

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 December 2014

Public Authority: Poole Hospital NHS Foundation Trust

Address: Longfleet Road, Poole BH15 2JB

Decision (including any steps ordered)

1. The complainant has requested information about a current procedure relating to an historical complaint process. The Poole Hospital NHS Foundation Trust ('the Trust') released information that the complainant considers does not address their request. The complainant considers the Trust has breached section 1(3) (further information to identify and locate requested information) or section 16 (advice and assistance).
2. The Commissioner considers that the Trust has:
 - complied with section 1(1) as it has now confirmed it does not hold the requested information;
 - breached section 10 (time for compliance) as the Trust's initial response and final response were provided to the complainant outside the 20 day timescale required by the FOIA; and
 - breached section 16 of the FOIA as the Trust could have done more to clarify the request in order to confirm whether or not it held the requested information.
3. The Trust has now correctly addressed the complainant's request and the Commissioner does not require it to take any further steps.

Request and response

4. On 16 August 2014, the complainant wrote to the Trust and requested information in the following terms:

"Please let me know what procedure Poole Hospital follows when they receive evidence that a member of staff who acted as a witness at a panel review, continued dialogue after a complaint had reached a panel and the report had been issued"

5. The Trust responded on 24 September. It said that, following amendment to its general complaints procedure, the Trust no longer held independent panel reviews. There was therefore no procedure of the type the complainant had requested.
6. The complainant was not satisfied with the response, telling the Trust it appeared to have "answered a question I did not ask".
7. Following an internal review the Trust wrote to the complainant on 7 October. It explained that its interpretation of the complainant's request had led it to believe that it related to the Trust's former complaint procedure. It provided a copy of its current complaints procedure to the complainant.

Scope of the case

8. The complainant contacted the Commissioner on 10 October to complain about the way their request for information had been handled.
9. The Commissioner liaised with the complainant to confirm the scope of their complaint. In the process, it became clear that their information request had not related to a *complaints* procedure specifically, but to *any* procedure the Trust would follow if the circumstances outlined in the complainant's request were to arise.
10. The complainant is of the view that the Trust has breached section 1(3) of the FOIA because it did not clarify the request with them. Similarly, they consider the Trust could have breached section 16 because it did not offer advice and assistance with a view to clarifying the nature of their request.
11. The Commissioner has focussed his investigation on whether the Trust met its obligations under section 1(1) (information held/not held), section 10 and section 16.

Reasons for decision

12. **Section 1(1)** of the FOIA places an obligation on a public authority to inform an applicant whether or not it holds the information they have requested, and if it does, to communicate that information to the applicant.
13. In this case, once it was clear what information the complainant had requested, the Trust confirmed to the Commissioner that it did not hold information on any procedures. It suggested that, should the circumstances outlined in the complainant's request arise, this matter would be dealt with by the Ombudsman (ie the Parliamentary and Health Service Ombudsman).
14. **Section 10** of the FOIA says that when a public authority receives a request for information it must comply with section 1 within 20 working days following the date of receipt.
15. The complainant submitted their request on 16 August. A response was due by 15 September and they received the Trust's initial response on 24 September. The Trust's final response was communicated to the complainant on 27 November, more than 60 days after they had submitted their request.
16. Under **Section 16** of the FOIA, public authorities have a duty to provide advice and assistance to an applicant; this includes clarifying an unclear request for information.
17. The complainant has wider, long-standing concerns about the Trust. In its handling of this particular request, the Trust initially assumed that the procedure the request referred to was a complaints procedure specifically and this was reflected in its response of 24 September. Given the wider context of the request, the Commissioner considers that this was a reasonable assumption to make.
18. However, the complainant then expressed dissatisfaction with the Trust's response and said it had answered a question they had not asked. In fact, the complainant was requesting information on *any* procedure the Trust would follow now, were it to receive evidence of an irregularity in an historical complaints process.
19. As it was, the Trust continued to interpret the request incorrectly. This resulted in it providing the complainant with its current complaints procedure, at internal review. In turn, this generated the complaint to the Commissioner because the complainant was not confident that the Trust had correctly understood or addressed their request.

20. The complainant had requested an internal review in particular terms that suggested the Trust had misinterpreted their request. With the benefit of hindsight, the Commissioner is prepared to accept that the Trust could, at that point, have sought clarification as to the exact nature of the complainant's request, as required under section 16, in order to comply with section 1(1).
21. As a consequence of this conclusion, the Commissioner did not find it necessary to go on to consider whether the Trust had any obligations under section 1(3). This section relates to a public authority's obligations to comply with section 1(1) in instances where it has requested clarification from an applicant.
22. Finally, the Commissioner notes that the Trust's final response is the same as its initial response on 24 September, namely that it does not hold the requested information. However, he is satisfied that, unlike the initial response, the final response is based on a correct interpretation of the request and the complainant can have confidence in it.

Right of appeal

23. 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

24. 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.
25. 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
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