

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 May 2018

**Public Authority:** University Hospitals Plymouth NHS Trust  
**Address:** Bircham House  
William Prance Road  
Derriford  
Plymouth PL6 5WR

#### Decision (including any steps ordered)

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1. The complainant requested information from the University Hospitals Plymouth NHS Trust (the Trust) relating to its GUM YourSHIP department and service line policies. The Trust cited section 21 as it considered the requested information is accessible to the complainant by other means and confirmed that they did not hold any further information. The complainant considered that more information must be held. The Commissioner's decision is that the Trust correctly applied section 21 and does not hold any further information in this case. The Commissioner does not require the Trust to take any steps.
2. Note - at the time of the request the Trust's name was the Plymouth Hospital NHS Hospitals Trust but on 1 April 2018 the Trust's name changed to University Hospitals Plymouth NHS Trust. Therefore, this decision notice is served on the University Hospitals Plymouth NHS Trust.

#### Request and response

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3. On 19 October 2017 the complainant requested the following information:  
*'PHNT GUM YourSHIP department and service line policies, procedures, practices, standards and Guidelines.'*
4. Clarification of the request was sought and provided as:  
*'The request is for PHNT GUM YourSHIP department and service line local policies, procedures, practices, standards and guidelines, including:*

- *Clinical*
  - *Safeguarding*
  - *Operational management, governance and administration*
  - *Policy development, implementation and governance*
  - *Communications*
  - *Clinical records management and information governance*
  - *Appraisal & performance management.'*
5. On 24 October 2017 the Trust responded that documents already in the public domain are exempt from supply under the Act because they are already available by other means (Section 21). The Trust provided URL links to the policies. (See the detail in the Appendix)
6. On 24 October the complainant raised concerns about the response she received. She stated:
- 'The response covers some clinical guidelines and hospital policies.*
- 1. The resources provided cover some clinical guidelines and some hospital policies, however, the request was for policies, procedures, practices, standards and guidelines.*
  - 2. Please confirm that the hospital policies that are accessible via this hospital website link <https://www.plymouthhospitals.nhs.uk/trust-policies> provide access to the complete hospital policies that the PHNT GUM YourSHiP department follow.*
  - 3. Please confirm that the PHNT GUM YourSHiP department and service line are only governed by following the national evidence-based guidelines on sexual infection screening and management stated in the response letter and are not governed by following the NHS Constitution and do not have local policies, procedures, practices, standards and guidelines to ensure adherence to the NHS Constitution, therefore, the resources provided are complete.*
  - 4. Please advise on where the PHNT GUM YourSHiIP department and service line documentation on policy development, implementation and governance is accessible in the resources provided.'*
7. The complainant requested an internal review on 4 November 2017. This request was refused by the Trust as it was actively considering the email of 24 October: *'The first question is being considered as part of a post enquiry to this request. Questions 2 to 4 technically represent new questions, but are being processed now to reduce any confusion.'*
8. On 8 November the complainant repeated the concerns about the incomplete information received and raised process concerns. In particular, that the Trust refused to accept her email of 24 October as a request for an internal review.

9. On 21 November the Trust responded to the 4 questions raised in the complainant's email of 24 October and offered an internal review. (See the detail in the Appendix.)
10. The complainant contacted the Commissioner on 22 November 2017. Following the intervention of the Commissioner, an internal review was requested on 10 January 2018 and provided on 29 January 2018. The Trust confirmed that '*all relevant documents ...have been identified and shared with you*'.
11. On 10 March 2018 the complainant wrote to the Commissioner with a number of concerns concerning the completeness of the information provided, the accessibility of one of the links and the process followed. (See the detail in the Appendix.)
12. The complainant sent a further email on the same day attaching a list of Trust policies accessible on the Trust website, where the Clinical Record Keeping Policy is listed but not accessible, and screenshots demonstrating that it is not accessible.

### **Scope of the case**

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13. The Commissioner has considered that the scope of the case is whether the Trust has complied with Section 1 of the FOIA. In particular, the Commissioner will consider whether the Trust holds any further recorded information to that already identified.
14. In addition, the complainant mentioned a specific policy that is not accessible via the provided links: '*Clinical Record Keeping Policy. This policy is listed but not accessible.*' Therefore, the Commissioner will first investigate whether the Trust is entitled to rely on Section 21 (information accessible to applicant by other means) for this particular policy information.

