

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 October 2021

Public Authority: Guy's and St Thomas' NHS Foundation Trust
Address: Westminster Bridge Road
London
SE1 7EH

Decision (including any steps ordered)

1. The complainant has requested Guy's and St Thomas' NHS Foundation Trust (the trust) to disclose the number of Prostate Arterial Embolisation procedures two doctors performed in 2019 and 2020 and any other data collected by the trust relating to such procedures over the same timeframe. The trust refused to disclose the requested information citing section 40(2) of the FOIA.
2. During the Commissioner's investigation the trust disclosed the requested information to the complainant and withdrew its application of section 40(2) of the FOIA. The Commissioner's decision is that the trust breached section 1 and 10 of the FOIA for failing to disclose information to which the complainant was entitled under section 1 within 20 working days of the receipt of the request.
3. As the information has now been disclosed, the Commissioner does not require any further action to be taken.

Request and response

4. On 2 January 2021, the complainant wrote to the trust and requested information in the following terms in relation to a performed Prostate Arterial Embolisation on 7th October 2020:

"7. For both Doctors separately, provide a total number of PAEs performed at Guys/St Thomas's for each calendar year 2019 and 2020 and a total overall for each Hospital"

"8. For each total under 7 specify number of procedures where the Embolisation produced a positive result for the patient and any other statistics for the 2 year period collected by both Hospitals relating to PAEs"

5. The trust responded on 16 February 2021. It confirmed that it holds the requested information, but considers it is exempt from disclosure under section 40(2) of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 16 February 2021 to complain about the way his request for information had been handled. There were personal data elements to the complainant's request. Case reference IC-89049-B4P3 was set up to address these. A separate complaint was set up to address the FOIA elements (questions 7 and 8 of the request, as outlined above in paragraph 4) case reference IC-106958-X1B2. Normally the Commissioner would expect an internal review to be requested and carried out before accepting a complaint for full investigation under section 50 of the FOIA. But on this occasion she decided to exercise her discretion and accept the FOIA complaint for full investigation without an internal review.
7. The personal data elements of the request have been handled separately and cannot form part of this notice, as this notice is to address the FOIA elements to the request and the trust's handling of those elements under the FOIA legislation. The complainant also raised further issues about the trust (concerning the procedure itself and his belief that he felt the trust was 'lying'). The Commissioner explained to the complainant that these issues are not within her remit. She informed the complainant of what her remit is under FOIA and that she is limited to considering elements 7 and 8 of his request and the trust's application of section 40(2).
8. During the Commissioner's investigation the trust decided to disclose the requested information (the information it holds relevant to questions 7 and 8) to the complaint and to withdraw its previous application of section 40(2) of the FOIA. It disclosed the requested information to the complainant on 14 October 2021.
9. As the requested information has now been disclosed, the remainder of this notice will address any procedural breaches of the FOIA.

Reasons for decision

10. Section 1 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 them.

Subject to any exemptions from disclosure that may apply as outlined in the legislation.

11. Section 10 states that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
12. The Commissioner notes that the trust withdrew its application of section 40(2) and disclosed the information to the complainant during the Commissioner's investigation. As this was information to which the complainant was entitled to receive under section 1(1) of the FOIA and within 20 working days of the receipt of the request (section 10) the Commissioner finds the trust in breach of section 1 and 10 in this case.
13. However, as the requested information has now been disclosed to the complainant, she does not require any further action to be taken.

Right of appeal

14. 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

15. 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.
16. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF