

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 8 October 2024

**Public Authority:** Newcastle upon Tyne Hospitals NHS Foundation Trust

**Address:** Freeman Hospital  
Freeman Road  
High Heaton  
Newcastle upon Tyne  
NE7 7DN

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to a restructure project. Newcastle upon Tyne Hospitals NHS Foundation Trust ('the public authority') failed to confirm whether it held information, or disclose any information, in response to the request.
2. The Commissioner's decision is that the public authority has failed to comply with section 1 (general right of access to information) and section 17 (refusal notice) of FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - Issue a fresh response to the request, that complies with its obligations under FOIA.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 14 June 2024, the complainant wrote to the public authority and requested information in the following terms:

\*\*\*Restructure Project\*\*:

- All information relating to the recent clinical boards restructure project, including the rationale behind the decisions made.
- A list of job descriptions that were changed during the restructure and direct links to the replacement job descriptions, this needs to include payscales."

6. The public authority responded on 26 June 2024. It's response stated:

"We are unable to provide this information as the Clinical Board restructure project is currently in progress. This will be communicated to staff via internal communication when complete."

7. Following an internal review the public authority wrote to the complainant on 1 July 2024. It upheld its previous position.

## Reasons for decision

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8. Section 1(1) of FOIA states that a public authority must confirm to a requester whether it holds the information being requested and, if it does, to provide that information unless an exemption under FOIA applies.

9. In its response to the complainant, the public authority confirmed it was unable to provide the requested information. It did not, however, confirm whether it actually held the information being requested in each part of the request. This is especially unclear to the Commissioner in relation to the job descriptions being requested, since the restructure project is still ongoing.

10. A public authority needs to, in relation to each part of a request, confirm or deny whether the requested information is held, except if providing this confirmation or denial, in itself, would disclose potentially exempt information. In this instance, the public authority has failed to comply with section 1(1) of FOIA.

11. When a public authority receives a request for information under FOIA, it must:
  - provide the information to the requester, or alternatively
  - reply to the requester saying that the information is not held
  - refuse to confirm or deny whether information is held, or
  - confirm that information is held but refuse to provide it.
12. If a public authority is refusing to provide information, or refusing to confirm or deny whether the information is held, in accordance with section 17 (refusal notice) of FOIA, it must specify the exemption it's relying upon and, if it wouldn't otherwise be apparent, why the exemption applies.
13. The public authority's response of 26 June 2024 fails to cite an appropriate exemption and so fails to comply with section 17.
14. The public authority must now deal with the request again and issue a fresh response. It needs to, in relation to each part of the request, confirm or deny whether any of the requested information is held (unless to do so, in itself, would disclose exempt information). If it does hold relevant information, it either needs to disclose that information to the complainant or clearly explain why the information is exempt from disclosure and under what exemption.

## Other matters

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15. The following guidance<sup>1</sup> of the Commissioner's may assist the public authority in its fresh consideration of the request.

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<sup>1</sup> [Guide to managing an FOI request | ICO](#); [Refusing a request: writing a refusal notice \(section 17\) | ICO](#); [List of exemptions | ICO](#)

## Right of appeal

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16. 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](mailto:grc@justice.gov.uk)

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

17. 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.
18. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**