

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 December 2018

Public Authority: Drs Blundell, Strange & Butler-Gallie, partners of North Ridge Medical Practice

Address: North Ridge
Rye Road
Hawkhurst
Kent
TN18 4EX

Decision (including any steps ordered)

1. The complainant has requested information relating to support for patients affected by racial abuse.
2. The Commissioner's decision is that the GPs named above (referred to hereafter as "the Practice") failed to discharge their duty under Section 1(1)(a) to confirm or deny holding information within the scope of elements [2] to [5] of the request. However, the Practice has disclosed, to the complainant, all the information it holds in recorded form.
3. The Commissioner does not require any further steps to be taken.

Status of GPs under the FOIA

4. The Commissioner notes that the medical practice itself is not a public authority for the purposes of the FOIA. Rather, each GP within the practice is a separate legal person and therefore each is also a separate public authority. The actual duty under section 1 of the FOIA, to confirm or deny whether information is held and then to provide the requested information to the applicant, subject to the application of any exemptions, rests with each individual GP.

5. However, the Commissioner acknowledges that when an applicant makes an information request to a medical practice, or a single GP within the practice, it is reasonable to expect, for convenience, that the practice will act as the single point of contact and provide a response on behalf of the GPs concerned.
6. For the purposes of this decision notice, references to the views and actions of "the Practice" should be read as referring to the collective views and actions of the above-named GPs.

Request and response

7. On 2 March 2018, the complainant wrote to the Practice and requested information in the following terms:

"I wish to receive a copy of all information you hold regarding how to address the needs of patients affected by racial abuse.

"In particular I wish to receive a copy of all information you hold in respect of the following:-

- 1) *Information you have displayed in waiting areas and other suitable places regarding:-*
 - A) *Racial abuse.*
 - B) *The support available by the NHS and also any other agencies for those affected by racial abuse.*
- 2) *What are the ways a GP should respond when their patient informs them that they have been harmed as a result of their experience of racial abuse.*
- 3) *What are the signs and symptoms that mean the patient might be likely to have been harmed as a result of their experience of racial abuse.*
- 4) *What steps can the whole GP practice team (clinical and non-clinical) take to make it easier for patients to disclose that they have been a victim of racial abuse.*
- 5) *What environment is best suited for a patient to be asked relevant questions to help them disclose their past or current experiences of racial abuse to any of your GP practice team (clinical and non-clinical)."*

8. The Practice responded on 9 March 2018. It stated that it had already provided the complainant with information within the scope of the request and informed him that he could find more information on the Practice website.
9. The complainant requested an internal review on 18 April 2018. He argued that the Practice's response did not amount to discharging its duty under Section 1 of the FOIA as the practice had not provided information which it held. He also argued that the Practice would hold further information relevant to the request. Following an internal review the Practice wrote to the complainant on 26 April 2018. It provided some further information within the scope of the request and stated that it did not consider elements [2]-[5] of the request to be valid under the FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 18 July 2018 to complain about the way his request for information had been handled.
11. The complainant subsequently explained to the Commissioner that, in his view, if the information that had been disclosed to him was the only information held, the Practice was likely to be in breach of its duties under the Equality Act 2010.
12. The scope of this case is to consider whether further information was held by the Practice within the scope of the request.

Reasons for decision

Was the request valid?

13. Section 8(1) of the FOIA states that:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

14. Section 84 of the FOIA further defines information in this context as being information "recorded in any form."

15. The Practice has stated that it does not regard elements [2] to [5] of the request as being requests for information held in recorded form. It argues that the complainant is seeking an explanation or justification which would require the creation of new information.
16. The Commissioner notes that the preamble to the numbered elements of the request stated clearly that the complainant was seeking "a copy of all information you hold in respect of the following...".
17. The Commissioner therefore takes the view that, when read objectively, the request was seeking recorded information – regardless of whether the Practice did in fact hold information within scope. It was therefore a valid request.

Held/Not-Held

18. Section 1(1) of the FOIA states that:

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

The Complainant's position

19. The complainant's view, as outlined above, is that the Practice "must" hold further information within the scope of the request.
20. In his request for an internal review, the complainant stated that "Given your contractual and equality duties I am of the opinion that, in all probabilities, you are likely to hold further information fitting criteria of my request and which you have not provided me with a copy." The complainant did not specify which contractual or equality duties he considered would require the Practice to hold further information.

The Practice's position

21. In respect of Element [1] of the request, the Practice has stated to the Commissioner that it has disclosed, to the complainant, both in response to a previous request and at the internal review stage, a copy of its Respect and Dignity policy which is required reading for all its staff.
22. It has conducted a visual check of its waiting room and confirmed that the posters it has displayed offer general advice and guidance about a broad range of issues – none relate specifically to racial abuse.

23. The Practice further stated that it has searched its electronic patient files to see whether any further information could be found within the scope of elements [2] to [5] of the request and was unable to locate anything within scope.
24. In the Practice's view, the answers to Elements [2] to [5] would not be held in recorded form – rather the task of dealing with a patient who complained of, or displayed symptoms of harm from racial abuse would be “a matter of clinical judgment.”
25. Finally the Practice confirmed that there was no business or statutory requirement for it to hold such specific information.

The Commissioner's view

26. The Commissioner's view is that the Practice does not hold the requested information.
27. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
28. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
29. In the Commissioner's view, the searches that the Practice has carried out were adequate, relevant and would have identified any information which was held.
30. Given that, in respect of Element [1], the complainant had specified that the information he was seeking had to be “displayed in the waiting areas and other suitable places,” a visual inspection would have been adequate – information which was not visible would, by definition, not be displayed.
31. The complainant's request was very specific to information relating to “racist abuse.” The Commissioner considers it unlikely that the Practice would need to hold additional policies or procedures that dealt solely with racist abuse.

32. It is not for the Commissioner to determine whether the Practice is, or is not, in compliance with its duties under the Equality Act. The complainant has not elaborated on why he believes the Practice to not be in compliance with the legislation and the Commissioner can see no reason why the Practice would be required to hold further information to satisfy its duty. The Practice has a Respect & Dignity policy and an Equality & Diversity policy. The Commissioner therefore sees no reason why the Practice should therefore also be expected to hold separate policies relating to those who have suffered racial abuse.
33. Whilst the Commissioner therefore concludes that no information is held within the scope of any of the request beyond that which has previously been disclosed, because Elements [2] to [5] were valid requests, the Practice was required to state that it did not hold information within the scope of these elements. As it failed to do so, either in its initial response or its internal review, the Practice thus failed to discharge fully its duty under Section 1(1)(a) of the FOIA.

Other matters

34. When a public authority receives an information request, its first duty is to establish what information is held and to either confirm or deny holding this information to the requestor (unless there a specific exemption from the duty to confirm or deny). Once it has confirmed holding information, it must either provide that information or issue a refusal notice.
35. If the public authority believes the information is reasonably accessible to the requestor, either because it has previously been provided or because it is publically available (eg. via a website), the public authority can either provide that information again in permanent form or refuse the relevant element(s) of the request under Section 21 of the FOIA. To be fully FOIA-compliant, it cannot simply say "the information can be found here."
36. If it chooses to refuse the request because the information is available on a website it should describe, as specifically as possible where on that website the specific information can be found.

Right of appeal

37. 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

38. 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.
39. 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

**Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
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SK9 5AF**