

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 January 2022

Public Authority: Midlands Partnership NHS Foundation Trust
Address: Trust Headquarters
Corporation Street
Stafford
ST16 3SR

Decision (including any steps ordered)

1. In a seven part request, the complainant has requested information about an information governance incident from Midlands Partnership NHS Foundation Trust ('the Trust'). The Trust addressed two parts of the request, disclosed information within scope of one part, advised it does not hold information relevant to another part and withheld information within scope of the remaining three parts under section 40 of the FOIA (personal data). The Trust subsequently withdrew its reliance on section 40 and confirmed it does not hold the information requested in these parts.
2. The Commissioner's decision is as follows:
 - On the balance of probabilities, the Trust does not hold any further information within scope of the request and has complied with section 1(1)(a) of the FOIA.
 - The Trust's response breached section 10(1) of the FOIA as it did not fully comply with section 1(1)(a) within 20 working days.
3. The Commissioner does not require the Trust to take any remedial steps.

Request and response

4. On 20 May 2021 the complainant requested information in the following terms:

"In order to assist you the background to this request is as follows;

Between the 18th and 23rd March 2016 a Staff member identified as '[redacted]' from the St Georges Hospital Corporation Street Stafford engaged in conducting searches of NHS Data Bases and searching NHS files on behalf of Staff from Staffordshire Police and checked the medical history of at least sixteen members of the public suspected of suffering from Mental Health issues.

The requests for this information conducted by email and timed at 12:15 18th March 2016; 17:15 19th March 2016; 08:38 21st March 2016 and 14:04 23rd March 2016. The apparent title of this process under 'Subject' is; Re Persistent Caller List.

The above process generated a medical data breach complaint to the 'Trust.' This was investigated by [redacted] who substantiated the breach of duty. This was further substantiated in a letter dated 25th June 2018 under the Ref No: TM/KF/FC/0315 and a full breach of duty were admitted in response to a civil claim on 3rd January 2019.

The above breach of duty to the 16 members of the public was referred to the ICO by [redacted] and the following are extracts from the ICO referral form used, with questions from the ICO and answers provided by [redacted];

Q: "Potential Consequences of breach"

A: "Unknown"

Q: "What likelihood the Data Subjects will experience significant consequences"

A: "Not Known"

Q: "Have you told the Data Subjects about the breach"

A: "We're about to or are in the process of telling the Data Subjects"

Q: "Have you told other agencies or supervisory authorities in case we need to make contact with other agencies"

A: "Yes"

The last two questions and answers have been highlighted because they are significant statements and very relevant to the information now sought which is a matter of considerable 'Public Interest' considering the gravity of the process where the Police are accessing NHS Medical records.

It is a fact that the NHS 'Trust' was, at all times the 'Data Controller' and 'Custodian' of the NHS records of the sixteen members of the Public who had no knowledge their medical records were being accessed at the request of Staffordshire Police.

1: Have all sixteen members of the public been contacted and informed by the 'Trust' of this illegal access to their medical records and what assistance has the 'Trust' provided to the Data Subjects?

2: If the answer to the above question is 'Yes' then on what date, or by what date, were all sixteen individuals contacted?

3: Please provide a copy of the document, form or letter sent to the individuals with the appropriate redactions to protect their personal information.

4: Of the sixteen members of the Public subject of the checks how many were men?

5: If the answer to the question is 'No' the 'Trust' has not contacted them, please provide the reasons why the 'Trust' has not completed its legal obligations as indicated it had, or was about to, as provided in the response made by [redacted] to the ICO.

6: The statement was made by [redacted] that the other 'Authority' (Staffordshire Police) had been contacted. Please provide a copy of the document, letter or form sent to the Police and provide the date it was sent.

7: Please provide copies of any subsequent documents forwarded to the ICO related to the above issue.

Thank you for your time in this matter and look forward to hearing from you in due course but within the statutory time frame under the act."

5. On 9 June 2021 the Trust refused the request as a vexatious request under section 14(1) of the FOIA.

6. The Trust provided an internal review on 20 August 2021. It withdrew its reliance on section 14(1) and addressed the complainant's questions.
7. The Trust advised the complainant that information within scope of questions 1, 3 and 4 is exempt information under section 40 of the FOIA, advised that questions 2 and 5 were "not applicable", that the complainant should contact Staffordshire Police about question 6 and that it had previously provided the complainant with information relevant to question 7.
8. The Trust advised that it would categorise any further correspondence from the complainant on the matter that is the focus of the request as vexatious.
9. In the course of the Commissioner's investigation, the Trust reconsidered its response to parts 1, 3 and 4 of the request, advising the Commissioner on 21 December 2021 that it does not hold the information requested in these parts. On the same day the Commissioner advised the Trust to inform the complainant of its final position and the Trust confirmed it intended to do so on 28 January 2022.

Scope of the case

10. The complainant first contacted the Commissioner on 20 June 2021 to complain about the way his request for information had been handled.
11. In view of the Trust's final confirmed position, the Commissioner's investigation has focussed on whether the Trust has complied with section 1(1) with regard to the entire request. He has also considered the timeliness of the Trust's response.

Reasons for decision

Section 1 – general right of access to information held by public authorities

12. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to them if it is held and is not exempt information.
13. In correspondence to the Commissioner on 7 December 2021 the complainant discussed his wider concerns about the Trust and the

reasons why he is dissatisfied with the Trust's response to each part of his request.

14. In so far as they are requests for recorded information, the parts of the request can be summarised as being for the following information:
 1. Recorded information that evidences whether the Trust had contacted the 16 individuals about the information governance incident and the help the Trust provided to those individuals.
 2. If the individuals were contacted, what date on which they were contacted.
 3. A copy of any correspondence the Trust sent to the 16 individuals.
 4. The number of those individuals who were men.
 5. If the Trust did not contact the 16 individuals, recorded information that evidences why the Trust "has not completed its legal obligations" which it had advised the ICO it had done or was about to do.
 6. A copy of the document that evidences that the Trust contacted Staffordshire Police [about the incident], with a date.
 7. Copies of any documents the Trust subsequently sent to the ICO about the incident.
15. The complainant submitted an earlier complaint to the Commissioner about the Trust and a request broadly associated with the same matter. As a result of that complaint, the Commissioner is aware that from 1 June 2018 South Staffordshire and Shropshire Healthcare NHS Foundation Trust (SSSFT) merged with Staffordshire and Stoke-on-Trent Partnership NHS Trust to become Midlands Partnership Foundation Trust – 'the Trust'.
16. The information governance incident that generated the request in that earlier case and that is the focus of the current case concerned one of those legacy Trust's – SSSFT. The incident occurred, as the complainant's request notes, in 2016.
17. In its submission to the Commissioner, the Trust has first provided a little detail about the information governance incident behind the complainant's request. It has explained that a legal case resulted from the incident, and that the matter was settled.
18. The Trust has gone on to confirm that it does not hold "all information" about the above incident and has communicated that fact to the

complainant. It says it has suggested to the complainant that he contact other relevant parties to request any information to which he is legally entitled and that the Trust would fully support any appropriate disclosures by those parties.

19. The Trust says it does not have any relevant file within its filing system relating to the incident and the associated matters, and that the person involved at the time has since left the Trust.
20. The information the Trust does hold is contained in a complaint file, a legal file and FOI-related correspondence [which the Commissioner assumes was with the complainant and the ICO]. In order to clarify what searches were made the Trust says it has reviewed central filing systems and asked its IT provider to review emails to identify pertinent email correspondence. The Trust has advised that emails are now retained for 30 days once deleted or a person leaves Trust employment.
21. In its submissions the Trust has confirmed that, regarding parts 1 to 6 of the request, it does not hold any relevant information within its filing systems.
22. Regarding part 7, the Trust has confirmed that, as part of the separate legal process, it had provided the complainant with the relevant information it holds on the central complaints file relating to the incident in question. In his correspondence to the Commissioner the complainant has expressed dissatisfaction that it was not clear from its response to this part whether the Trust had released all the relevant information it holds. In its submission Trust has confirmed it does not hold any other information relevant to this part of the request.
23. The Commissioner has reviewed all the circumstances of this case, namely: the restructuring of two existing Trusts into one new Trust; changes in staffing and records management systems; the fact that the information governance incident had occurred five years before the time of the complainant's request; and the searches that the Trust has carried out. Having considered these factors, the Commissioner is satisfied that, on the balance of probabilities, the Trust does not hold any further information within scope of the complainant's request and has complied with section 1(1)(a) of the FOIA.

Section 10 – time for compliance

24. Under section 10(1) a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
25. In this case, the complainant submitted his request on 20 May 2021. The Trust initially indicated that it held information within scope of parts 1, 3 and 4 of the request. It subsequently advised the complainant in correspondence sent to him on 28 January 2022 that it does not hold that information. The Trust's response did not therefore fully comply with section 1(1)(a) within the necessary timescale.

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: 0203 936 8963
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

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