

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 December 2020

Public Authority: Bedfordshire Hospitals NHS Foundation Trust
Address: South Wing
Kempston Road
Bedford
MK42 9DJ

Decision (including any steps ordered)

1. The complainant requested documents from Bedfordshire Hospitals NHS Foundation Trust (the Trust) relating to the merger of Luton and Dunstable University Hospital and Bedford Hospital and also for information regarding the recent recruitment for two general manager positions within the Trust. The Trust had failed to provide a response to either request by the date of this notice.
2. The Commissioner's decision is that the Trust failed to respond to the requests 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 both requests.
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 9 June 2020, the complainant wrote to the Trust and requested information in the following terms:

"To have full oversight of the context of the changes and direction of travel can you please take this request as a formal FOI to:

Disclose the final FBC

Disclosure all the draft versions (with version control) that were used in developing the quality governance section for the FBC including the version submitted for the FBC."

6. On 11 June 2020, the Trust requested clarification of what the complainant meant by FBC.
7. On 11 June 2020, the complainant clarified his request in the following terms:

"FBC relates to the full business case for the merger between L&D and BH.

The drafts I am asking for are all the draft versions used / developed / saved as part of the quality / governance section of the FBC.

Please feel free to come to me if you have any further questions."

8. The Trust acknowledged this clarified request on 7 July 2020.
9. On 10 July 2020, the complainant wrote to the Trust and made a second request for information in the following terms:

"During June 2020 there were two vacant general manager posts – that for group 4a and group 6

Please accept this email as a formal FOI to disclose:

- The date the two roles were approved at the vacancy control panel*
- The dates the vacancies for the two roles were advertised – (open and closing date)*
- A copy of the advert for each job*
- Where the jobs were advertised*
- A list of the interview dates*
- At the point of interview the following information on the successful candidates*

- o Their role / job title*
- o Their employing organisation"*

10. The Trust acknowledged this second request on 13 July 2020 but had failed to provide a substantive response to either request by the date of this notice.

Scope of the case

11. The complainant contacted the Commissioner on 8 November 2020 to complain about the failure, by the Trust, to respond to the two requests.
12. In line with her usual practice, the Commissioner contacted the Trust on 27 November 2020 to highlight the outstanding responses. She requested that the Trust respond to the requests within 10 working days. The correspondence was neither acknowledged nor responded to.
13. The scope of this notice and the following analysis is to consider whether 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 either request within 20 working days, the Trust has breached section 10 of the FOIA.

Right of appeal

19. 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

20. 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.
21. 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
Team Manager
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Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF