

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 April 2024

Public Authority: University Hospitals of Derby and Burton NHS Foundation Trust

Address: Uttoxeter Road
Derby DE22 3NE

Decision (including any steps ordered)

1. The complainant submitted a two-part request to the University Hospitals of Derby and Burton NHS Foundation Trust ('the Trust') about its membership of a vascular network.
2. The Commissioner's decision is first, that the first part of the request isn't a valid request for information under section 8 of FOIA. Second, the Commissioner finds that the Trust doesn't hold recorded information within scope of the second part and has complied with section 1(1)(a) of FOIA. It's not necessary for the Trust to take any steps.

Request and response

3. The complainant made the following information request to the Trust on 30 August 2023:

"NHS England has once again affirmed your status as a network hub in the vascular provider network. I did inquire about the source of this statement, to which they responded that it originates from the contract the Trust entered into with them for the period 2023/2024. Given the evident perplexity and contradictions from both organisations, I would like to make an amendment to this FOI request by including two additional questions.

2. Is the Trust a network hub within a hub-and-spoke vascular network model, and consequently, a member of a "vascular provider network" a term delineated and mandated in the Specialised Vascular Services (Adults) 170004/S specification?
3. Considering that historical public records indicate that the Trust was previously a formal member of a vascular network in the capacity of a vascular network hub, with Chesterfield being designated as a spoke site/hospital (non-arterial centre), could the Trust kindly provide the date on which it ceased to be a member of the vascular provider network? This information is sought to facilitate discussions regarding payments made to the Trust by NHS England."
4. The Trust initially relied on section 14(2) of FOIA to refuse the request as it considered it was a repeat request. The Trust maintained that position following its internal review.
5. Following the complaint to the Commissioner, the Trust reconsidered its response and issued the complainant with a fresh response to their request on 13 March 2024. It answered "No" to question 2. For question 3, the Trust confirmed that, as it had indicated in responses to the complainant's 10 previous requests for information and other follow up questions, the Trust is not, and never has been, a member of a formal vascular network. The Trust advised that it had already provided all the relevant information it holds.
6. Having considered the phrasing of the request and having spoken to the Trust the Commissioner wrote to the complainant on 21 March 2024. He explained what FOIA concerned – recorded information - noted that the Trust has confirmed it hasn't been a member of a formal vascular network and that, as such, it can't hold information within scope of the second question. He invited the complainant to withdraw their complaint, but the complainant preferred to conclude their complaint through a decision notice.

Reasons for decision

7. This reasoning first considers whether question 2 of the complainant's request is a valid request under section 8 of FOIA. If necessary, the Commissioner will consider whether the Trust holds recorded information within scope of that question and question 3.

Section 8 – request for information

8. Section 8(1) of FOIA states that a valid request is one that is in writing, includes the applicant's name and contact details and describes the information requested.
9. In question 2 of their request, the complainant has asked a question that invites the answer "Yes" or "No", namely:

"Is the Trust a network hub within a hub-and-spoke vascular network model, and consequently, a member of a "vascular provider network" a term delineated and mandated in the Specialised Vascular Services (Adults) 170004/S specification?"
10. FOIA concerns information held in recorded form only. FOIA doesn't oblige a public authority to answer general questions – including "Yes/No" questions – or provide opinions or explanations. Nor does FOIA concern the accuracy or otherwise of information that a public authority may provide.
11. The Commissioner asked the complainant to explain what recorded information they were expecting to receive when they submitted their request.
12. In response, the complainant discussed discrepancies between the Trust's answer "No" to question 2 and information they say they received from NHS England which suggested to them that the Trust **had** been part of a vascular network.
13. That matter isn't a matter the Commissioner can consider. He can consider solely whether a public authority holds recorded information within scope of a request.
14. The complainant hasn't described what recorded information they were expecting to receive. The Commissioner considers that, to question 2, the complainant can only have expected to receive the answer "Yes" or "No". Since the requested information isn't described, the Commissioner doesn't consider that part 2 of the request is a valid request under section 8 of FOIA.
15. The Commissioner has published guidance for applicants¹ on making a request to ensure they receive the specific information they're seeking. The complainant may find that guidance useful.

¹ <https://ico.org.uk/for-the-public/official-information/>

Section 1 – general right of access to information held by public authorities

16. Section 1(1)(a) of FOIA requires a public authority to confirm whether it holds (in recorded form) information that an applicant has requested.
17. In part 3 of their request, the complainant has asked the Trust for the date when it ceased to be part of a vascular network. The Trust confirmed it isn't and has never been part of a "formal" vascular network. As such, its position is that it doesn't hold the requested date because, in the circumstances, it can never have left such a network.
18. In correspondence to the Commissioner, the complainant has detailed evidence that suggests to them that the Trust has been a member of such a network: the information NHS England had provided, an NHS survey return from 2018 and a vascular 'self-declaration' submitted for the period 2018/2019.
19. In the 2018 survey, the Trust had answered "Completely reconfigured, and part of a formal vascular network" when asked which statement best described the hospital's vascular service.
20. The Commissioner referred the Trust to the 2018 survey response and the complainant's other points. He asked the Trust to explain and clarify the situation regarding its membership of a formal, or informal, vascular network – or otherwise.
21. In a further telephone conversation on 3 April 2024 the Trust confirmed that it works collaboratively with other NHS organisations as necessary, as the public would expect it to do, but the Trust isn't and has never been part of a formal vascular network. The Trust acknowledged that the 2018 survey suggested that it had been but explained, as it has previously explained to the complainant, that that response was incorrect, and the Trust had amended its response to that question in the 2019 survey. There has been no survey since 2020 and the COVID pandemic.
22. The Commissioner considers the Trust's explanation is satisfactory and he accepts the Trust's position. Since it's never been part of a vascular network the Trust can't hold information on a date when it left that network. As such, the Commissioner finds that the Trust doesn't hold the information requested in part 3 of the request and has complied with section 1(1)(a) of FOIA.
23. At this point, there would seem to be little to be gained from continuing to request information from the Trust about a vascular network which it's never been a part of. If the complainant disagrees with the Commissioner's decision, they can appeal it, as explained below.

Right of appeal

24. 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

25. 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.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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