

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 February 2019

Public Authority: Wrightington, Wigan and Leigh
Address: NHS Foundation Trust
Information Governance Department
Wrightington Hospital
Hall Lane
Appley Bridge
WN6 9EP

Decision (including any steps ordered)

1. The complainant requested information from Wrightington, Wigan and Leigh NHS Foundation Trust (the Trust) regarding all racist incidents reported to the Trust. The Trust provided the complainant with information – racial incidents which had been recorded on its system. However, the complainant considered that the Trust had not provided all information relating to his request.
2. The Commissioner's decision is that, on the balance of probabilities, the Trust has provided the complainant with all of the information which it holds falling within the scope of the request. Therefore, the Commissioner does not require the Trust to take any steps as a result of this decision.

Request and response

3. On 23 July 2016 the complainant wrote to the Trust and requested information in the following terms:

"Dear Wrightington, Wigan and Leigh NHS Foundation Trust, This is a Freedom of Information Request. Please inform me whether or not you hold the information specified below. If you do hold the requested information please be so kind as to send me a copy."

Regarding all Racist incidents reported to you please send me a copy of recorded information you hold showing:-

- 1. Date the racist incident is alleged to have occurred*
 - 2. Alleged perpetrator's professional status and job title*
 - 3. Whether alleged victim was a patient or a member of your staff*
 - 4. What support the alleged racist incident victim received*
 - 5. Who investigated the alleged racist incident*
 - 6. The outcome of your investigation into the alleged racist incident*
 - 7. What other organisations you informed of the racist incident"*
4. On 18 August 2016 the Trust responded. The Trust provided the complainant with information relating to parts 1, 2, 3, 5 and 6 of the request and stated information was not held by the Trust relating to parts 4 and 7. It explained to the complainant that its Datix System does not hold the information specified in these two parts of his request.
 5. On 30 August 2016 the complainant asked for an internal review as he believed that the Trust has acted contrary to the FOIA and also the Commissioner's guidance. He considered that all the recorded information had not been provided and that the quality of the response was poor.
 6. On 6 September 2016 the Trust acknowledged the internal review request.
 7. Further to this, the complainant wrote to the Trust a number of times chasing its response to his internal review request.
 8. On 18 November 2016 the Trust provided its response. The Trust revised its position and provided the complainant with a further explanation of the information already provided. It also sent some additional information, specifically, the Supporting Staff policy and a complaints policy.

Scope of the case

9. The complainant contacted the Commissioner on 10 February 2017 to complain about the way his request for information had been handled.
10. Specifically, the complainant was dissatisfied with the responses to his request which the Trust had provided.
11. The complainant questioned the handling of his request by the Trust and said that it was contrary to the FOIA and the Commissioner's guidance. He is of the view that the Trust had failed within 20 working days to confirm or deny whether or not it held the information he requested. However, the Commissioner notes that the Trust responded to the complainant 19 days from the date of the request on 18 August 2016. This is within the statutory time limit.
12. The complainant also believed that the Trust had failed to provide him with a copy of all the recorded information it held relating to his request and he considers that the Trust had not provided a valid refusal notice. As the Trust did not refuse any part of the request, it was not under any obligation to provide a refusal notice.
13. The complainant expressed his dissatisfaction with the response from the Trust and instead of being provided with an actual copy of the recorded information, he considered that this response "*appeared to contain newly created information.*" The Commissioner notes, however, that whilst the Trust provided further explanations to the complainant, this was in addition to disclosing to him recorded information. That the Trust provided additional explanation does not raise any issue concerning its compliance with the FOIA.
14. The complainant was also unhappy with the time it had taken the Trust to provide its response to his internal review request of 30 August 2016. This was not provided to the complainant until 18 November 2016. This matter is commented on in the "Other matters" section at the end of this decision notice.
15. The scope of the following analysis is to determine whether the Trust handled the request in accordance with the FOIA, in particular whether the Trust was correct in stating that it did not hold any recorded information relating to parts 4 and 7 of the request.

Reasons for decision

Section 1 – General right of access

16. 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.
17. 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 arguments. She will also consider the actions taken by the authority to check what recorded information within the scope of the request it held and she will consider if the authority is able to explain why the information was not held.
18. For clarity, the Commissioner is not expected to reach a categorical conclusion on whether the information was held. She is only required to make a judgement on whether the information was held "on the balance of probabilities"¹.

The Trust's position

19. The Trust was asked by the Commissioner for the steps needed to compile the information requested. It said that the information is stored on Datix which is the software that the Trust employs to record and report upon clinical and non-clinical incidents. The Trust explained that in order for it to provide the requested information, it required an individual to search the Datix incident system. This information was retrieved by searching the database both manually using the free text search and by using the category and sub category searching criteria.

¹This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

20. The Trust further explained that the searches were undertaken on its Datix system and that this was to see what information could be deemed to be held by the use of building blocks of information, to answer the request by putting different searches together to produce information.
21. The Trust stated that all incidents reported via Datix are stored and remain on the database and that no records are deleted or destroyed. If an incident reported is a duplicate, the Trust said that this is the only instance when records are or have been deleted. It confirmed that the Trust had not deleted or destroyed information relevant to the complainant's request.
22. The Trust was asked whether it held the information in another format or if it could be provided to the complainant via other means. The Trust referred the Commissioner to its previous response which is explained in paragraph 19 above.
23. The Trust said it does not believe that this information is held on any other system within the Patient Safety Team. If a patient accuses a member of staff of racism, it would have to be dealt with by Patient Relations and then investigated appropriately. Human Resources would then be involved. The Trust confirmed that this explanation had been provided previously to the complainant.
24. The Trust was asked whether it had considered providing some information in building blocks, specifically relating to part 7 of the request. Also, whether the Trust holds the information in a different format or if it could be provided via another way. It responded and said that *"the Trust may report to another organisation following a disciplinary investigation if there are concerns around registration or professional practice."* It confirmed that the Trust has never done this and said it does not believe that the requested information is held on any other system within the Patient Safety Team.
25. The Trust reported that with regards to the information held in Datix, it does not believe it could provide a more detailed response in respect to the questions raised by the complainant in his request of July 2016, or based on the information held by the Trust or is able to provide by building blocks of information.

The Commissioner's view

26. The Commissioner has considered the searches performed by the Trust, the information it disclosed, the explanations by the Trust as to why there is no information held and the complainant's concerns.
27. Having considered the scope of the request and on an objective reading, the Commissioner is satisfied that the Trust carried out adequate searches to identify the requested information that was held at the time of the request.
28. Therefore, on the balance of probabilities, the Commissioner considers that the Trust does not hold any information within the scope of parts 4 and 7 of the request and, she concludes that the Trust complied with section 1(1) of the FOIA. In light of the above finding, the Commissioner does not require the Trust to take any steps.

Other matters

29. The Commissioner notes that the Trust took 59 working days to complete its internal review. Whilst there is no statutory time set out in the FOIA within which public authorities must complete internal reviews, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review.
30. However, the Commissioner also considers that there may be cases which involve circumstances where it may be reasonable to take longer to complete an internal review. In those circumstances the public authority should, as a matter of good practice, notify the requester and explain why more time is needed. Only in the most exceptional cases should the total time taken exceed 40 working days. Such delays, as identified in this particular case, are unacceptable.

Right of appeal

31. 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

32. 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.
33. 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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Wycliffe House
Water Lane
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