

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 November 2024

Public Authority: University College London Hospitals NHS
Address: Foundation Trust
250 Euston Road
London
NW1 2PG

Decision (including any steps ordered)

1. The complainant has requested a specific piece of guidance. University College London Hospitals NHS Foundation Trust (“the public authority”) denied holding the requested information.
2. The Commissioner’s decision is that, on the balance of probabilities, the requested information isn’t held. However, in failing to deny that the requested information was held within the statutory timeframe, the public authority breached section 1 (general right of access to information) and 10 (timescale for compliance) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 9 April 2024 the complainant made the following request for information under FOIA:

“Thank you for your response to FOI 2024/0091.
Regarding item 3 of the response attached), please supply in pdf format a copy of the ‘guideline’ referred to.”
5. The public authority responded on 26 April 2024 and applied section 21 (information reasonably accessible by other means), indicating that the

requested information was publicly available on Imperial College London's website¹.

6. The complainant requested an internal review on 9 May 2024. They disputed the application of section 21.
7. On 12 July 2024 the public authority provided the outcome to its internal review. It revoked its reliance on section 21 and instead confirmed that it didn't hold the requested information.

Background information

8. The Commissioner understands that this request, and the complainant's previous request, relates to guidance on how, and when, information should be uploading to a database known as the Heat Registry.²
9. According to the Heat Registry's website, it's a 'a globally accessible, web-based platform used for storing clinical data on patients treated with Sonablate HIFU treatments' which is a minimally invasive prostate treatment.

Scope of the case

10. The complainant contacted the Commissioner on 16 July 2024 to complain about the way their request for information had been handled. They disputed the public authority's position that the requested information wasn't held.
11. The Commissioner considers that the scope of his investigation is to determine if the public authority holds the requested information.

¹ <https://www.imperial.ac.uk/department-surgery-cancer/research/cancer/groups/imperial-prostate/>

² [HEAT Registry, Evaluating Sonablate® Clinical Data](#)

Reasons for decision

12. In cases where a dispute arises over whether recorded information is held by a public authority, the Commissioner, following the outcome of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. This means that the Commissioner will determine whether it is likely, or unlikely, that the public authority holds the requested information and did at the time the request was received.
13. However, the Commissioner isn't under an obligation to prove, definitively, whether the information is held.
14. The complainant's position is:

“Without published guidance concerning the uploading of patient data to the HEAT Registry, data can be manipulated, delayed or simply missed out. The proper recording of data on a Registry as a research tool was key in acceptance by NICE/NHS for limited use of the Sonablate 500 device at University College London Hospitals NHS Foundation Trust.”
15. The public authority has explained to the Commissioner that, not only does it not hold the requested information; the requested information doesn't actually exist in a recorded format.
16. The public authority has explained to the Commissioner that, if it existed, such guidance would be held by Imperial College London as it is the clinical lead and data controller for the Heat Registry. Whilst the public authority utilises the technology in question, it doesn't report directly into the Heat Registry.
17. Imperial College London's 'Imperial Prostate' group is 'a is a world-leading collective of expert urologists, medical specialists, and experienced researchers' which help disseminate clinical trials such as the one the complainant is concerned with.
18. This explains why the public authority directed the complainant to Imperial College London's website in its refusal notice, although it erroneously applied section 21 in doing so.
19. The public authority has explained to the Commissioner that the complainant's concerns as outlined above need to be directed to Imperial College London, who would be in charge of inputting into the Heat Registry and therefore would hold any guidance on uploading such data to the registry.
20. Returning to paragraph 15, in dealing with the Commissioner's investigation, the public authority contacted Imperial College London

directly and they confirmed that the guidance on how and when to report clinical data to the Heat Registry isn't actually held in a recorded format.

21. Whether this is acceptable to the complainant and whether such reporting guidance **should** be held in a recorded format, and whether it should then be held by Imperial College London, isn't an issue for the Commissioner to comment on. All the Commissioner needs to decide is whether the public authority, at the time of the request, held the information the complainant is requesting.
22. Given the public authority's explanation; that it isn't the clinical lead for the treatment in question, and therefore not the body responsible for reporting into the Heat Registry, it wouldn't hold any such guidance. Furthermore, it has been confirmed with Imperial College London, the clinical lead and data controller, that such guidance doesn't exist in a recorded format.

Procedural matters

23. Section 1 of FOIA states that, upon receipt of a request under FOIA, a public authority must confirm or deny whether the requested information is held and, if it is held, communicate said information to the requestor unless a valid exemption applies.
24. Section 10 of FOIA states that section 1 must be complied with as soon as possible, and no later than 20 working days, of receipt of the request.
25. In failing to confirm to the complainant that the information wasn't held within twenty working days, the public authority breached section 1 and section 10.

Right of appeal

26. 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

27. 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.
28. 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