

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 31 July 2018

**Public Authority:** Royal Marsden NHS Foundation Trust  
**Address:** Fulham Road  
London  
SW3 6JJ

#### Decision (including any steps ordered)

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1. The complainant has requested information about a clinical trial known as delta-9 that he believes took place at the Royal Marsden Hospital.
2. The Commissioner's decision is that Royal Marsden NHS Foundation Trust (the Trust) does not hold the requested information and found that there is no breach of section 16(1) of the FOIA (duty to provide advice and assistance).
3. The Commissioner does not require any steps to be taken as a result of this decision.

#### Request and response

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4. On 22 April 2018, the complainant wrote to the Trust and requested information in the following terms:

*"I would like to make the following Freedom of Information Act ("FOIA") Request from the Royal Marsden Hospital based on something Steven Pound MP said in Hansard on Feb 20 2018*

*"May I help the Minister and suggest that he speak with his colleague the Secretary of State for Health and ask about the extensive trial, known as delta-9, which took place in the Royal Marsden Hospital 40 years ago? Cannabis was found to be an excellent prophylactic against*

*nausea caused by ontological medicine The data is there The imperial evidence is there Why does he not save time and trouble by having a word with the Secretary of State and drawing this information to the attention of the House? ...*

*Please note' I have already mad this FOIA request from the Care Quality Commission. They did not have the information, but recommended I make the FOIA request from the Royal Marsden directly*

*Please can you provide all information on this trial as well as all information relating to the parties to whom this information has been made available"*

5. On 27 April 2018 the Trust responded. It said that the Trust does not hold the requested information.
6. On 30 April 2018 the Trust completed an internal review and wrote to the complainant maintaining its original position.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 12 May 2018 to complain about the way his request for information had been handled.
8. The scope of the Commissioner's investigation has been to determine whether the Trust held information at the time of the request. The Commissioner has also considered whether the Trust provided appropriate advice and assistance under section 16 of the FOIA.

### **Reasons for decision**

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#### **Section 1 of the FOIA – general right of access to information**

9. Section 1 (1) of the FOIA states:

*"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) *is that is the case, to have that information communicated to him."*

### Determining whether information is held

10. In scenarios where there is some dispute between the amount of information located 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 Information Tribunal decisions, applies the civil standard of the balance of probabilities.
11. In other words, in order to determine such complaints the Commissioner must decide whether it is more likely than not that a public authority does not hold any information which falls within the scope of the request (or did not hold it at the time of the request).
12. The Commissioner will consider the scope, quality and thoroughness of the searches performed, and whether the searches were appropriate and adequate. She will also consider any other explanations provided by the public authority for why the information is not held. Finally she will consider the arguments or evidence provided by the complainant as to why they consider the requested information must be held.

### The Trust's position

13. The Trust has stated that in preparing its initial response and review decision its Clinical Research and Development Team was consulted and a search of its current research database that was created in 2004/5 was undertaken which returned no results for information relating to a 40 year old study. The Trust stated that it extended its search to its previous research database which also returned no result for the information. The Trust also stated that its manual records including those in storage do not date back to the time of the alleged clinical trial (40 years ago).
14. The Trust has further stated that, during the timeframe of the alleged study e.g., 40 years ago, there were no national regulations or local standard operational procedures for the retention of information relating to clinical trials involving medicinal products. The regulations to which the Trust currently adheres to stipulate that 'the medical records and essential documents are retained for at least 5 years after the conclusion of the trial'. The sponsor should retain documents for longer periods (at least 15 years) if the study is to be submitted as part of a marketing authorisation. For other types of clinical trials, relevant documentation should be archived in accordance with the Research Governance Framework for Health and Social Care in the UK 2005, the protocol and responsibilities laid out in the contract/agreement.

### The Complainant's position

15. The Complainant believes that the information is held by the Trust because he made a similar request to the Care and Quality Commission (CQC) and it replied on 18 April 2018 and said *"we can advise that it may be more appropriate to make a request for information to the Royal Marsden Hospital where the trial was undertaken."*
16. The complainant believes that the information is held by the Trust because of the comments made by Steven Pound MP on 20 February 2018. He believes that the trial was conducted at and under the authority and supervision of the Marsden Hospital and if the information is not /no longer held by the Trust then it is likely to know if the information was shared and who with.
17. The complainant believes the Trust has breached section 16(1) of the FOIA by failing to tell him which organisation(s) hold the information and forward the request to it/them.

### The Commissioner's view

18. The Commissioner's view is that, on a balance of probabilities, the information is not held by the Trust.
19. She accepts that the Trust and its Clinical Research and Development Team which it consulted would be aware of information of the nature that the complainant has requested – if it existed. She is also satisfied with the searches undertaken by the Trust and in the absence of conclusive and recent evidence to the contrary, she therefore sees no reason to doubt these searches.
20. The Commissioner also notes the passage of time since the trial is believed to have taken place, specifically 40 years ago. She also notes that the trial is believed to have taken place at the Marsden Hospital prior to the formation of the Trust to which it is now a part of and that there is no evidence of regulations and/or guidelines that existed that suggest that there is a requirement for the information to be held and/or still held by the Trust.
21. The Commissioner notes that although the CQC advised the complainant that it *'may be more appropriate'* to make a request to the Trust for the information, there is no evidence in the CQC's response or otherwise in this case that the Trust holds the information.

22. The Commissioner therefore concludes that, for the reasons given above, on the balance of probabilities, the Trust does not hold the requested information.

### **Section 16 of the FOIA – duty to provide advice and assistance**

23. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request "*so far as it would be reasonable to expect the authority to do so*". Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice (the "code")<sup>1</sup> in providing advice and assistance, it will have complied with section 16(1).
24. As there is no evidence in this case that the information was ever held by the Trust, it follows that the Trust would not be aware of other organisations it shared the information with and therefore could not provide the complainant with advice and assistance in relation to this or forward the request on to them.
25. The Commissioner is therefore satisfied that there has been no breach of section 16 of the FOIA by the Trust in the circumstances of this case.

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<sup>1</sup> <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-ofpractice.pdf>

## Right of appeal

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26. 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: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

27. 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.
28. 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**