

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

### **Decision notice**

**Date:** 18 December 2024

**Public Authority:** Frimley Health NHS Foundation Trust  
**Address:** Frimley Park Hospital  
Portsmouth Road  
Surrey GU16 7UJ

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

---

1. The Commissioner's decision is that two of the seven parts of the complainant's request aren't valid requests for information under section 8(1) of FOIA.
2. Of the remaining five parts of the request, the Commissioner finds that Frimley Health NHS Foundation Trust ('the Trust') doesn't hold information within scope of four of them but does hold information within scope of one part.
3. His decision is that Trust's handling of the request breached sections 1(1) and 10(1) of FOIA as it didn't confirm whether it held recorded information within scope of the request or communicate it, within the statutory time frame.
4. The Trust must now take the following step to ensure compliance with the legislation:
  - Either communicate to the complainant the information that falls within scope of part 5 of the request or issue a refusal notice.
5. The Trust must take this step 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.

## Background

---

6. In its submission to the Commissioner, the Trust has provided a background to the request, which the Commissioner has included for context
7. The Trust says that the complainant lodged a complaint about a test result being delayed, which was addressed by another NHS Trust. The complainant wasn't satisfied with the complaint response, and since then has submitted several FOIA requests to the Trust on matters relating to that complaint. They submitted these requests between February 2023 and May 2024. The requests then expanded to the wider management of Berkshire and Surrey Pathology Services (BSPS) for which the Trust is the Lead Data Controller.
8. The Trust has gone on to say that the requests the complainant has submitted have been a mixture of requests for information and requests for opinions, views or detailed explanations on processes. This has meant that for many of the complainant's questions, no recorded information was held.
9. It appeared to the Trust that, over time, the requests were becoming less and less applicable to FOIA. It therefore suggested to the complainant that if they were to submit a formal complaint to the Trust, this would lead to more comprehensive answer to their specific questions.
10. The complainant continued to submit questions relating to their complaint as formal FOIA requests, which the Trust says it has attempted to respond to as best it could.
11. The Trust says that the complainant did log a formal complaint to the Trust regarding their concerns about a particular test and, in addition, submitted two FOIA requests, one of which is the subject of this notice.

## Request and response

---

12. The complainant made the following information request to the Trust on 8 April 2024.
13. In relation to a privacy notice not being accessible:
  - "[1] How long was this important document missing from the website?
  - [2] As this probably means that BSPS has breached its DPA obligations, has this been investigated?

[3] What was the outcome?

[4] Does BSPS intend to report this to the ICO?"

14. In relation to informed consent:

"[5] Does BSPS and its associated trusts have a confirmed legal position that it is free to exchange information and give access to personal information of a non-medical nature without the need for informed consent?"

15. In relation to a previous question about organisations' access to their restricted medical records:

"[6] What is the official answer?

[7] Why was it not possible to provide a response earlier?"

16. The Trust responded on 17 May 2024, relying on section 21 of FOIA to refuse the request. It said this was because it would be addressing the complainant's questions as part of its response to the formal complaint about the test that they'd submitted.

17. The complainant requested an internal review on 19 May 2024. The Trust acknowledged this but didn't go on to provide a review.

18. In their initial complaint to the Commissioner, the complainant disputed the Trust's reliance on section 21 of FOIA. They said that the Trust couldn't rely on this exemption as, at the time of their request, they hadn't had a response in relation to their complaint to the Trust. As such, the information they'd requested wasn't already accessible to them.

19. Following contact with the Commissioner, the Trust acknowledged that it had incorrectly applied relied on section 21, for the reason the complainant had given.

20. The Trust said, having reviewed the request, it considered that several of the questions wouldn't be applicable under FOIA and would have received a "not held" response.

21. However, in order to supply the complainant with a suitable response, and to try to bring their requests to a natural conclusion, it made the decision to provide responses to their questions as part of the formal complaint response that was already in progress.

22. The Trust has confirmed to the Commissioner that on 13 May 2024 it provided the complainant with a response to all their questions as part of its formal complaint response.

23. The Commissioner passed on the Trust's acknowledgement to the complainant. He noted that the Trust had withdrawn its reliance on section 21 and had advised that it had now addressed their questions through a response to their service complaint. The Commissioner suggested that it would therefore be proportionate to close the case informally. The complainant preferred to conclude their complaint formally, through a decision notice.

