

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

### **Decision notice**

**Date:** 16 December 2024

**Public Authority:** Harrogate and District NHS Foundation Trust  
**Address:** Trust Headquarters  
Harrogate District Hospital  
Lancaster Park Road  
Harrogate  
HG2 7SX

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

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1. The complainant has requested information from Harrogate and District NHS Trust (the Trust) regarding staff training and the refusal of treatment.
2. The Commissioner's decision is that, on the balance of probabilities, the Trust has not conducted adequate searches for the requested information.
3. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation.
  - Conduct a fresh search for the requested information and either disclose the information or provide an appropriate refusal notice under FOIA.
4. The Trust 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.

## Background

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5. On 2 April 2022, the complainant wrote to the Trust and requested information in the following terms:
  - "1) What guidance is given to front line staff, about rights not to have medical treatments imposed?
  - (2) What has been done to make staff aware of the 'Discharge Against Medical Advice and Refusal of Treatment' document?
  - (3) What information is given to staff, so they can be sure they are never exercising illicit powers of detention?
6. The complainant advised the Trust that the request had been made following a specified incident in a hospital.
7. The Trust did not provide a response to the request under FOIA, but rather advised the complainant that they could raise a complaint.

## Request and response

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8. On 17 May 2024, the complainant wrote to the Trust and made a further request for information in the following terms:

"I made this Freedom of Information request on the 02 April 2022:-  
[website redacted]

The issue was and has remained very serious.

As you will see, the requested information was never provided.

Please provide:-

  - (a) the information requested two years ago;
  - (b) details on all action which was taken two years ago;
  - (c) any new information on staff training;
  - (d) more recent steps taken to prevent anything similar."
  9. The Trust responded on 20 May 2024. It provided a "Policy for recognising and managing patients with behaviours that are challenging". It again advised the complainant that if they wished for a specific incident to be investigated, a complaint would need to be raised.
  10. Following an internal review, the Trust wrote to the complainant on 12 June 2024. It stated that the requested information was being refused in line with section 40(2), due to the low numbers involved.

## **Scope of the case**

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11. The complainant contacted the Commissioner on 5 August 2024 to complain about the way their request for information had been handled.
12. During the Commissioner's investigation, he requested a copy of the withheld information which was being withheld under section 40(2). The Trust advised "it did not have the details".
13. Having reviewed the submission provided, the Commissioner has determined that it is more appropriate to consider whether the Trust, on the balance of probabilities, has conducted adequate searches for the requested information.
14. If the Commissioner is satisfied that appropriate searches have been conducted, he will then go on to consider whether the Trust was entitled to rely on section 40(2) when refusing this request.

## **Reasons for decision**

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### **Section 1 – general right of access to information**

15. Section 1 (1) FOIA states that: "Any person making a request for information to a public authority is entitled – (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and (b) if that is the case, to have that information communicated to him."
16. Section 1(1) requires that a public authority must inform a requestor, in writing, whether it holds information falling within the scope of the request. If the public authority does hold relevant information, FOIA also requires that it communicates that information to the requestor, subject to any exclusions or exemptions applying.
17. In scenarios where there is some dispute between the amount of information held which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
18. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any - or additional - information which falls within the scope of the request (or held any at the time of the request). For

clarity, the Commissioner is not expected to prove categorically whether the information is held.

19. The Commissioner has therefore sought to determine whether, on the balance of probabilities, the Trust has conducted adequate searches to locate the requested information.
20. In response to the Commissioner's queries regarding the searches undertaken to determine whether any information within the scope of the request was held, the Trust advised that it did not have any details regarding the alleged incident.
21. The Trust also stated that information within the scope of the request had never been held, but failed to outline how it was able to determine this.
22. Considering the above, the Commissioner is not satisfied that, on the balance of probabilities, appropriate searches for the requested information have been conducted.
23. The Commissioner therefore requires the Trust to conduct a further search for the requested information.

### **Other matters**

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24. The Commissioner would like to take this opportunity to remind the Trust that it can only rely on section 40(2), if the requested information is held and contains personal data.
25. The Commissioner would also like to remind the Trust that if there is any uncertainty regarding what information is being requested, it is the Trust's responsibility under section 16(1) to seek clarification of the request.

## Right of appeal

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

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

**Michael Lea**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**