

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 March 2025

Public Authority: University College London Hospitals NHS Foundation Trust

Address: 250 Euston Road
London
NW1 2PG

Decision (including any steps ordered)

1. The complainant has requested information relating to the hereditary angioedema (HAE) clinic and the clinical immunology service at University College London Hospitals NHS Foundation Trust (the Trust). The Trust provided the information it held within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the Trust does not hold any further information falling within the scope of the request. However, it failed to comply with section 1 of FOIA due to it not conducting proper searches at the time of the request.
3. The Commissioner does not require any further steps as a result of this decision notice.

Request and response

4. On 17 November 2022, the complainant submitted the following request for information to the Trust:

"Under the Freedom of Information Act 2000 could you please supply a copy of all emails and any recorded information in other forms sent/received between the Clinical Lead of the Department of Specialist Allergy and Clinical Immunology, the Divisional Clinical Director for RNENTEDH, the Medical Director for Specialist Board and the CEO, in the period between March 2020 - May 2020, held on the subject of the hereditary angioedema

(HAE) clinic and the clinical immunology service at uclh that I lead.”

5. The Trust responded to the complainant on 24 September 2024, providing the information the Trust believed it held falling within the scope of the request.
6. The complainant wrote to the Trust on 25 September 2024, requesting an internal review of its response to their request. Specifically, they were concerned that the Trust’s response was “very short and incomplete.”
7. The Trust responded to the complainant on 27 September 2024, stating:

“I fully uphold the original response as appropriate due to the following considerations. A full forensic study was undertaken with copies of the relevant email accounts which went well beyond the FOIA time/cost limits. I also noticed discrepancies such as an email sent to [name redacted] on 9 March 2020 regarding a HAE meeting, this email was found in [name redacted] account but not in [name redacted] account. I can only conclude the relevant people deleted such emails prior to us obtaining copies of their email accounts. Therefore, the response provided to you is accurate and complete based on the records provided to us.”
8. The complainant responded to the Trust on the same day asking it to clarify when the relevant email accounts were accessed and whether the Trust could retrieve deleted messages.
9. The Trust responded to the complainant on the same day confirming that the relevant email accounts were accessed following receipt of the Commissioner’s decision notice. The Trust advised that it did not know whether it could retrieve deleted emails and would need instruction from the Commissioner to do this.

Scope of the case

10. It is useful to first provide some background information to assist with the understanding of this case. The complainant in this case initially contacted the Commissioner about the Trust’s failure to respond to the above request for information. The Commissioner dealt with this under

case reference IC-309187-D4Y8 and issued a decision notice¹ stating that the Trust had breached section 10 of FOIA (time for compliance) and required the Trust to respond to the request.

11. The complainant submitted a further complaint to the Commissioner on 2 October 2024 to complain about the Trust's response to their request for information. In particular, the complainant is concerned that the Trust's response to their request was "very short and incomplete", and that the Trust appears to have not attempted to retrieve any deleted messages.
12. The Commissioner considers that the scope of this investigation is to determine whether, on the balance of probabilities, the Trust holds any further information falling within the scope of the request.

Reasons for decision

Section 1 – Information not held

13. Under section 1(1) of FOIA, anyone who requests information from a public authority is entitled:
 - a) to be told if the authority holds the information and,
 - b) to have the information communicated to them if it is held and is not exempt information.
14. Where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of "the balance of probabilities".
15. In other words, in order to determine such complaints, the Commissioner must decide whether it is more likely than not that the public authority holds any information which falls within the scope of the request (or held it at the time of the request).
16. In this case, the complainant has asked for all emails and recorded information between the Clinical Lead of the Department of Specialist Allergy and Clinical Immunology, the Divisional Clinical Director for RNTEDH, the Medical Director for Specialist Board and the CEO,

¹ [IC-309187-D4Y8](#)

during the period of March 2020 - May 2020 relating to the HAE clinic and the clinical immunology service.

