

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 March 2025

Public Authority: United Lincolnshire Hospitals NHS Trust
Address: Lincoln County Hospital
Greetwell Road
Lincoln
LN2 5QY

Decision (including any steps ordered)

1. The complainant has requested the relevant professional registration numbers of individuals involved in his mother's care. The above public authority ("the public authority") initially relied on section 40(2) of FOIA to withhold the information, before claiming that some was reasonably accessible and therefore exempt under section 21 of FOIA.
2. The Commissioner's decision is that, on the balance of probabilities, he is not satisfied that the public authority has complied with its duty under section 1(1) of FOIA. The public authority has also breached sections 10 and 17 of FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - issue a fresh response, to the request, that explicitly confirms or denies that information, other than that already provided to the complainant, is held. If (and only if) further information is held, the public authority should either disclose it or issue a refusal notice.
4. The public authority must take these steps within 30 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.

Background

5. The background to this request is a sad case involving the complainant's mother – who died in 2021 whilst in the public authority's care.
6. The complainant made a formal complaint to the public authority as he believed (and continues to believe) that the treatment and care provided to his mother was inadequate. In parallel to that complaint, the complainant was granted access to his mother's medical records under the Access to Health Records Act 1990.
7. For its part, the public authority disputes the complainant's allegations.

Request and response

8. On 28 June 2023, the complainant wrote to the public authority and requested the registration numbers of several individuals he believes to have been involved in his mother's care. These were:
 - An "individual" who had provided a specific diagnosis.
 - Consultants who dealt with the complainant's mother whilst at a specific hospital.
 - A physiotherapist who had asked his mother to perform a specific movement.
 - Nurses who had carried out a specific procedure on his mother.
9. The public authority responded on 17 January 2025. It stated that it was relying on sections 41 (breach of confidence) and 40(2) of FOIA (personal information) to withhold the requested information.

History of the case

10. This complaint has a long and unhappy history.
11. The complaint was originally brought to the Commissioner on 19 July 2023. It was unfortunately not recognised as a complaint under section 50 of FOIA, either in part or at all, at that time. It was only after the intervention of the Tribunal that the Commissioner accepted that he should have considered the matter under section 50.

12. The Commissioner formally opened his section 50 consideration on 24 December 2024 by writing to the public authority and asking it to respond to the request within 20 working days. The Commissioner subsequently explained that, given the delays that had already occurred, he would not insist that the complainant seek an internal review before bringing the complaint back, if he was dissatisfied with the response.
13. After the public authority had issued its fresh response, the Commissioner proceeded to his investigation process straight away. He wrote to the public authority on 22 January 2025 asking it to explain why sections 40(2) and 41 applied. However, before getting to those questions, he drew attention to the ambiguity, in the public authority's response, about what (if any) information it actually held. Drawing attention to the four categories outlined above, the Commissioner asked the public authority to identify what information, within each category, it had identified. Where the public authority was claiming not to hold information, the Commissioner asked it to explain the steps it had taken to establish that the information was not held.
14. The Commissioner asked the public authority to respond within 20 working days. When the public authority failed to meet this deadline, the Commissioner served an information notice requiring it to respond.
15. The public authority responded to the investigation letter on 28 February 2025. It stated that it **did** hold information within the scope of the request – but it failed to identify whether it held all or only some of the information. It also stated that:

“the complainant has received a copy of his mother's medical record which would details [sic] of the individuals concerned.”
16. On 4 March 2025, the Commissioner contacted the public authority again, noting that the documents the complainant already had self-evidently did not identify the individuals precisely enough (if they did he would have been able to look up their number using the published register). The Commissioner asked the public authority to explain whether it held any **other** records, besides those already provided, that would enable the individuals specified in the request to be identified.
17. The public authority responded on 6 March 2025 to say that it **did not** hold any such information.
18. The Commissioner contacted the public authority again the same day to ask it how it had come to the conclusion that no further information was held and what searches it had carried out to confirm that this was the case. He cited several potential areas where it was possible that relevant

records might still be held, including old staff rotas. The public authority responded to this correspondence to say that it held staff rotas (it did not specify how far back these went) but that it considered these to be exempt from disclosure.

19. The Commissioner therefore went back to the public authority a fourth time to get it to provide a comprehensive explanation of the information it held and how it had established that this was the only information held. He pointed out that establishing what (if any) information was held was a basic legal obligation under FOIA and one that needed to be discharged before a public authority considered exemptions. He noted that it was possible that the public authority **genuinely did not hold** the records that would allow it to identify the requested information, but that he could not accept that this was the case until the public authority had demonstrated that it had carried out adequate searches to confirm that the information wasn't held. He asked for a further response by 21 March 2025.
20. On 19 March 2025, the public authority responded to say that it would not be in a position to respond until 4 April 2025.
21. The Commissioner does not consider that such an extension is reasonable. He has set out, clearly and on several occasions, the information he requires from the public authority. The public authority's apparent lack of basic knowledge of the principles of FOIA gives him little confidence that an informal extension would produce the evidence he has asked for. He also notes that he has already had to use an information notice to obtain information from the public authority. He therefore considers that a decision notice is warranted.

Scope of the case

22. The scope of this notice is to determine whether the public authority complied with FOIA when responding to the request the complainant submitted to it on 28 June 2023. He has based this scope on the scope that he would have set, had he dealt with the complaint in 2023, based on the evidence the complainant provided at that time.
23. The complainant has argued for a wider scope. He argues that he made several requests for this and other similar information prior to that date. In particular, he has drawn to the Commissioner's attention correspondence dating back to 2021.
24. The Commissioner does not dispute that the complainant made earlier requests than this one. However, these matters were not submitted to him in July 2023. Even if they had been, he would have refused to deal

with them on the grounds that there had (at that point) been an undue delay in bringing them to his attention.

Reasons for decision

25. Where there is a dispute over the amount of information a public authority says it holds and the amount the requester believes is held, the Commissioner must decide whether it is more likely than not that the public authority has provided all the information it holds.
26. Section 1(1)(a) of FOIA requires a public authority to tell a requester whether it holds the information that they have requested – unless an exemption allows the public authority to refuse to confirm or deny that the particular information is held.
27. Where a public authority has confirmed that it does hold some, or all, of the information that has been requested, section 1(1)(b) of FOIA requires that public authority to then communicate that information to the requester – unless an exemption allows the public authority to withhold information.
28. Where a public authority communicates information, it does not have to separately confirm that that information is held. However, where a public authority wishes to rely on an exemption from the duty to disclose information, it must separately confirm whether or not that information is held.
29. There are certain circumstances in which a public authority can rely on an exemption to refuse to confirm or deny that it holds particular information. This is usually where confirming or denying that the information is held would itself be harmful.
30. However, under no circumstances should a public authority rely on an exemption from the duty to disclose information **until it has established that it does in fact hold any information in the first place.**
31. For the avoidance of doubt, unless a public authority is refusing to confirm or deny that it holds information, it must still check whether the information is held – unless it is already certain that the information is (or is not) held. This is the case regardless of the sensitivity of either the information itself or the records containing it.
32. In this case, the request seeks registration numbers of individual members of staff. The Commissioner recognises that the public authority will hold the professional registration numbers for all the members of

staff (and contractors) it employs in roles where professional registration is required. It is also likely to hold numbers for some former employees.

33. The issue in this case is whether the public authority can identify, from the records that it holds, which of the registration numbers it needs to provide. If it cannot identify those individuals, from the records it already holds, it does not hold the requested information, because it cannot distinguish the numbers that the complainant wants from the other numbers that it holds.
34. Therefore, in order to claim it definitely doesn't hold the requested information, the public authority must demonstrate that it holds no records that would allow for identification and that it has carried out appropriate searches to confirm that this is the case.
35. The individuals involved also need to be identifiable from the recorded information the public authority holds. If the information only exists in someone's head (because a member of staff recalls specific events, for example) that information is not held for the purposes of FOIA.
36. The public authority has noted that the complainant has already received his mother's medical records. The Commissioner accepts this, but considers it self-evident that these records, on their own, do not sufficiently identify the individuals in question such that the complainant would be able to look up their number on the published registers.
37. The public authority suggested that it may not hold any further information that would definitively identify all the individuals concerned. The Commissioner was willing to accept that stance in principle, but wanted to confirm that the public authority had considered other potential places where some of the information might be found.
38. In particular, the Commissioner noted that:
 - staff rotas would record who was on duty when some or all of the events referred to took place. It might be possible to cross reference these (if they still exist) with the medical notes to identify specific individuals; and
 - personnel files may contain details of care provided; and
 - in dealing with the complainant's formal complaint, it seems likely that the public authority would have needed to establish which members of staff had been involved so that they could provide evidence.

39. The public authority's response to that challenge did not indicate that it had considered any other potential sources of information. Nor did it indicate that searching for this information would exceed the cost limit.
40. The Commissioner cannot say with any degree of certainty that the public authority **does hold** this information. It is now around four years since the complainant's mother died. Some staff will have left the public authority, taking their institutional knowledge with them and some records will have been destroyed in accordance with retention policies.
41. However, the Commissioner is even less certain that the public authority **does not** hold this information, because it seems to have made very little effort to even consider where the information might be if it were held, still less to check whether or not it is there.
42. The Commissioner is normally required to assess the information held at the point that the public authority did, or, if earlier, should, have responded to the request. He considers it more likely that information would have been held in July 2023, when the public authority should have dealt with the request, than January 2025. This is because more staff would have left during that period and more records would have been destroyed.
43. On the balance of probabilities, the Commissioner is therefore not satisfied that the public authority has complied with its duty under section 1(1) of FOIA. This is because it has not demonstrated that it has carried out adequate searches to establish whether or not relevant information is held.
44. The public authority must now provide a fresh response to the complainant.
45. For the avoidance of doubt, the Commissioner may accept a response from the public authority that denies that further information (besides that already disclosed) is held. However, that will **only** be the case if the public authority demonstrates that it has carried out a comprehensive assessment of where relevant information (if it existed) would be held **and** that it has carried out appropriate searches of any records that assessment identifies. As a bare minimum, the Commissioner would expect the public authority to have considered all three bullet-pointed categories of information in paragraph 38 above, but it should also consider other places where information might reasonably be expected to be found.

Procedural matters

46. Section 10 of FOIA requires a public authority to respond to requests for information promptly and within 20 working days of receipt.
47. The request quoted above fell under FOIA and should have been responded to within 20 working days.
48. The public authority therefore breached section 10 of FOIA in responding to the request.
49. Section 17 of FOIA requires a public authority to issue a refusal notice, within 20 working days, stating any exemptions it wishes to rely on.
50. The public authority's refusal notice was not issued within 20 working days, nor did it cite all the exemptions on which it later came to rely. It therefore breached section 17 of FOIA.

Other matters

Apology

51. The Commissioner would like to reiterate in public the apologies he has already offered to the complainant in private correspondence for the time it has taken to reach a decision in this case. The delay – at least until December 2024 – arose as a result of handling errors by the Commissioner's staff.
52. The Commissioner recognises that the complainant has had to go to considerable lengths to have his complaint properly dealt with under section 50 of FOIA and that he (the Commissioner) should have dealt with the complaint this way (at least in part) from the outset.
53. Whilst the Commissioner cannot say for certain that the outcome would have been different, had this complaint been dealt with in 2023, he also recognises that there is a reasonable likelihood that the public authority held more relevant information in 2023 than it does today.
54. For this, the Commissioner offers an unreserved apology.

Tone

55. The Commissioner recognises that the background to this request is emotive and that the process of exercising information rights can be a long, frustrating one. He is also mindful of not wishing to detract from the apology offered above. However, it is his duty to promote good

practice in using FOIA and, in view of that duty, he wishes to note the following.

56. The Commissioner has published [helpful guidance](#) to those making or wishing to make information request, including his four “top tips” for making effective requests. These include:

“Be nice. Even if you’re dissatisfied with the organisation, try to put that to one side and focus on the information you want to receive. If possible, keep your information request separate from any ongoing email threads or complaints about wider issues.”

57. The Commissioner notes that the correspondence the complainant has exchanged with the public authority (as well as that with his office) has contained numerous insults, as well as referring to members of staff as “murderers” and signing off correspondence with an NHS logo dripping blood. The public authority has also informed the Commissioner that the complainant has made threats toward its staff.

The Commissioner wishes to make clear that he is entitled to refuse to deal with complaints that would risk bringing the legislation into disrepute. This would include complaints or requests (including the conduct whilst pursuing them), that, in his view, are being used as a means of harassing individuals or the public authority as a whole.

Right of appeal

58. 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

59. 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.
60. 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

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