshire
SK9 5AF