

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 February 2020

Public Authority: Weston Area Health NHS Trust

Address: Weston General Hospital
Grange Road
Uphill
Weston-Super-Mare
BS23 4TQ

Decision (including any steps ordered)

1. The complainant has requested Weston Area Health NHS Trust (the Trust) to disclose information relating to doctors subjected to disciplinary action in the last 5 years. The trust disclosed the requested information to the complainant but refused to disclose the exact allegations for each case under section 40 of the FOIA.
2. The complainant did not dispute the application of section 40 of the FOIA but disagreed with the information disclosed and felt further recorded information is held or should be provided. Upon undertaking further searches, the Trust found that it did hold further information within the scope of the complainant's request, which it disclosed to the complainant. The Commissioner is satisfied that the Trust has now provided all the recorded information it holds falling within the scope of the complainant's requests. She therefore does not require any further action to be taken.
3. The Commissioner has however found the Trust in breach of sections 1(1)(a) and (b) and section 10 of the FOIA.

Request and response

4. On 19 July 2019, the complainant wrote to the trust and requested information in the following terms:

"How many doctors have been subjected to disciplinary hearings in the last 5 years and what is their ethnicity?"

If possible, what were the allegations for disciplinary hearing in each case?"
5. The trust responded on 15 August 2019. It provide a response to the first element of the request but refused to answer the second element (allegations) citing section 40(2) of the FOIA.
6. The complainant wrote to the trust on 16 August 2019. He asked the trust to confirm whether the medical staff concerned (its answer to element one of the request) are non-native British. He also asked whether the trust would be willing to disclose the categories of allegations rather than the exact allegations in each case.
7. As the complainant received no further response, he approached the Commisisoner on 27 August 2019 for assistance.
8. The Commissioner wrote to the complainant on 7 September 2019. She stated that in accordance with the section 45 code of practice the trust has 20 working days to respond to his email (request for internal review) of 16 August 2019. As the trust was still within the recommended timeframe, the Commissioner advised the complainant that there was nothing she could assist with at that stage.
9. The complainant contacted the Commissioner again on 18 September 2019. He stated that the trust had failed to respond within the recommended 20 working days.
10. The Commissioner wrote to the trust on 19 September 2019 and requested that it completes the internal review process no later than 3 October 2019.
11. The complainant informed the Commissioner on 7 and 11 October 2019 that the trust had provided its internal review response. He had informed the trust that he remained dissatisfied and the trust had asked for a further 14 days to address his concerns.
12. The complainant contacted the Commissioner again on 24 October 2019. He stated that the trust had not provided an honest answer to his FOIA request despite having waited for the suggested time period. He

confirmed that he had also written to the trust advising it that the information about foreign workers' status could be easily obtained from the GMC website by looking at the doctor's country of primary qualification. He stated that he felt the trust had not provided the correct information about the number of foreign doctors (consultants) subjected to disciplinary proceedings and tried to mislead on their foreign worker status. He asked the Commissioner to investigate further.

13. The complainant sent a further email to the Commissioner on 5 November 2019 chasing the matter up.

Scope of the case

14. As stated above, the complainant contacted the Commissioner on 24 October 2019 to complain again about the way his request for information had been handled. As the complaint was now eligible for investigation under section 50 of the FOIA, the Commissioner reopened the complaint on 7 November 2019 and began her enquiries.
15. The scope of the Commissioner's investigation is to determine whether the trust has met its obligations under the FOIA and to record any procedural breaches.

Reasons for decision

Has the trust complied with the complainant's request?

16. Section 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.This is subject to any exemptions outlined in Part II of the FOIA.
17. The Commissioner made some initial enquiries to the trust and then wrote to the complainant on 12 November 2019 advising him that it appeared the trust had now provided the information originally requested (number subject to disciplinary hearings, ethnicity, categories of allegations). With regards to whether the medical staff are non-native British, the Commissioner said that this was not what he originally requested. He had asked for their ethnicity and this had been provided.

She therefore asked the complainant to consider how he wished to proceed.

