

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 September 2020

Public Authority: Norfolk & Norwich University NHS Trust

Address: Colney Lane
Colney
Norwich
Norfolk NR4 7UY

Decision (including any steps ordered)

1. The complainant requested information relating to the Norwich Anaesthetic Group.
2. The Commissioner's decision is that Norfolk & Norwich University NHS Trust ("the Trust") failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the FOIA, to the request.
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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 11 December 2019, the complainant wrote to the Trust and requested information in the following terms:
- "1. The number of sessions/programmed activities covered by the Norwich Anaesthetic Group (NAG) each year, for each of the past 5 years.*
- 2. The payments made to the NAG each year, for each of the past 5 years.*
- 3. The current vacancy number of anaesthetists and intensivists in the NNUH.*
- 4. The number of job adverts for anaesthetists and intensivists in the past year.*
- 5. Please provide a copy of your documented mitigation actions for the conflict of interest of the clinical director of anaesthesia & ICU and the relevant divisional director who all have both pecuniary interests in NAG and have decision making responsibilities regarding recruitment and allocation of NHS sessions to their company (NAG). This should be in line with NHS England guidance on managing conflicts of interests. If no documented mitigation plan is in place, please state this.*
- 6. Please provide a copy of the procurement document for anaesthetic services and the process of how this was tendered and awarded to NAG. Given the size of this contract for services, please state which government tendering site it was placed on and on what date? When is this contract due for renewal?*
- Please note, non-disclosure of the above information will result in immediate referral to the NHS Fraud Department."*

6. The Trust acknowledged the request on 12 December 2019 but had failed to provide a substantive response by the date of this notice.

Scope of the case

7. The complainant initially contacted the Commissioner on 28 February 2020 to complain about the failure, by the Trust, to respond to the request.
8. In line with her usual practice, the Commissioner contacted the Trust on 12 March 2020 to highlight the outstanding response. She requested

that the Trust respond to the request within 10 working days. The correspondence was neither acknowledged nor responded to.

9. The complainant contacted the Commissioner again on 30 March to advise that no response had been received. At that time the Covid-19 pandemic restrictions were being implemented and extra demand had been placed on NHS services.
10. The Commissioner wrote to the complainant to advise that although she would write to the Trust again, as a reasonable and proportionate regulator, she had taken the decision to amend her casework approaches to reduce the burden on public authorities. The Commissioner was therefore not compelling the NHS, which was under severe pressure, to divert resources to information rights cases at this time. The complainant accepted the Commissioner's position.
11. The Commissioner also wrote to the Trust again reminding it of its obligations under the FOIA and advising it should provide a response as soon as possible. Again, the correspondence was not acknowledged or responded to.
12. On 28 August 2020 the complainant notified the Commissioner that he had still not received any response to his request and asked her to consider issuing a decision notice.
13. The scope of this notice and the following analysis is to consider whether the Trust has complied with section 10 of the FOIA.

Reasons for decision

14. 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.*

15. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*

- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

16. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.
17. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
18. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the Trust has breached section 10 of the FOIA.
19. The Trust has had ample time and opportunity to provide a response and therefore the Commissioner finds the Trust has not complied with its obligations under the legislation.

Right of appeal

20. 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

21. 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.
22. 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
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