

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 5 October 2021

**Public Authority:** University Hospitals Plymouth NHS Trust  
**Address:** Derriford Road  
Crownhill  
Plymouth  
PL6 8DH

### **Decision (including any steps ordered)**

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1. The complainant has requested information that they considered University Hospitals Plymouth NHS Trust ("the Trust") may have held and provided to inform a health study into the proposed site of an incinerator as well as information on yearly case studies on patient admittance by postcode area for a range of different illnesses. The Trust stated this information was not held.
2. The Commissioner's decision is that, on the balance of probabilities, the information is not held by the Trust and it has complied with its obligations under section 1(1) of the FOIA.

### **Request and response**

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3. On 30 July 2020 the complainant made a request to the Trust for information in the following terms:

*"One of the reasons why the MVV Environment Devonport site was chosen and built was because of the local Health studies and area profiles that were conducted."*

*In July 2012 Plymouth City Council commissioned an independent review to assess the evidence regarding the health and environmental impacts of combined heat and power plants on local communities in built-up areas, the reason it sought the advice was based upon an*

*intention of revoking the then current planning consent that had been granted.*

*It has been reported that Legal advice, however, found that cancelling the contract would cost the council more than £400 million in compensation to MVV and fellow SWDWP members Torbay and Devon.*

*Under the FOI act can you please supply:*

*1. A copy or link of the information supplied for the Health studies and area profiles that were conducted.*

*2. A copy of the yearly health reviews- case crossover studies (Plymouth post code specific )that have been conducted for: Annual patient area profile admittance and referrals numbers from 2014 to the present day for the Plymouth region to include:*

*Miscarriages and still births*

*Infant deaths*

*All types of cancer*

*nose/sinus infections*

*throat infections*

*lung infections*

*asthma treatments*

*COPD*

*circulatory problems*

*strokes*

*heart attacks*

*type 2 diabetes*

*osteoarthritis*

*rheumatoid arthritis*

*systemic lupus erythematosus*

*systemic sclerosis*

*juvenile idiopathic arthritis*

*gout*

*sciatica*

*migraines*

*carpal tunnel"*

4. The Trust responded on 6 August 2020. It stated the requested information was not held as it had found no evidence that it had been involved in the commissioning of MVV services in the form of studies, reviews or profiles.
5. An internal review was requested and the internal review outcome provided to the complainant on 24 August 2020 upheld the response.

## Scope of the case

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6. The complainant contacted the Commissioner on 24 August 2020 to complain about the way their request for information had been handled.
7. The Commissioner considers the scope of her investigation to be to determine if the Trust has correctly stated that it does not hold the requested information in line with its responsibilities under section 1(1) of the FOIA.

## Reasons for decision

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### Section 1 – is the information held?

8. 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."*

9. In cases where a dispute arises over the extent of the recorded information 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 a public authority to check that the information is not held and any other explanations provided by the authority to explain why the information is not held.
10. The Commissioner is not required to prove beyond any doubt that the information is or is not held, she is only required to make a judgement on whether, on the balance of probabilities, the information is held.
11. In determining whether information was held in this case, the Trust approached its Performance Team to search for the report or any information related to it as this is the team that would extract statistics for reports from the Trust's electronic systems.
12. The Performance Team and Business Intelligence Manager confirmed that the searches had returned no information relevant to the request. Members of the team with years of experience had no memory or recollection of any report, no search terms returned records and there was no evidence that the Trust had pulled together data for any such reports.

13. The Trust also explained that it liaised with the external organisations referenced in the request and all of the organisations confirmed the Trust had not been involved in the report, studies or review and had not provided information.
14. Following the internal review request the Trust double checked its records; getting another senior member of staff to perform searches of the Trust's records. This member of staff had been with the Trust and in its information team since 2012 and had no memory of the Trust being involved and holding any information relevant to the request. The searches again returned no information.
15. The complainant's arguments to the Trust as to why information would be held were that there was a system in place regarding environmental public health tracking using the environmental public health surveillance system and that this system received regular data information from the Trust.
16. The Trust contacted Public Health England who confirmed that the Trust does not submit any information to this system.
17. When corresponding with the Trust the complainant had referred to a policy paper on the Devonport Dockyard proposed incinerator. Unfortunately this paper was withdrawn from publication in December 2020 so cannot be directly referenced here.
18. However, much of the complainant's arguments as to why the Trust must hold the requested information come from this paper. The paper referred to responses received from Plymouth Teaching Primary Care Trust ("the PCT"). The Trust explained to the complainant that the PCT is a different organisation to the Trust, which is the acute Trust in Plymouth. When PCT's were disbanded their functions were distributed to other healthcare bodies; in the case of this PCT it split into several different organisations. The Trust considered Devon Clinical Commissioning Group ("the CCG") would be best placed to offer advice.
19. The Commissioner's view is that the majority of PCT's functions were taken on by CCGs and any legacy information held by PCT's was either transferred to the relevant CCG or held by NHS England. It is therefore highly likely that if the PCT was involved in providing information to Public Health England that any information on this would have passed to a healthcare body other than the Trust.
20. Other parts of the policy paper refer to Plymouth NHS providing the Environment Agency with health impact assessments. The Trust has pointed out that the reference to Plymouth NHS is clarified in the paper to be referring to the PCT.

21. The Commissioner considers that the Trust has provided convincing explanations as to why it does not hold the particular data that the complainant has requested. The Trust has clearly explained that it has conducted searches for any information that might fall within the scope of the request and has consulted with external organisation who have all confirmed that the Trust was not involved in providing information to the report, study or subsequent reviews.
22. The Commissioner also considers the Trust's explanations regarding the healthcare bodies who would have been involved in providing information to feed into any reports and reviews to be cogent and in line with the Commissioner's understanding of what happened to PCT's functions and records when they were disbanded.
23. The Commissioner does not consider that the complainant has provided any persuasive or compelling arguments to explain why this information would be held.
24. The Commissioner is therefore satisfied that the Trust does not hold the information requested and has complied with its duty under section 1(1) of the FOIA.

## Right of appeal

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25. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.
27. 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 .....**

**Jill Hulley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**