

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 03 December 2018

**Public Authority:** Barts Health NHS Trust

**Address:** 9 Prescott Street

London

E1 8PR

### Decision (including any steps ordered)

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1. The complainant has requested information relating to the number of cancelled operations. Barts Health NHS Trust (the Trust) failed to respond to this request for information and the Commissioner's decision is that in doing so the Trust breached section 10(1) of the FOIA. The Commissioner requires the public authority to provide the complainant with a response to this request in accordance with its obligations under FOIA.
2. The public authority 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 FOIA and may be dealt with as a contempt of court.

### Request and response

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3. On 31 August 2018, the complainant requested the following information:

*"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.'*

4. The Trust acknowledged the request on 31 August 2018 and allocated a reference number.

### **Scope of the case**

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5. The complainant contacted the Commissioner on 26 October 2018 to complain about the failure of the Trust to respond to this request.
6. In line with her usual practice, the Commissioner contacted the Trust on 6 November 2018 to highlight the outstanding response. She instructed the Trust to respond to the request within 10 working days. The correspondence was neither acknowledged nor responded to. On 23 November the complainant confirmed that she had not received a response.
7. The Commissioner considers that the scope of her investigation is to determine whether the Trust has complied with Section 10 of the FOIA.

### **Reasons for decision**

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8. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
9. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "no later than the twentieth working day following the date of receipt".
10. In this case the Trust has breached section 10(1) by failing to respond to the request within 20 working days.

## Right of appeal

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11. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

12. 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.
13. 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 .....**

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