

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

### **Decision notice**

**Date:** 1 June 2018

**Public Authority:** Manchester University NHS Foundation Trust  
**Address:** Oxford Road  
Manchester  
M13 9WL

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

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1. The complainant requested information related to a rota and details of pay supplements provided to consultants on rota from Manchester University NHS Foundation Trust<sup>1</sup> (MFT). MFT provided the recorded information that was held followed by further explanations addressing the complainant's queries.
2. The Commissioner's decision is that MFT has provided all the information it holds falling within the scope of the complainant's request.
3. However, The Commissioner also finds that MFT breached section 10(1) of the FOIA due to the time it took to respond to the request.
4. The Commissioner does not require MFT to take any steps to ensure compliance with the legislation.

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<sup>1</sup> Manchester University NHS Foundation Trust (MFT) was formed on 1st October 2017 following the merger of Central Manchester University Hospitals NHS Foundation Trust (CMFT) and University Hospital of South Manchester NHS Foundation Trust (UHSM). The initial request was submitted to CMFT by the complainant.

## Request and response

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5. On 15 May 2017 the complainant wrote to MFT and requested information in the following terms:  
  
*"1. Copies of non-invasive Cardiology on-call rota from the commencement of January 2012.*  
  
*2. Details of the on-call supplements for the Consultants on every rota.*  
  
*3. Where there is a discrepancy on the supplements paid to Consultants for the same on-call rota please explain the discrepancy"*
6. On 8 August 2017 MFT responded to the complainant, informing her that it *"...does not have a specific non-invasive cardiology on-call rota"*, but instead it provided *"...the cardiology master rota from the commencement of January 2012 which covers the Primary PCI rota and the Consultant of the week rota"*. In addition, MFT explained that it had highlighted with a specific colour on the provided spreadsheet, where a consultant had provided non-invasive cover.
7. In relation to request 2 MFT stated that the *"...consultants who cover Primary PCI within the rota receive an on-call supplement entry in Electronics Staff Records at 5%"*. In relation to request 3 MFT explained that *"There are no discrepancies for the consultants who receive a 5% on-call supplement identified on the given rotas"*. However, it explained that *"there have been errors previously for consultants who should not receive an on-call supplement but did in error. These errors have subsequently been corrected"*.
8. Following this response, the complainant did not request an internal review, but engaged in a lengthy correspondence with MFT disputing the accuracy and completeness of the information provided. However, taking into account that MFT provided further explanation to the complainant on two separate occasions, on 14 September 2017 and 27 February 2018 the Commissioner considers that an internal review has been conducted and its outcome has been provided to the complainant.

## Scope of the case

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9. The complainant contacted the Commissioner on 12 September 2017 to complain about the way her request for information had been handled.

10. In the course of the Commissioner's correspondence with the parties, the complainant confirmed that she was dissatisfied with the responses to request 2 and request 3.
11. The following analysis covers whether MFT provided all the information which it held in relation to request 2 and request 3.
12. In addition, the Commissioner has examined whether MFT complied with its obligations to respond in a timely manner as required by section 10(1) of the FOIA.
13. The Commissioner notes that in the meantime, on 22 September 2017, the complainant had a telephone communication with MFT, which generated a response in writing by MFT. Subsequently the complainant requested a review of this response, which was provided by MFT on 26 October 2017. Despite the fact that this communication was treated as an information request by MFT, the Commissioner does not consider it to be a valid request due to the fact that it does not fulfil the FOIA requirement for the request to be submitted in writing. Therefore this decision notice does not cover that part of the communication between the parties.

## **Reasons for decision**

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### **Section 1(1) – General right of access**

14. Section 1 of the FOIA provides a general right of access to recorded information held by public authorities. Any person making a request for information to a public authority is entitled to be informed in writing by the public authority within 20 working days whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him unless a valid reason exists for not doing so under the legislation.
15. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. She will also consider the actions taken by the authority to check that the information was not held and she will consider if the authority is able to explain why the information was not held.

16. For clarity, the Commissioner is not expected to prove categorically whether the information was held. She is only required to make a judgement on whether the information was held on the balance of probabilities<sup>2</sup>. The question for the Commissioner here is whether on the balance of probabilities MFT holds further information falling within the scope of requests 2 and 3 of 15 May 2017.
17. The MFT's initial position was that it has all the information requested by the complainant in its response of 8 August 2017 and in subsequent explanations provided to the complainant on 14 September 2017.
18. The complainant insisted that further information was held by MFT, recalling that in one of the responses received by a named individual, a member of medical staffing asserted that different figures were paid to different consultants.
19. As part of her investigation, the Commissioner asked MFT to revisit the request and to ensure that all necessary searches had been conducted in order to confirm whether further information, falling within the scope of the request, was held.
20. In its response to the Commissioner, MFT confirmed that it had provided all the information it held in respect of the complainant's request. It explained the searches it had carried out, stating that information had been sought *"from a number of departments, including Human Resources & Medical Staffing, Payroll Department and the Department of Specialist Medicine which is the department that managed the Cardiology rotas that relate to this request."*
21. However, as part of the review that MFT carried out it determined that its response of 8 August 2017 lacked sufficient clarity. It stated that whilst the response was factually correct *"the review highlighted there were instances where specific consultants undertook additional on-call rotas to cover periods where there was a reduction in available consultants for the rota and therefore receive the higher on call percentage of 8% during those periods"*.
22. The Commissioner asked MFT to share with the complainant this clarification followed by providing an updated version of the spreadsheet containing the information.

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<sup>2</sup> This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

23. The complainant responded by claiming that this information contains a factual error. In response to this, the Commissioner explained that the FOIA provides a right of access to recorded information. It does not, however, require public authorities to guarantee the accuracy and completeness of the information.
24. Whilst the Commissioner recognises that the complainant does not consider that MFT has fulfilled the request, it has provided a clear explanation of the searches that underlay its responses. No evidence is available to the Commissioner that indicates that MFT's searches and efforts to comply with the request have been insufficient, or that further recorded information is held.
25. In conclusion, the Commissioner has considered the searches performed by MFT, the amount of information provided, MFT's explanations as to why there is no further information held and the complainant's concerns. On the balance of probabilities, the Commissioner considers that MFT does not hold any further information to that already provided in relation to the request submitted on 15 May 2017.

## **Section 10 – time for compliance**

26. Section 10(1) of the FOIA says that a public authority must comply with a request as soon as possible and within 20 working days following the date of receipt of the request.
27. In this case, the complainant submitted her initial request on 15 May 2017 and did not receive a response until 8 August 2017. Therefore, MFT breached section 10(1) on this occasion.

## Right of appeal

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28. 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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**