### **Reasons for decision**

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#### Section 21 – information reasonably accessible to the applicant

15. Section 21 of the FOIA says that information is exempt from disclosure under the FOIA if it is already reasonably accessible by other means.
16. The complainant raised a particular concern of incomplete information with the Commissioner and this was forwarded to the Trust who provided the following answer:

*'An example of incomplete information as accessible by other means includes the Trust's Clinical Record Keeping Policy.'*

- Trust-wide policies are published on the Trust's Website as part of our Publication Scheme. The Clinical Record Keeping Policy is a Trust-wide policy. On receiving your email we checked the link and noted it was broken. This has now been restored. When applicants are directed to specific policies by the FOI team, the links are always checked. However this request was for all policies. Since receiving your email we have organised a rolling programme of quality checks on the policy section of our Publication Scheme.
  - There is advice on our website <https://www.plymouthhospitals.nhs.uk/publication-scheme> for users to contact us if they experience any problems with the links: If you are unable to access the Publication Scheme via the designated link, then please contact the Publication Scheme Co-ordinator who would be happy to assist you with your enquiry.
17. The Commissioner is satisfied that the information specified was on the Trust's website and that there was advice on the website if there was a broken link. The Commissioner considers that the Trust correctly applied the exemption under section 21 to this particular policy information.

### Section 1

18. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
19. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
20. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any further information which falls within the scope of the request (or was held at the time of the request).
21. As is the practice in a case such as this, the Commissioner asked the Trust a number of questions to confirm/establish if further information is held.
22. In response to the Commissioner's questions about the location of the information, the Trust confirmed that it did not hold any further recorded information falling within the scope of the request.

23. The Commissioner asked the Trust a number of questions to establish what searches had been carried out for information falling within the scope of the request.
24. The Trust explained that *'the FOI team maintain a list of leads from across the Trust who are contacted to provide information for FOI cases. In this instance, the Service Line Manager of YourSHIP was contacted to provide documents relevant to the request. All FOI responses are then checked by a Director. Therefore senior managers of the specific area confirmed that the documents provided were the only ones relevant to the request. In addition, the Trust has a number of Trust-wide policy documents which would be relevant to the YourSHIP department. The Information Governance team are responsible for the document control of Trust-wide Policies which are published on the Trust website as part of the Trust's publication scheme. Therefore the applicant was directed to the Publication Scheme.'*
25. The Commissioner asked questions about electronic searches. The Trust explained that:
- 'YourSHIP hold departmental documents on an electronic shared folder which is on the Trust's servers rather than on individual computers. The department also refer to national documents which are accessed via the internet.*
- Trust-wide policy governance is set out in the Trust's policy "The Development and Management of Formal Documents". This sets out the process for producing and maintaining formal documents. Trust-wide policies are held in a central repository which is managed by the Information Governance Team. These documents are displayed on the staff intranet and website. These documents are not held locally on individual computers.*
- The manager of the area was able to point the FOI team to the correct YourSHIP and national documents. In addition all of the Trust-wide documents are available under our Publication Scheme.'*
26. The Commissioner asked questions on whether any recorded information ever held relevant to the scope of the request had been destroyed. The Trust answered that *'documents provided are the current versions and replace those documents which they supersede. Previous versions of Trust-wide Policies are held in an electronic archive folder.'*
27. The Commissioner asked about Trust's formal records management policy on the retention and destruction of records of this type. The Trust answered that *'as an NHS organisation the Trust follows the Information Governance Alliance's Records Management Code of Practice for Health and Social Care 2016. Trust-wide Policies will be kept in line with the*

*instructions on page 69 stating that Policies, strategies and operating procedure should be kept for the life of the organisation plus 6 years.'*

28. The complainant raised a particular concern of incomplete information with the Commissioner and this was forwarded to the Trust who provided the following answer:

*'An example of incomplete information supplied is the GUM YourSHIP department has local communications policy and practice information that has not been supplied.'*

- I have liaised with the Service Line Manager of YourSHIP and they have confirmed that there is no local communication policy held within the department. The Manager has carried out a search of the YourSHIP electronic shared folder and asked senior staff working on the unit to establish this.
29. Having considered the Trust's responses to the Commissioner's investigations, the Commissioner is satisfied that, on the balance of probabilities, the Trust does not hold any further recorded information within the scope of the request.
30. The Commissioner understands the reasons why the complainant considers further information may be held, but the Commissioner can only consider what is held. It is outside the Commissioner's remit to determine if it should be held, and even if it should be, she cannot require a public authority to create the information under the FOIA.
31. As the Commissioner's decision is that further information is not held, the Commissioner does not require the Trust to take any steps.

## **Procedural matters**

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32. Section 10(1) of the FOIA states that a public authority should respond to a request promptly and in any event no later than 20 working days of receipt.
33. The complainant notes that part of the information requested was not provided until the 21 November 2017 (24 working days after the initial request on 19 October 2017) and that information held by the Trust continues to be inaccessible.
34. The Commissioner is satisfied that the Trust has engaged with the complainant to fully understand and respond to the request at every stage of the request. The Trust provided its response on 24 October (3 working days after the initial request). However, the Trust only supplied additional information (2 local amendments, one for annual leave and

another for chaperones) on 21 November which was outside of the 20 working day time limit for compliance. In this respect the Commissioner finds the Trust breached section 10(1) of the FOIA.

35. The Commissioner is satisfied that the specific concern about the broken link has been resolved and that the Trust has taken steps, by introducing a rolling programme of quality checks, to improve the reliability of its links in the future.

## Other Matters

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36. Although the Trust did not accept the complainant's emails of 24 October and 8 November 2017 as a request for an internal review of the handling of this request, the correspondence can be clearly construed as written expressions of dissatisfaction with the response to the request. The Code of Practice issued under Section 45 of FOIA states, at paragraph 38:

"Any written reply from the applicant (including one transmitted by electronic means) expressing dissatisfaction with an authority's response to a request for information should be treated as a complaint....."

37. The Commissioner has issued guidance regarding the time limits on carrying out internal reviews. The Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review, and in no case should the total time taken exceed 40 working days. A full copy of this guidance is available on our website ([www.ico.org.uk](http://www.ico.org.uk)) under the Freedom of Information guidance section.
38. The Commissioner would recommend that the Trust treats future expressions of dissatisfaction with an authority's response to a request for information as a request for an internal review.

## Right of appeal

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39. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

40. 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.
41. 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** .....

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## Appendix - Request and response

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On 19 October 2017 the complainant requested the following information:

*'PHNT GUM YourSHIP department and service line policies, procedures, practices, standards and Guidelines.'*

Clarification of the request was sought and provided as:

*'The request is for PHNT GUM YourSHIP department and service line local policies, procedures, practices, standards and guidelines, including:*

- Clinical*
- Safeguarding*
- Operational management, governance and administration*
- Policy development, implementation and governance*
- Communications*
- Clinical records management and information governance*
- Appraisal & performance management.'*

On 24 October 2017 the Trust responded that documents already in the public domain are exempt from supply under the Act because they are already available by other means (Section 21). The Trust provided URL links to:

'a range of policies on its website here:

<https://www.plymouthhospitals.nhs.uk/trust-policies>.

PHNT GUM YourSHIP department rather than developing its own service line policies, procedures, practices, standards and guidelines work to UK national evidence-based guidelines on sexual infection screening and management.

The guidance we use here can all be found on the BASHH & BHIVA Website:

<https://www.bashh.org/guidelines>

<http://www.bhiva.org/Guidelines.aspx>

You may also find the NICE Guidelines helpful, but they are reflected in BASHH and BHIVA:

<https://www.nice.org.uk/guidance/lifestyle-and-wellbeing/sexual-health>.'

On 24 October the complainant raised her concern about the satisfaction of the response received as incomplete:

*'The response covers some clinical guidelines and hospital policies.*

*1. The resources provided cover some clinical guidelines and some hospital policies, however, the request was for policies, procedures, practices, standards and guidelines.*

2. Please confirm that the hospital policies that are accessible via this hospital website link <https://www.plymouthhospitals.nhs.uk/trust-policies> provide access to the complete hospital policies that the PHNT GUM YourSHiP department follow.

3. Please confirm that the PHNT GUM YourSHiP department and service line are only governed by following the national evidence-based guidelines on sexual infection screening and management stated in the response letter and are not governed by following the NHS Constitution and do not have local policies, procedures, practices, standards and guidelines to ensure adherence to the NHS Constitution, therefore, the resources provided are complete.

4. Please advise on where the PHNT GUM YourSHiP department and service line documentation on policy development, implementation and governance is accessible in the resources provided.'

The complainant requested an internal review on 4 November 2017. This request was refused by the Trust as it was actively considering the email of 24 October: *The first question is being considered as part of a post enquiry to this request. Questions 2 to 4 technically represent new questions, but are being processed now to reduce any confusion.*

On 8 November the complainant raised concerns:

**'FOI Request – Incomplete Information Accessible by Other Means Concerns:**

*The response covers some clinical guidelines and hospital policies.*

1. *The resources provided cover some clinical guidelines and some hospital policies, however, the request was for policies, procedures, practices, standards and guidelines.*

2. *Please confirm that the hospital policies that are accessible via this hospital website link*

*<https://www.plymouthhospitals.nhs.uk/trust-policies> provide access to the complete hospital policies that the PHNT GUM YourSHiP department follow.*

3. *Please confirm that the PHNT GUM YourSHiP department and service line are only governed by following the national evidence-based guidelines on sexual infection screening and management stated in the response letter and are not governed by following the NHS Constitution and do not have local policies, procedures, practices, standards and guidelines to ensure adherence to the NHS Constitution, therefore, the resources provided are complete.*

4. *Please advise on where the PHNT GUM YourSHiP department and service line documentation on policy development, implementation and governance is accessible in the resources provided.*

**FOI Request - Process Concerns:**

1. *I raised concern about the satisfaction of the response I received on 24th October 2017 refusing my request due to information accessible by other means, following the process to raise concern outlined in the Trust's response letter that states that an independent appeal will be arranged. I'm*

*concerned that the Trust has refused the internal review request and the Trust intends to respond to my concern without the independent appeal stated in its process.*

*2. I'm concerned that further delays will be incurred with the response received from the Trust.*

*3. I'm concerned that the Trust is categorizing my concern raised about incomplete information accessible by other means, as a post enquiry and new questions. I've raised concern that the information resources provided as accessible by other means cover some clinical guidelines and some hospital policies and highlighted the specific areas of concern about incomplete information in points 1-4 of my email dated 24th October 2017.'*

On 21 November the Trust responded to the 4 questions raised in the complainant's email of 24 October and offered an internal review:

***'The response covers some clinical guidelines and hospital policies.***

***1. The resources provided cover some clinical guidelines and some hospital policies, however, the request was for policies, procedures, practices, standards and guidelines.***

*The Trust has reviewed the reply to your request. Our response to this question is:*

*YourSHiP is part of PHNT and use the Trust wide policies. YourSHiP do have two local amendments, one for annual leave and another for chaperones, which are attached.*

*Please also refer to Q3 that answers your question about procedures, practices, standards and guidelines.*

***2. Please confirm that the hospital policies that are accessible via this hospital website link <https://www.plymouthhospitals.nhs.uk/trust-policies> provide access to the complete hospital policies that the PHNT GUM YourSHiP department follow.***

*The Trust wide policies are accessible via the link provided and YourShip is required to abide by them.*

***3. Please confirm that the PHNT GUM YourSHiP department and service line are only governed by following the national evidence-based guidelines on sexual infection screening and management stated in the response letter and are not governed by following the NHS Constitution and do not have local policies, procedures, practices, standards and guidelines to ensure adherence to the NHS Constitution, therefore, the resources provided are complete.***

*For clinical practice, as previously advised, YourSHiP use BASHH and BHIVA as guidance. We have provided you with links to their websites where the information is held. We don't create local policies, procedures, practices or standards for YourSHiP as it is considered unnecessary as the BASHH and BHIVA ones are entirely appropriate for use.*

*As a department, it is considered that policies, procedures, practices, standards and guidelines are either sourced in the Trust or via BASHH and BHIVA. This means that we are able to ensure we are working with the best practice.*

***4. Please advise on where the PHNT GUM YourSHIIP department and service line documentation on policy development, implementation and governance is accessible in the resources provided.***

*When staff develops formal documents they refer to the document titled: The development and management of formal documents.*

*Please refer to the guidance listed in the Model Publication Scheme, section 5 – Policies and procedures, subsection - Corporate record management...*

*We refused a review of this particular request of yours because we had already advised you that we were already reviewing the response to question one and because the final three questions were new questions and inappropriate for internal review.*

*Would you kindly note that if you were unhappy with this response then you have the right to request an internal review.'*

The complainant contacted the Commissioner on 22 November 2017. Following the intervention of the Commissioner, an internal review was requested on 10 January 2018 and provided on 29 January 2018. The Trust confirmed that '*all relevant documents ...have been identified and shared with you*'. Outside of the FOIA, the Trust also explained that the creation date of the document sent to the complainant was to do with the document being saved as a PDF file ready to be sent to the complainant.

On 10 March 2018 the complainant wrote to the Commissioner with a number of concerns concerning the completeness of the information provided, the accessibility of some of the links and the process followed:

*'I outline below my concerns that I'd like to raise with the ICO for investigation.*

*On 10 January 2018, I wrote to the Trust for a second time requesting an internal review. I outline below my outstanding concerns from the Trust's response to the Freedom of Information request on 21<sup>st</sup> November 2017 and the internal review dated 29<sup>th</sup> January 2018:*

- 1. The response has not satisfactorily addressed the completeness of information that I had requested (listed under 'FOI Request ' Incomplete Information Accessible by Other Means Concerns)'.
  - a. The resources provided cover some clinical guidelines and some hospital policies, however, the request was for policies, procedures, practices, standards and guidelines.**



*out to me. In the Trust's response to the ICO's investigation for the Freedom of Information request for local departmental PALS & Complaints policies, procedures, standards and guidelines, the Trust noted that its policy documentation is already stored in electronic format. The Trust noted that the Information Governance team are responsible for the document control of Trust-wide formal documents such as policies and procedures. These documents are held on electronic folders and displayed on the Trust intranet. Trust Policies are also published on the Trust website as part of the Trust's publication scheme. ?*

7. *The Trust has not satisfactorily addressed my concerns about the process that it has followed.*
  - a. *I raised concern about the satisfaction of the response I received on 24<sup>th</sup> October 2017 refusing my request due to information accessible by other means, following the process to raise concern outlined in the Trust's response letter that states that an independent appeal will be arranged.*
  - b. *I'm concerned that the Trust had refused the internal review request and the Trust responded to my concern without the independent appeal stated in its process.*
  - c. *I'm concerned that further delays were incurred with the response received from the Trust. I should have received a full and final response from the Trust by 21<sup>st</sup> November 2017.*
  - d. *I'm concerned that the Trust had categorised my concerns raised about incomplete information accessible by other means, as a post enquiry and new questions. I'd raised concern that the information resources provided as accessible by other means cover some clinical guidelines and some hospital policies and highlighted the specific areas of concern about incomplete information in points 1-4 of my email dated 24<sup>th</sup> October 2017.*
  - e. *The Trust refused the request for an internal review, stating that the Trust is under no legal obligation to do so under the Act, categorising my concern raised about incomplete information accessible by other means, as a post enquiry and new questions. The response stated that the Trust are actively pursuing a reply, however, I did not receive a reply until 21<sup>st</sup> November 2017, 20 working days after I raised my complaint on 24<sup>th</sup> October 2017, the timeframe that applies to a formal review.*
  - f. *Following a second request for an internal review, I received a response from the Trust that the reason the response to the Freedom of Information request on 21<sup>st</sup> November 2017 contained additional policy documentation that was not considered to exist by the Trust when my request for information on 19<sup>th</sup> October 2017 was refused on 24<sup>th</sup> October 2017, was because they had conducted a review, and the purpose of a review is to reconsider and identify any missing components (whilst at the time the Trust had advised me they had refused a review, and were handling it as a post enquiry and new questions).'*

Reference: FS50712640

The complainant sent a further email on the same day attaching a list of Trust policies accessible on the Trust website, where the Clinical Record Keeping Policy is listed but not accessible, and screenshots demonstrating that it is not accessible.