18. The complainant responded, stating that the information provided is not accurate. In a further email, he provided some additional information about two consultants he is aware of and how this therefore proved he had not been provided with the correct information. The Commissioner put this additional information to the trust and asked it to carry out further searches to ensure that it had identified all the recorded information it holds.
19. The trust complied, carried out further searches and provided a revised response to the complainant. It provided a revised number of doctors who had been subject to disciplinary proceedings and where held their ethnicity.
20. The Commissioner wrote to the complainant on 22 November 2019 and asked him to consider withdrawing his complaint, as it appeared to her that on the balance of probabilities the trust had now provided the recorded information it holds.
21. The complainant responded. He stated that he was dissatisfied that it had taken the Commissioner's intervention, further clarification and further searches to identify the recorded information it holds. He confirmed that he has no confidence that the trust has provided a satisfactory response on foreign doctors subjected to formal investigation. He commented again that this information could easily be obtained by the trust by simply checking the facts on the GMC website in less than a minute for all the consultants concerned.
22. The Commissioner considered the complaint again and felt that the complainant's email of 16 August 2019 (see paragraph 6) could constitute a new request or additional request under the FOIA for information as to whether the consultants are non-native British. She therefore asked the trust to carry out further enquiries to see whether it holds any recorded information relating to the doctors concerned from which this can be determined.
23. The trust complied and undertook further searches of its records. It confirmed that it does in fact hold this information and proceeded to disclose it directly to the complainant on 17 January 2020.
24. The complainant contacted the trust direct on receipt of this information. He stated that he just required the information for consultants; not doctors and whose primary qualification is overseas. The trust responded to the complainant directly on 21 January 2020, forwarding a copy to the Commissioner. It provided the information for the

consultants falling within the scope of the request and confirmed if they are British or non British, as requested on 16 August 2019.

25. The complainant contacted the trust again and stated that the most recently disclosed information did not address his question. He stated that nationality can be acquired and therefore the country of primary qualification which would confirm foreign worker status should be provided.
26. In correspondence to the Commissioner the complainant stated that he remained dissatisfied. He confirmed that he had asked for information on ethnicity, he felt that what had been provided was inaccurate and that the trust should check country of primary qualification via the GMC's website.
27. Dealing with the complainant's requirement for the trust to check the consultants' country of primary qualification on the GMC's website, it is the Commissioner's view that there is no requirement under the FOIA for the trust to do this. The FOIA provides a right of access to recorded information held by a public authority. This does not extend to obtaining information the public authority does not hold from another external source or verifying what it does hold with information available from an external source.
28. Dealing with the complainant's first request and using its own wording (which can be found at paragraph 4), the complainant asked for information as to how many doctors had been subjected to disciplinary proceedings in the last 5 years and their ethnicity.
29. It is accepted that additional searches were required and that the complainant provided specific information to demonstrate that he had not received the recorded information held or all of it. However, the Commissioner is satisfied that on the balance of probabilities the complainant is now in receipt of all the recorded information the trust holds. The Commissioner has discussed the request with the trust at length and the enquiries made and she is satisfied that the trust is confident that it has now identified all relevant recorded information and disclosed this.
30. Regarding the complainant's second request (email dated 16 August 2019), the complainant's own words were:

"Please help me to understand the response and confirm if you meant that all [redacted] medical staff are non-native British."
31. It is again accepted that the trust initially stated that it does not hold this information. However, on the instruction of the Commissioner it freely undertook further searches to establish more precisely whether it

holds this information. It established that it does in fact hold this information and proceeded to disclose it directly to the complainant on 17 and then 21 January 2020. It confirmed how many are British and how many are non British in line with the specific wording of this second request.

32. The Commissioner is therefore satisfied that the trust has now met its obligations under the FOIA. It has disclosed the recorded information it holds relating to both requests and assured the Commissioner that adequate searches have now been undertaken to ensure that all the recorded information it holds has been identified and released.
33. There is no requirement under the FOIA for the trust to check country of primary qualification via the GMC's website, as the complainant has specifically requested. What has been disclosed is the recorded information that is held fitting the specific wording of both requests. If the complainant requires further information, he will need to make a further request to the trust. It is important to highlight at this point however that section 40 of the FOIA provides an exemption to the disclosure of third party personal data, if that disclosure would be unlawful and in breach of the Data Protection Act 2018.

Procedural breaches

34. As the trust did not release the recorded information it holds within 20 working days of the requests (i.e. had to carry out further searches in order to provide the correct information), the Commissioner has found the trust to be in breach of section 1(1)(b) in respect of both requests.
35. As the trust also failed to confirm that it does hold recorded information falling within the scope of the second request (i.e. initially informed the complainant that it does not hold the information, when it does), the Commissioner has recorded a breach of section 1(1)(a).
36. The trust did not recognise the second request as a further request for information under the FOIA. It therefore failed to respond to it within 20 working days, which is a breach of section 10 of the FOIA.

Other matters

37. The Commissioner would like to remind the trust of the requirements of the section 45 code of practice. It recommends public authorities to offer an internal review and if one is requested to carry this out and notify the applicant of its findings no later than 20 working days from receipt. It permits 40 working days but only for requests that are particular complex or voluminous and require that additional time.

Right of appeal

38. 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@justice.gov.uk

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

39. 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.
40. 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

Samantha Coward
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Wycliffe House
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