17. In its submission to the Commissioner, the Trust has confirmed that it approached members of staff still in post at the Trust and carried out a review of the email of accounts of the Clinical Lead of the Department of Specialist Allergy and Clinical Immunology, the Medical Director for Specialist Board and the CEO. It stated the Divisional Clinical Director for RNTEDH provided its FOIA team with copies of the relevant emails.
18. The Trust stated that it carried out forensic searches of the email accounts of the Clinical Lead of the Department of Specialist Allergy and Clinical Immunology, the Medical Director for Specialist Board and the CEO using the search terms angioedema, HAE, and immunology.
19. The Trust confirmed that the requested information, if held, would be held in electronic form.
20. The Trust has stated that some of the emails relevant to the request have been deleted, but it is unclear when the emails were deleted as there is no record of destruction.
21. The Trust considers it unlikely that copies of any of the relevant emails would have been copied and held in other locations.
22. In terms of recovering any of the deleted emails, the Trust advised that it contacted NHS Digital which stated that it could not recover the deleted emails because of the time that has elapsed since the creation of the email.
23. The Trust has stated that there is a statutory requirement to retain the records of the CEO under the Public Records Act and has provided the Commissioner with its Records Management Policy which states that the records of the CEO, including emails, should be permanently retained, and transferred to the Archive.
24. The Trust has explained that the CEO referred to in this request for information stepped down from their role on 21 March 2021. However, they subsequently took up an honorary contract with the Trust and therefore retained and continued to use their email account.
25. The Trust explained that the email account was therefore not closed at the point at which the individual ceased to be CEO, but no process was undertaken to transfer or copy emails from their time as CEO for permanent storage. The Trust clarified that it is not known when emails in the scope of this request for information were deleted, and by whom, because there is no record of deletion.

26. The Commissioner appreciates that the complainant believes that the Trust should hold the requested information. However, FOIA's purpose is to provide transparency of information actually held by public authorities. It gives an individual the right to access recorded information held by public authorities at the time the request for that information is made. FOIA does not cover whether public authorities should hold information - it only provides access where information is held.
27. It is important to note that at the time of the request, the Trust had not conducted any searches for information falling within the scope of the request due to its FOIA team needing authorisation to access the email accounts of the staff referred to in the request and needing permission to install software to search and download files from those email accounts. A detailed chronology of the follow up correspondence between the complainant and the Trust can be found in the annex at the end of the decision notice IC-309187-D4Y8².
28. Based on the above information, the Commissioner considers that on the balance of probabilities, at the time of the complainant's request on 17 November 2022, the Trust will have held relevant information within scope of the complainant's request.
29. The Commissioner's conclusion is therefore that the Trust failed to comply with section 1 of FOIA for failing to conduct proper searches at the time of the request. However, as the information has now been deleted and there is no way of recovering the deleted emails because of the time that has elapsed since their creation, unfortunately there are no rectification steps which the Commissioner can order in this case.
30. The Commissioner notes that the Trust has now conducted proper searches, and he has considered the Trust's position.
31. The Trust has explained the searches it has now carried out and, on this basis, confirmed that it has not identified any further information falling within the scope of the complainant's request. The Commissioner has not been provided with any evidence to contradict the Trust's explanation or to show that it in fact holds further information within the scope of the request. The Commissioner is therefore satisfied that the Trust has now conducted appropriate searches to identify what information it may still hold in relation to the request.

² [IC-309187-D4Y8](#)

32. Based on the above, the Commissioner finds that, on the balance of probabilities, the Trust does not hold any further information beyond that already disclosed to the complainant.

Other matters

Records Management

33. The Commissioner has issued guidance regarding the management of records under section 46 of FOIA, namely the section 46 code of practice³ on records management. Section 2.3 of the code states:

“Authorities must define how long to keep information and dispose of it when it is no longer needed. Authorities can dispose of information by destroying it, transferring it to another body, or by transferring it to an archive. Authorities must be able to explain why information is no longer held either by reference to a record of its destruction or by reference to the authority’s policy.”

34. Whilst the Commissioner accepts that the Trust has a records management policy in place, in this case it appears that the policy was not adhered to in relation to the retention and archiving of the previous CEO’s emails.
35. The Commissioner therefore reminds the Trust that it is the responsibility of every public authority to ensure that its staff are made aware of the correct procedures for records management.
36. The Commissioner therefore recommends that the Trust reviews the section 46 code of practice.

Engagement with the Commissioner

37. Whilst the Trust did engage with the Commissioner's enquiries during his investigation, it failed to respond to him within the timescales requested on a number of occasions. This led to the Commissioner having to issue a formal Information Notice to the Trust in order to obtain the information he required to come to a decision. The Commissioner takes note of this and reminds the Trust that it should

³ [Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000](#)

respond in a timely manner in future cases. Failure to comply could lead to the Commissioner taking action under section 54 of FOIA.

Right of appeal

38. 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

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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