

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 May 2021

Public Authority: Isle of Wight NHS Trust
Address: St. Mary's Hospital
Parkhurst Road
Newport
Isle of Wight
PO30 5TG

Decision (including any steps ordered)

1. The complainant requested information from Isle of Wight NHS Trust ("the Trust") relating to employees who have been unable to attend work during the COVID 19 pandemic due to shielding. By the date of this notice the Council had not provided a substantive response to the request.
2. The Commissioner's decision is that the Trust has 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 to the request in accordance with its obligations under the FOIA.
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 Act and may be dealt with as a contempt of court.

Request and response

5. On 21 September 2020, the complainant wrote to the Trust and requested information in the following terms:

"Please could you let me know the following:

- 1. How many NHS employees employed at or from St Mary's Hospital were unable to work due to shielding from Covid-19 from the introduction of shielding.*
 - 2. How many of those returned by the 3rd August 2020.*
 - 3. How many of those returned between 4th August and 1st September.*
 - 4. How many of those returned from between 2nd September to 14th September.*
 - 5. How many have still not returned as of today, 15th September.*
 - 6. What is the total cost of salaries including national insurance and pension contributions paid by NHS/government for those above who have been unable to work due to shielding."*
6. The Trust wrote to the complainant on 22 September 2020 to acknowledge the request.
7. On 19 October 2020, the Trust wrote to the complainant to ask him to provide further information to clarify his request.
8. The complainant responded on 19 October 2020 and clarified his request for information. The Trust wrote to the complainant on the same date to acknowledge the complainant's correspondence.
9. On 23 October 2020 the Trust wrote to the complainant to provide him with an update on the status of his request for information.
10. On 7 December 2020, as the complainant had not received a response to his request, he wrote to the Trust to ask for an update on the status of his request.
11. The Trust wrote to the complainant on 8 December 2020 to provide him with an update on the status of his request.

12. On 26 January 2021 the complainant wrote to the Trust again to complain about the Trust's delay in responding to his information request.
13. The Trust wrote to the complainant on 27 January 2021 to apologise for its delay in responding to his information request. By the date of this notice the Trust had not provided a substantive response to the request.

Scope of the case

14. The complainant contacted the Commissioner on 10 March 2021 to complain about the Trust's failure to respond to his request.
15. The Commissioner contacted the Trust on 29 March 2021 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
16. The Commissioner also contacted the complainant on 29 March 2021 to explain that the Trust had been given 10 working days from that date within which to provide a response to his request.
17. On 23 April 2021 the Trust wrote to the Commissioner to ask for further time to respond to the complainant's information request.
18. The Commissioner responded to the Trust on 27 April 2021 and asked the Trust to provide a substantive response to the complainant within 10 working days.
19. The complainant has provided evidence that by the date of this notice, he had not received a substantive response to his information request.
20. 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

21. Section 10 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.*

22. 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."*
23. The Trust did not provide a substantive response to the request within 20 working days of receipt. Therefore, the Commissioner's decision is that the Trust has breached section 10 of the FOIA.

Other matters

24. The Commissioner notes that the Trust did not seek clarification from the complainant until its response was due on the twentieth working day which, in effect, re-set the clock for its response. This is not considered to be good practice.
25. The Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA.

Right of appeal

26. 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

27. 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.
28. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF