

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 November 2018

Public Authority: Barnsley Hospital NHS Foundation Trust

Address: Gawber Road
Barnsley
S75 2EP

Decision (including any steps ordered)

1. The complainant requested information from Barnsley Hospital NHS Foundation Trust (the Trust) about the total number of operations cancelled for non-clinical reasons, and broken down by the cause of the cancellation.
2. The Commissioner's decision is that the Trust has breached section 10(1) of the FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation.
 - Respond to the complainant's request in accordance with the FOIA
4. The Trust must take these steps within 35 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

5. On 31 August 2018, the complainant wrote to Barnsley Hospital NHS Foundation Trust and requested information in the following terms:

"Under the Freedom of Information Act, I would like to request the total number of operations cancelled for non-clinical reasons, broken down by the cause of the cancellation, for example due to lack of beds, operating theatre capacity, staffing issues, and equipment failures.

Please provide this information for each of the past five financial years (i.e. years running from April to March - 2013/14, 2014/15, 2015/16, 2016/17, 2017/18).

In the total number of operations, broken down by cancellation reason, please include:

- Elective operations cancelled at the last minute. For the purposes of this request, last minute means on the day the patient was due to arrive, after the patient has arrived in hospital or on the day of the operation or surgery.*
- Cancelled urgent operations.*

If the data is collected by the trust, please also provide a separate total for each year for all operations cancelled for non-clinical reasons, regardless of how soon before the scheduled operation time the cancellation occurred.

Please send this information in a spreadsheet or CSV format."

6. To date, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 19 October 2018 to complain about the failure by the Trust to respond to her request.
8. The Commissioner has considered whether the Trust has complied with its obligations in relation to the time for compliance at section 10(1) of the FOIA.

Reasons for decision

9. Section 1(1) of the 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.

10. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt.”
11. On 31 October 2018 the Commissioner wrote to the Trust, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
12. Despite this intervention the Trust has failed to respond to the complainant.
13. From the evidence provided to the Commissioner in this case, it is clear that Barnsley Hospital NHS Foundation Trust did not deal with the request for information in accordance with the FOIA. The Commissioner finds that the Trust has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the FOIA.

Right of appeal

14. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

15. 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.
16. 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
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Water Lane
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