## **Reasons for decision**

---

24. This reasoning first covers the degree to which the complainant's questions are valid requests for information under section 8 of FOIA.
25. The Commissioner will then consider whether the Trust complied with section 1 and 10 of FOIA, in respect of any valid requests.
26. Finally, under 'Other matters' the Commissioner will discuss matters associated with the FOIA Code of Practice, and effective requests under FOIA.

## **Section 8 – request for information**

27. Section 8(1)(c) of FOIA says that a request for information is a request which "describes the information requested."
28. The Commissioner will accept that parts 1, 2, 3, 4 and 5 of the complainant's request can be considered to be valid requests for information under FOIA. Although unlikely, it could have been the case that the Trust held recorded information about an investigation into why a privacy notice was missing from a website, which included how long it was missing and whether the Trust considered contacting the ICO.
29. It could also have been the case that the Trust – as the Data Controller for BPS – held recorded information about BPS's data sharing arrangements with its associated Trusts.
30. However, the Commissioner considers that parts 6 and 7 of the request are general enquires which don't meet the definition under section 8(1)(c). The Trust addressed these parts in its correspondence of 13 May 2024.
31. FOIA concerns recorded information only. It doesn't oblige a public authority to answer general enquires or give opinions or explanations. As such, it isn't generally the appropriate route through which to attempt to pursue a service complaint about a public authority.

## **Section 1 – general right of access to information held by public authorities and Section 10 – time for compliance**

32. Under section 1(1)(a) of FOIA, a public authority must confirm whether it holds information an applicant has requested. Under section 1(1)(b) it must communicate the information if it's held and isn't exempt information.
33. Section 10(1) requires the authority to comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
34. The Trust stated that it considered it had addressed all the complainant's questions in its response to their service complaint, dated 13 May 2024 – a copy of which it provided to the Commissioner.
35. In respect of parts 1, 2, 3 and 4 of the request, in a telephone call with the Commissioner on 17 December 2024 the Trust confirmed that it has considered these parts of the request, that it didn't carry out any investigation and so doesn't hold any recorded information about such an investigation.
36. The Commissioner sees no reason to doubt that's the case and accepts that, on the balance of probabilities the Trust doesn't hold recorded information within scope of these four parts of the request.
37. In respect of part 5, in the same call the Trust confirmed that it would look into whether it held any recorded information within scope of this part. Later that day it confirmed to the Commissioner that it did.
38. The Trust didn't clearly confirm, to the complainant, whether it held recorded information relevant to the parts of the request that are valid or communicate any information it held that wasn't exempt information. As such, the Trust didn't comply with section 1(1) and section 10(1) of FOIA.

### **Other matters**

---

39. In this case, in its original refusal of the request, the Trust advised that the complainant could request an internal review. The complainant did so but the Trust didn't go on to provide one. The Commissioner has recorded this for monitoring purposes.

40. Internal reviews aren't a requirement under FOIA but are a matter of good practice under part 5 of the FOIA Code of Practice<sup>1</sup>. The Commissioner reminds the Trust that an internal review should be provided within 20 working days of a request for one, and within 40 working days as a maximum.
41. The complainant is dissatisfied that the Trust "converted" their request and responded to it outside of FOIA, without discussing that with them. Under Advice and Assistance, at paragraph 2.4 the FOIA Code of Practice advises:

"Where an applicant asks a public authority to disclose recorded information but does not specifically mention the Act, and the request complies with section 8 (see paragraph 1.14 above), the public authority should consider the request under the Act in any case and let the applicant know that this is how the request is being handled."
42. In this case, having originally applied section 21 of FOIA to request, the Trust finally handled it outside of FOIA. The Commissioner notes that the request was sent to the Trust's FOI inbox, had "FOIA request" at the top and the complainant signed off by saying they expected the matter to be dealt with in line with the "ICO Code of Practice". In those circumstances, and given the nature of the relationship, in the Commissioner's view it was misguided of the Trust to step outside of the FOIA process, unless the complainant had explicitly agreed to this. Stepping outside of the process means forgoing its protection – for example the provision under section 14 of FOIA, which concerns vexatious requests.
43. Finally, the Commissioner has produced guidance to help applicants submit an effective request for information under FOIA<sup>2</sup>. The complainant may find it helpful to review that guidance.

---

1

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

2 <https://ico.org.uk/for-the-public/official-information/preparing-and-submitting-your-information-request/>

## **Right of appeal**

---

44. 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)

45. 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.
46. 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**  
**Cheshire**  
**SK9 5AF**