

Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 5 December 2006

Public Authority: Swansea NHS Trust
Address: Morryston Hospital
Morryston
Swansea
SA6 6NL

Summary Decision

1. The complainant requested information from the public authority relating to complaints of mistreatment/neglect/abuse received by the authority in respect of its premises at Morryston and Gorseinon. The public authority responded by supplying the complainant with the authority's 'Complaints Performance Management Report' for the period of July 2004 to September 2004. The complainant indicated to the public authority that the report was insufficient and further qualified his request should cover (a) copies of actual complaints files retained by the authority and (b) all copy files held by the authority for a ten (10) year period preceding the request. The public authority then refused the request by virtue of section 12 stating that the cost of complying would exceed the 'appropriate limit.' The Commissioner sought evidence to show that the cost of compliance would exceed the appropriate limit, and a member of his staff visited the public authority to view its record management systems. The Commissioner decided, in this case, the authority applied the Act appropriately by refusing the request by virtue of section 12.
2. The complainant has alleged that the public authority did not provide an appropriate level of advice and assistance in accordance with section 16 of the Act. The Commissioner has therefore considered whether the provision of advice and assistance was adequate for the purposes of the Act. The Commissioner concluded that the public authority satisfied the duty to provide such advice and assistance under section 16 of the Act.

The Commissioner's Role

3. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

The Request

4. The complainant has advised that on 14 March 2005 the following information was requested from the public authority in accordance with section 1 of the Act:

"I am interested in obtaining details of complaints made by patients, relatives, staff which involve allegations of maltreatment, non treatment, abuse and general neglect. Possible heads include, but are not limited to, denial of hydration or nutrition and inappropriate use of diamorphine or potassium chloride. Contentious 'do not resuscitate' and 'not for intensive therapy unit' orders are also relevant."
5. The public authority responded to the complainant on 4 April 2005. A copy of the public authority's Complaints Performance Management Report (CMPR) for the period of July 2004 to September 2004 was attached.
6. The complainant reverted to the public authority on 15 April 2005 indicating that the CMPR, previously disclosed, was not satisfactory for his purposes.
7. The complainant confirmed to the public authority that he required *"copies of the actual reports involving the issues alluded to in my previous correspondence"* (ie that of the 14 March 2005) and further that the request for information should cover the 10 year period preceding his original request.
8. The public authority responded with a formal Refusal Notice dated 19 April 2005. The Refusal Notice stated that actual copy reports or files relating to patients/staff/relatives would not be disclosed as they constituted personal information and were therefore exempt from disclosure under section 40 of the Act. In addition the public authority advised that the records retained by itself did not go into the level of detail requested and that to satisfy the request it would be necessary to search through individual files. The public authority confirmed that the cost of compliance would exceed the appropriate limit (as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004).
9. The complainant wrote to the public authority on 5 July 2005 appealing the Refusal Notice and requesting that the public authority respond to the points raised.
10. In response the public authority wrote to the complainant on 11 July 2005 requesting a meeting with the complainant. The complainant stated, on 25 July 2005, that whilst not objecting to a meeting he would require an agenda for any proposed discussion. On 5 August 2005 the public authority duly provided the complainant with a proposed agenda and a number of potential time slots for the meeting to take place. The offer of the meeting was not accepted by the complainant.

The Investigation

Scope of the case

11. On 2 August 2005 the complainant contacted the Commissioner to complain that whilst he had received correspondence from several officials at the authority no progress had been achieved.
12. The Commissioner has considered the public authority's use of the section 12 exemption to refuse to provide the information requested.
13. In addition, the Commissioner has considered whether the public authority fulfilled its duty to provide advice and assistance to the complainant, in accordance with section 16 of the Act.
14. Whilst the Refusal Notice dated 19 April 2005 makes reference to section 40 of the Act the Commissioner has not considered it necessary to consider section 40 within the scope of his investigations.

Chronology of the case

15. The complainant made a complaint to the Commissioner on 5 August 2005. At this stage the public authority had issued a Refusal Notice on 19 April 2005 in accordance with section 17 of the Act.
16. The Commissioner wrote to the public authority on 23 June 2006 requesting further details in respect of the exemptions being relied upon. It was specifically requested that the public authority provide details of the methods by which complaints were recorded and stored and how records could be accessed.
17. The public authority responded to the Commissioner on 10 July 2006. The response gave some indication of the amount of files that may be of relevance. The public authority confirmed that 430 complaints had been received for the year 2004/2005 and a further 660 complaints had been made in the year 2005/2006.
18. In order to deal with the complainant's request the public authority stated that it would firstly have to locate the relevant files and read each complaint to ascertain its relevance to the complainant's request.
19. By correspondence dated 18 July 2006 the Commissioner requested further clarification from the public authority in respect of the method by which complaints were stored and how the storage system was indexed.
20. The public authority responded to the Commissioner's request on 26 July 2006,

providing additional information about the authority's complaints procedure. In order to verify the accuracy of the procedural details, staff from the Commissioner's office visited the public authority on 22 September 2006. During the course of his visit the Commissioner's representative was shown the steps taken by the authority when recording complaints and how such information might be retrieved. The Commissioner's representative was given the opportunity to question the authority on its estimate of the costs of complying with the request.

Findings of the case

21. The public authority's refusal notice of the 19 April 2005 provides some detail as to why complying with the request would exceed the appropriate limit. The visit to the authority on 22 September 2006 provided the Commissioner with the opportunity to establish whether the section 12 exemption has been applied correctly.
22. Upon receipt of a complaint the public authority would create a complaint file in the name of the complainant (ie files are indexed alphabetically according to the complainant's surname). At the same time as the complaint file is created the complainant's medical records would be requested from medical records storage. The complaint would then be investigated by the public authority.
23. On conclusion of an investigation of a complaint, the complaint file and the medical records would be separated, the latter being returned to the medical records department. The complaint file itself would reside in the complaints handling department. A total of two years of complaints are maintained as active files at any given time and the public authority confirmed that 1,090 complaints files were presently held in that department covering the period of 2004/2005 and 2005/2006.
24. The public authority further confirmed to the Commissioner that following a two year period the complaint files would be removed from the complaints handling department and transferred to the authority's archive facility. The complaint files would be retained at the archive facility for a further 8 years. The archive facility was present on the same site although the files were housed in boxes in a different building. The public authority estimated that the amount of files retained in the archive facility would be in the region of 8,000 files.
25. The public authority further confirmed to the Commissioner that the complaints files, whether current or archived, would be indexed alphabetically by patient or complainant name and not by the nature or type of complaint to which the file referred. In order to comply with the request the public authority would firstly need to retrieve each complaint file and thereafter review its contents to ascertain the nature of the complaint and whether it was relevant to the initial request.
26. In addition to the creation of hard copy files, upon receipt of a complaint, limited information is entered into the public authority's electronic complaints database system, known as 'Datix'. The 'Datix' system was implemented by the public

authority in April 2004 and since its inception the Commissioner has been advised that 2,520 complaints have been logged into the database. The information is utilised to compile the public authority's Complaints Performance Management Report and is regarded as a statistic tool providing the public authority with information in respect of the numbers of complaints received rather than specific detail as to the nature of the complaint. The system itself is quite basic inasmuch as it relies on generic labels to identify the nature of complaints. For example, complaints would be entered under headings such as 'Rude Staff' or 'Nursing Care'. The complaints database does not record any specific details of the actual clinical activity that might have led to the complaint in the first instance. Such information could only be retrieved from the hard copy complaint files read in conjunction with the patient's medical records.

Analysis

27. The Commissioner has considered the public authority's response to the complainant's request for information.

Procedural Breaches

Section 12

28. Section 12 of the Act removes the obligation on public authorities to comply with section 1 of the Act if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
29. The appropriate limit, as prescribed by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, is £600 for Central Government and £450 for other public authorities, with staff time calculated at a rate of £25 per hour. When calculating whether the appropriate limit is exceeded, authorities can take account of the costs of determining whether the information is held, locating and retrieving the information, and extracting the information from other documents. They cannot take account of the costs involved with considering whether information is exempt under the Act. For the public authority to legitimately cite section 12 in this case, therefore, it needs to demonstrate that the time needed to comply with the request exceeds 18 hours.
30. Having considered the evidence put forward by the public authority and further considered the nature and construction of the public authority's complaints handling and storage systems, the Commissioner is satisfied that the information requested by the complainant cannot be easily and quickly retrieved. It would appear from the evidence obtained that there are in the region of approximately 10,000 complaint files, current and archived, retained at the public authority's premises. The files are stored and indexed alphabetically, according to the name of the complainant. The exact nature of the complaint is not therefore apparent until such time as a file is retrieved and read in conjunction with the patient's medical notes. The medical notes themselves are

not stored with the complaints file and would need to be accessed via a separate request to a different department. Accordingly, the Commissioner accepts that to comply with this request for information would exceed the appropriate limit.

Section 16

31. The Commissioner has considered the provision of advice and assistance by the public authority in this case. He accepts that an offer was made by the public authority to meet with the complainant to discuss the request in detail. The Commissioner further accepts that the complainant was aware of the offer to assist as indicated by the complainant's letter to the public authority of 25 July 2005. The public authority wrote to the complainant on 5 August 2005 setting out a proposed agenda upon which the meeting should be based. The suggested agenda was to (a) Confirm the details of the information requested (b) Confirm the information the public authority holds (c) Assess what the public authority is able to provide and any possible exceptions under FOI and (d) Agree a way forward. The offer of a meeting was not accepted by the complainant. The Commissioner considers that this satisfies the requirements of the Secretary of State's Code of Practice issued under section 45 of the Act, and therefore the duty at section 16 of the Act.

The Decision

32. The Commissioner's decision in this matter is that the public authority has dealt with the complainant's request in accordance with the requirements of Part 1 of the Act because it applied the Act correctly in refusing the request by virtue of section 12. The Commissioner further finds that the public authority did offer sufficient advice and assistance to fulfil its duty under section 16 of the Act.

Steps Required

33. As the Commissioner's decision is that the public authority has responded to the complainant's request in accordance with the Act, no remedial steps are required.

Right of Appeal

34. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

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

Dated the 5th day of December 2006

Signed

**Anne Jones
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**