

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 15 December 2010

Public Authority: The St. Barts and the London NHS Trust
'The Trust'
Address: 9 Prescot Street
Aldgate
London
E1 8PR

Summary

The complainant requested a set of policies from the Trust. She referred to the Commissioner the matter of delay in providing some of the policies.

The Commissioner has determined that the Trust breached the procedural provision found in section 10(1) of the Act four times.

He requires no remedial steps to be taken in this case in light of the disputed information being disclosed.

The Commissioner's Role

1. 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

2. On 9 December 2009 the complainant requested the following information in accordance with section 1(1) of the Act. This was passed through a third party, but the public authority has confirmed to the Commissioner that it received the request on the same day:

'I ask that a copy of the St. Barts and Royal London Hospitals complaints procedure be forwarded to Capital Staffing Services, as well as the trusts uniform policy, bullying and harassment policy and health and safety policy.'

3. To ensure clarity in this Notice the Commissioner has broken down the request into four elements:
 - (1) The Trust's complaints procedure.
 - (2) The Trust's uniform policy.
 - (3) The Trust's bullying and harassment policy.
 - (4) The Trust's health and safety policy.
4. Having not received an appropriate response to this request the complainant resubmitted her request on 10 February 2010. She expressed particular disappointment at the delays that she had experienced in receiving the policies.
5. On 18 February 2010 the Trust provided a response under the Act through the third party. It certainly provided elements (1) and (3). It explained that it did not hold a single policy for item (4) and asked for further clarification from the complainant should she want a specific policy in this area. The Trust explained that it believed it also provided item (2) to the third party, but the complainant has explained to the Commissioner and The Trust that she never received it.
6. Further correspondence passed between the two parties. On 14 May 2010 the complainant wrote to the public authority to complain about how the request has been handled and it became apparent that she had never received item (2).
7. On 20 May 2010 the public authority communicated its response to this matter. It provided another copy of item (2). This was received by the complainant on 27 May 2010.

The Investigation

Scope of the case

8. On 27 March 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

- The public authority failed to provide an appropriate response;
 - The public authority has not complied with the time provisions found within the Act; and
 - That the Commissioner should consider the motivation of the delay.
9. On 20 September 2010 the complainant accepted that the relevant information had been provided and her concerns were that it was late. She indicated agreement with the Commissioner's proposed scope of this case which was to determine:
- Whether or not the public authority complied with section 10(1) in respect to your requests for the three policies with which you have subsequently been provided [items (1), (2) and (3) in this Notice].
10. The complainant has also made a request for assessment with respect to her own personal data in relation to some connected requests. Under section 42 of the DPA the Commissioner can make an assessment of the public authority's compliance with the DPA. An assessment under section 42 of the DPA is a separate legal process from that under section 50 of the FOI Act. The Commissioner is in the process of undertaking such an assessment in respect of the public authority's handling of those connected requests and will communicate the outcome of this assessment to the complainant in due course.
11. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. In particular the complainant has made accusations about the motive behind the delay that she has experienced. The Commissioner has referred this matter to his investigations team to as this was a potential allegation under section 77 of the Act. The Commissioner's investigations team found that there was insufficient evidence for the offence to be made out in this case.

Chronology

12. On 27 April 2010 the Commissioner wrote to the public authority to advise it that he has received a complaint and asked for a response to be issued to the request dated 9 December 2009. The Trust responded on the same day to explain it did issue a response on 18 February 2010. The Commissioner replied that he would like to receive a copy of the relevant correspondence.

13. On 28 April 2010 the Trust provided the Commissioner with a copy of its response dated 18 February 2010 without its attachments.
14. Further correspondence was exchanged between the Commissioner, complainant and public authority. The result of this correspondence was that the complainant explained that she remained dissatisfied with the 'obstructive behaviour of the Trust' and that she was concerned about the delays in respect to the information already provided.
15. On 13 September 2010 the Commissioner wrote to the complainant to confirm the scope of his investigation and asked for any evidence that the complainant had of the receipt of her original request for information. The Commissioner wrote to the public authority on the same day to ask for the same evidence and to ask for a copy of the letter dated 20 May 2010.
16. On 20 September 2010 the Commissioner spoke to the complainant on the telephone to explain the scope of the investigation. The complainant emailed the Commissioner on the same day to confirm the scope of his investigation and to reiterate her concerns about the motivations for the delays. The Commissioner replied to the complainant explaining that he would refer the issue of motivation to his investigations team as noted in paragraph 11 above.
17. Also on 20 September 2010 the Commissioner wrote to the public authority to chase a response to his earlier email. This information was provided to him the next day.

Analysis

Section 10

18. The Commissioner must consider the timeliness of the public authority's response to the request dated 9 December 2009. The public authority has acknowledged that it received the request on the same day and has apologised to the Commissioner and the complainant about its lack of timeliness.
19. Section 10(1) (full wording in the legal annex) states:

"... a public authority must comply with this section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

20. By consensus, the public authority certainly failed to provide any of the three policies that are relevant to this case – elements (1), (2) and (3) until 18 February 2010.
21. The public authority therefore failed to acknowledge the request or provide the information requested in twenty working days.
22. It therefore failed to comply with section 1(1)(a) (full wording of each section is contained in the legal annex) in respect of this request in twenty working days (as it failed to confirm or deny whether it held relevant recorded information). This constitutes a breach of section 10(1). The Commissioner does not require any remedial steps in respect to these breaches as the public authority has subsequently confirmed that it held relevant recorded information in this case.
23. It also failed to comply with section 1(1)(b) in respect of each element of the request in twenty working days (as it failed to provide the policies). This constitutes three further breaches of section 10(1). The Commissioner does not require any remedial steps in respect to these breaches as those policies have subsequently been provided.

The Decision

24. The Commissioner's decision is that the public authority did not deal with the original request for information in accordance with the Act because:
 - It failed to confirm or deny whether it held relevant recorded information within twenty working days and therefore breached section 10(1) once on this count; and
 - It failed to provide the three policies within twenty working days and therefore again breached section 10(1).

Steps Required

25. The Commissioner requires no action to be taken in this case because the three policies have now been provided.

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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

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

Dated the 15th day of December 2010

Signed

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

Legal Annex

The Freedom of Information Act 2000

Section 1 - General right of access to information held by public authorities

- (1) 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.
- (2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.
- (3) Where a public authority—
- (a) reasonably requires further information in order to identify and locate the information requested, and
 - (b) has informed the applicant of that requirement,
- the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

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Section 10 - Time for compliance with request

- (1) Subject to subsections (2) and (3), 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.
- (2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.
- (3) If, and to the extent that—
- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
 - (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,
- the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

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