



FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

DECISION NOTICE

Dated 22 March 2006

Name of Public Authority: United Lincolnshire Hospitals NHS Trust

Address of Public Authority: 101 Manthorpe Road, Grantham,
Lincolnshire, NG31 8DG

Nature of Complaint

The Information Commissioner (the "Commissioner") has received a complaint from the complainant which states that on 9 February 2005 the following information was requested from United Lincolnshire Hospitals NHS Trust (the "Hospital") under section 1 of the Freedom of Information Act 2000 (the "Act"):

"A copy of the full transcripts of the Doctors interviewed and also a copy of the written submissions supplied to the Independent Review Panel for their purposes"

These transcripts were produced as part of an independent review into the circumstances surrounding the death of the complainant's mother.

It is alleged that:

- (1) The hospital failed to supply the information requested by the complainant within the 20 working days following the date of receipt of the request*
- (2) The hospital did not explain in the Refusal Notice why an exemption applied allowing the information to be withheld*

The Commissioner's Decision

Under section 50(1) of the Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the public authority.

The complainant has now been supplied with the information requested. The Hospital initially refused to disclose the information applying s.36 of the Act to justify its decision. The Commissioner corresponded with the Hospital about its application of s.36. However the Hospital confirmed in a letter to the Commissioner of 30 August 2005 that it had decided to release the information.

The Commissioner's decision is as follows:

- (1) The complainant was incorrectly advised by the hospital on the 8 March 2005 that the information requested was not held. However it informed the complainant on the 30 March 2005 that it did hold the information but it was considering whether the information was covered by one of the exemptions in Part II of the Act. The complainant was advised on the 28 April that the information would not be released since the information specified in the request was subject to an exemption under the Act. The Commissioner is satisfied the hospital's letter of the 28 April constitutes its Refusal Notice.
- (2) The Commissioner's decision is that the Hospital did not deal with the complainant's request in accordance with Part 1 of the Act. This is because the hospital did not confirm it held the requested information or issue a Refusal Notice within 20 working days of receiving the request.

Section 1(1) of the Act states:

"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."

Section 10(1) states:

"..... 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."

- (3) The Commissioner has seen the Refusal Notice issued by the hospital to the complainant and his decision is that the hospital is in breach of section 17(1) (c) of the Act by failing to explain in its Refusal Notice why the exemption on which it was then relying applied.

Under section 17 (1)(c) of the Act where the public authority is claiming information is exempt, it must within the time for complying with section 1(1) give the applicant a notice which states that fact, specifies the exemption in question and states (if not otherwise apparent) why the exemption applies.

The Commissioner also considers the hospital to be in breach of section 17 (7). The Refusal Notice did not provide details of its complaints procedure or confirm that it did not have one and did not advise the complainant of his right to refer his complaint to the Commissioner under section 50 (1) of the Act.

Section 17(7) states:

“A notice under subsection (1), (3), or (5) must-

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50”

Action Required

In view of the fact that the information was released to the complainant on or about 14 September 2005, the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he does not require any remedial steps to be taken by the hospital.

Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the “Tribunal”). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: informationtribunal@dca.gsi.gov.uk
Leicester	
LE1 6ZX	

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 22 day of March 2006

Signed:

Richard Thomas
Information Commissioner
Wycliffe House
Water Lane
Wilmslow Cheshire SK9 5AF