

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 July 2023

Public Authority: Cambridge University Hospitals NHS Foundation Trust

Address: Hills Road
Cambridge
CB2 0QQ

Decision (including any steps ordered)

1. The complainant requested information from Cambridge University Hospitals NHS Foundation Trust ("the Trust") about funding for a pilot post. The Trust cited section 43(2) of FOIA to withhold the requested information. However, the Trust withdrew its reliance on section 43 at internal review and disclosed the information it held in scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the Trust does not hold any further information in scope of the request.
3. The Trust failed to provide a refusal notice within 20 working days and therefore breached section 17(1) and section 10 of FOIA.
4. The Commissioner does not require any steps to be taken as a result of this decision.

Request and response

5. On 9 June 2022, the complainant requested information in the following terms:

"1) A copy of the original proposal that was submitted by CUH Trust to the Addenbrookes Charitable Trust (ACT) for the funding (to the tune of £43,920) of the pilot post in the urology department, a post that apparently aimed/aims to provide psychological support for patients who were/have been deemed to have functional urological conditions. (This post is the one mentioned on page 17/69 of Addenbrooke's Charitable Trust Annual Report and Financial Statements 2020/21)

2) A copy of all the data that was supplied to ACT as part of the proposal for the funding of that pilot post in the urology department, in the form in which it was supplied to ACT.

3) A copy of any letters/emails/documents that the CUH Trust sent to ACT in the course of any discussions/interactions regarding the proposal for the funding of this pilot post.

4) A copy of the confirmation letter from ACT informing the CUH Trust that the pilot post in the urology department would be funded, and any letter sent from the CUH Trust to ACT in reply to it.

5) A copy of any agreement documentation that was signed by the CUH Trust to enable the pilot post in the urology department to go ahead.

6) A copy of the full job advertisement and full job description that the CUH Trust put out to advertise the pilot post in the urology department that ACT was to fund.

7) Details of any other organization or hospital or other NHS trust that may be involved in the administration of this pilot post in the urology department at Addenbrooke's."

6. On the 26 July 2022, the Trust cited section 43 to withhold the requested information.

7. After the Commissioner's intervention, the Trust completed its internal review on 10 March 2023. It withdrew its reliance on section 43 of FOIA and supplied the information it held in scope of the request.

Reasons for decision

Section 1 FOIA - determining whether information is held

8. Section 1 of FOIA says that a public authority is required to confirm or deny that it holds the requested information, and disclose relevant information that it holds, unless an exemption or exclusion applies. If a public authority does not hold recorded information that falls within the scope of the request, the Commissioner cannot require the authority to take any further action.
9. The complainant has raised concerns about the lack of emails they felt would be held and therefore should have been included in the disclosure.
10. In cases where there is a dispute as to the information held by a public authority, the Commissioner will use the civil standard of proof, .e, the balance of probabilities. 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.
11. This reasoning covers why the Commissioner considers whether the Trust is correct when it says that it does not hold any other information the complainant requested.
12. There is no requirement for the Trust to create information in order to answer a request, its obligation is to supply information it held at the time of the request. However, in the Commissioner's [guidance on determining whether information is held](#) it states

“If you have the “building blocks” necessary to produce a particular type of information, it is likely that you would hold that information unless it requires particular skills or expertise to put the building blocks together.”
13. The Commissioner asked the Trust to provide an explanation of its response for the requested information, and how it had concluded that it did not hold any further information in scope of the request.
14. They explained that: “the Trust moved over from using Addenbrookes.nhs.uk to nhs.net email service.” As a result, emails that were no longer needed were deleted as part of migrating to nhs.net.

This migration took place prior to the request being received by the Trust.

15. The Trust also explained the procedures put in place to search relevant mailboxes for any information in scope of the request and their retention policies and procedure regarding destruction of information no longer required.

The Commissioner's view

16. The Commissioner has carefully considered the points made by the complainant and the Trust.
17. The Commissioner appreciates that the complainant has raised specific grounds of complaint which set out why, in their view, the Trust would hold relevant information. However, the Commissioner considers that the Trust's submissions to him have now adequately addressed these points.
18. In addition, the Commissioner is unable to identify any further action that the Trust could reasonably be expected to take as part of its statutory obligations under FOIA in order to identify or locate any further information in scope of the request. As has been set out above, if information is not held then it cannot be disclosed in response to a request.
19. In conclusion, the Commissioner finds, on the balance of probabilities, the Trust does not hold any further information falling within the scope of the request.

Procedural issues

20. The Commissioner raised concerns with the Trust regarding its handling of this case, lack of explanation for the delays, and lack of response to the requester and the Commissioner.
21. The public authority breached section 10 and 17 (1) of FOIA because it failed to inform the requester, within 20 working days, whether or not it held any information within the scope of their request.

Internal review

22. Whilst there is no formal requirement to undertake an internal review under FOIA, the Commissioner considers it good practice to do so, which is addressed in the code of practice issued under section 45 of FOIA.
23. The Commissioner considers that, where offered, internal reviews should be completed promptly. Although no explicit timescale is laid down in the code of practice, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer, but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.
24. In this case, the complainant requested an internal review on 28 July 2022. Having not received a response, they asked the Commissioner to intervene. The Trust finally responded on 10 March 2023 some seven months after the original request.
25. By failing to complete the internal review within the timescales specified above, the Commissioner considers that the Trust did not conform with the Section 45 code of practice.
26. The Commissioner uses intelligence gathered from individual cases to inform his insight and compliance function. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting systemic non-compliance, consistent with the approaches set out in his "Regulatory Action Policy"¹

¹ [Regulatory Action Policy \(ico.org.uk\)](https://ico.org.uk)

Right of appeal

27. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk

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

28. 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.
29. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF