

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 04 September 2018

Public Authority: Cambridgeshire and Peterborough Clinical Commissioning Group

Address: Lockton House
Clarendon Road
Cambridge
CB2 8FH

Decision (including any steps ordered)

1. The complainant requested information regarding the Health and Care Executive Minutes of the Cambridgeshire and Peterborough Sustainability and Transformation Programme (STP). The Cambridgeshire and Peterborough Clinical Commissioning Group (CCG) initially applied section 36 but during the Commissioner's investigation it disclosed the requested information. As the information was not disclosed within the statutory timescale of 20 working days, the CCG breached section 10(1) (time for compliance) of the FOIA. The Commissioner does not require any steps to be taken.

Request and response

2. On 30 August 2017 the complainant requested the following information:

'Dear Cambridgeshire and Peterborough Sustainability and Transformation Programme,

Could you please release the minutes of meetings of the Health and Care Executive which have been held to-date; along with the agenda for any upcoming meeting(s).

I would like to suggest the papers for Health and Care Executive meetings, and those for the partnership's other key committees, are pro-actively published on the partnership's website in the future.'

3. On 25 September 2017, the CCG responded and cited section 36:

'In considering this request the CCG has determined that the agenda and minutes of the Health and Care Executive (HCE), which is the forum overseeing the development of the STP plan for the Cambridgeshire and Peterborough system are exempt from disclosure at this time under Section 36 of the Freedom of Information Act – Prejudice to the effective conduct of public affairs. The exemption has been applied because it is the reasonable opinion of the CCGs "Qualified Person" that disclosure of this information under the Act would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs in accordance with Section 36(2)(c) of the Act...For the CCG the qualified person is the Accountable Officer (Acting Chief Officer – Jonathan Dunk).'

4. The complainant requested an internal review on 29 September 2017 about the failure of the STP to respond to his request. He stated that the STP is a public authority in its own right and he expected a response from the STP. He had only received correspondence from the CCG.

5. On 26 October 2017, the CCG sent the outcome of its internal review. The CCG explained in some detail the adopted approach for managing the STP FOIA queries:

'At the commencement of the STP process in 2015, the approach to how FOI requests relating to the STP should be managed was one of the governance matters considered. On the basis that the STP was not a statutory organisation it was considered appropriate that the CCG, which is a statutory body - and for reasons of robust governance - would be the most appropriate organisation to formally respond to these requests. This approach was subsequently adopted and remains in operation.

All STP related FOI responses are signed off at an appropriate level within the STP and CCG hierarchy before a final response letter is sent. In effect, while the CCG logs, coordinates and secures final sign-off of all STP related FOI requests the actual body of the response is provided by the STP's System Delivery Unit (SDU).'

6. The CCG went on to acknowledge that it needed to make it clearer in its final response letters that while the CCG is the formal responding body, the contents of the response will have been provided by the STP System Delivery Unit. It intended to instigate the change with immediate effect.
7. On 20 November 2017 the complainant wrote to the Commissioner and argued that the STP is a public body in its own right.
8. On 4 January 2018 the Commissioner wrote to the complainant explaining that the CCG had provided a response on behalf of the STP

within the 20 working day limit and closed the case as *'there does not appear to a breach of the FOIA for the Commissioner to consider.'*

9. On 21 January 2018 the complainant wrote to the Commissioner to dispute this closing letter as *'none of the information I requested has been released.'*
10. On 21 February 2018 the Commissioner wrote to the complainant explaining that although the original issue brought to her attention had been dealt with appropriately, the recent correspondence had widened the scope of the complaint to include the CCG's refusal to disclose the requested information.
11. The Commissioner made it clear that as the request for an internal review did not cover the application of the section 36 exemption, then the complaint about the refusal would not strictly speaking be deemed eligible for consideration. However, it was decided that the complaint should be re-opened. The CCG was informed that the complaint had been accepted for investigation.
12. The Commissioner also advised the complainant that the CCG would be within its rights to carry out a further review which would cover the revised scope of the complaint.
13. Following the Commissioner's letter in February, the CCG reviewed the 25 sets of minutes and, given the time that had passed and after consulting the partner organisations from across the local health system, decided that these should now be released. The CCG updated the complainant on 2 July and disclosed the information on 23 July 2018.

Scope of the case

14. The complainant first contacted the Commissioner on 20 November 2017 to complain about the way his request for information had been handled.
15. During the Commissioner's investigation and after the requested information had been disclosed, the Commissioner contacted the complainant to seek an informal closure. The complainant thought that *'there would be a significant public interest benefit in the Information Commissioner publishing a decision notice in this case, it would show that NHS Sustainability and Transformation Programmes ... are public bodies subject to FOI in their own right; the decision notice could be referred to by others seeking information from other STPs.'*

16. The Commissioner notes that the CCG has stated that STP is a meeting of partners and it is not an entity or public authority in its own right. The CCG has taken responsibility for providing responses to the FOI requests being the most appropriate statutory body to do so. This issue has been considered in previous decision notices: <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014653/fs50679853.pdf>
17. The Commissioner considers that the scope of her investigation is to determine whether the CCG has complied with Section 10 of the FOIA.

Reasons for decision

Section 10 – time for compliance

18. Section 1(1) of the FOIA states that anyone making a request for information to a public authority is entitled to be informed whether the public authority holds the information, and if so, to have that information communicated to them.
19. Section 10(1) of FOIA states that:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt".
20. The complainant made his request for information on 30 August 2017. Following the Commissioner's intervention the CCG reconsidered its initial refusal to disclose the information under section 36 and disclosed the information on 23 July 2018. The Commissioner therefore finds that the CCG has breached section 10(1) of the FOIA. The Commissioner notes that the CCG has engaged with both the complainant and the Commissioner throughout this investigation.

Right of appeal

21. 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

22. 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.

23. 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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