

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 December 2020

**Public Authority:** Chesterfield Royal Hospital NHS Foundation Trust

**Address:** Chesterfield Royal Hospital  
Calow  
Chesterfield  
S44 5BL

#### Decision (including any steps ordered)

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1. The complainant has requested information about vascular services. The Chesterfield Royal Hospital NHS Foundation Trust ("the Trust") stated that it did not hold the information.
2. The Commissioner's decision is that the Trust does not hold information within the scope of the request.
3. The Commissioner does not require any further steps.

#### Request and response

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4. On 26 November 2019, the complainant wrote to the Trust and requested information in the following terms:

*"With regards to the Specialised Vascular Services (Adults) (specification No: 170004/S) that you are currently commissioned by NHS England to provide, I request electronic copies of the following documents/information.*

*"Nb. Before making this request I inspected the latest Quality Surveillance Programme self-assessment form that was completed and sent to NHS England in June 2019 by your network hub (Derby) that shows all the service requirement indicators that your network*

*has declared as passed (and as such there is documentation - as advised by NHS England) so there should be no problem accessing/collating the requested information.*

*"The information requested may be identified by the following service indicator codes/names (below) as contained with the completed self-assessment that is mentioned with the Service Specification No: 170004/S).*

*"Please could you provide the following:*

*"1. With regards to indicator: 170004S-001 - There is an agreement outlining the network configuration.*

*"Your network hub stated "YES" in the self-declaration, Evidence documents: "Operational Policy"*

*"I request an electronic copy of the operational policy (or part of) that shows your Trust's part in this network configuration.*

*"2. 170004S-013 - There are day-care lists and short stay lists for vascular procedures.*

*"Your network hub stated 'YES' in the self-declaration, Evidence documents: 'Operational Policy'*

*"I request an electronic copy of the operational policy (or part of) that shows the vascular procedures that your Trust have short stay lists for.*

*"3. 170004S-017 - There are patient pathways in place*

*"Your network hub stated 'YES' in the self-declaration, Evidence documents: 'Operational policy including pathways'*

*"I request electronic copies of the documents (or part of) that show what responsibilities/actions your Trust takes with regard to the network agreed patient pathway for vascular injury, for patients presenting at Chesterfield with vascular injury (including complications of angiography).*

*"4. 170004S-021 - There are clinical guidelines in place.*

*"Your network hub stated 'YES' in the self-declaration, Evidence documents: 'Operational policy including pathways'*

*"I request electronic copies of these operational policies (or parts of) that show the clinical guidelines that your Trust follows for Vascular Injury.*

*"To expand on what information I am requesting for this question, I include the Indicator Description Notes directly from the self-assessment form.*

*"Clinical guidelines cover guidelines, protocols, 'SOPs' which describe how to manage a patient in a given clinical situation or specified point on the pathway. Examples include assessment checklists, surgical procedures, treatment protocols, key investigations at follow-up visits etc.*

*"The Centre may wish to agree additional clinical guidelines to those specified in the indicators.*

*"Network guidelines should be compliant with current national guidelines where relevant.'*

*"5. 17004S-201 - There is patient information available.*

*"Your network hub stated 'YES' in the self-declaration, Evidence documents: 'Operational policy. Examples of the information should be available at a review visit'*

*"I request an electronic copy of the document containing 'information about local provision of specialist vascular services including names and functions/roles of the MDT members' that is used by your network."*

5. The Trust responded on 24 December 2019. It stated that it was not part of a formal vascular network. It accepted that the University Hospitals of Derby and Burton NHS Foundation Trust ("UHDBT") had made an incorrect submission to NHS England claiming that the two trusts formed a vascular services network but, as the formal network did not exist it had no need for the requested information and did not hold it.
6. Following an internal review the Trust wrote to the complainant on 2 January 2020. It reiterated that it held no further information and that, as it had already responded several requests on the same topic, might consider further similar requests to be vexatious.

## Scope of the case

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7. The complainant contacted the Commissioner on 31 January 2020 to complain about the way his request for information had been handled.
8. After some initial confusion as to which request the Commissioner was investigating, the Trust confirmed that it still did not consider that it held relevant information.
9. The Trust also noted to the Commissioner, during the course of her investigation, that it had recently reached a Service Level Agreement with another trust relating to vascular service, but that it did not consider that the information would fall within the scope of the request. In any case, it noted that the information would be likely to fall within the scope of at least one exemption.
10. Given the wording of the request the Commissioner considers that the information the Trust had referred to would be unlikely to fall within scope. However, as the information did not exist at the time the request was responded to, there would have been no obligation on the Trust to communicate it anyway. As such the Commissioner has not considered this particular information within the scope of this notice.
11. The Commissioner considers that the scope of this notice is to determine whether the Trust held any relevant information at the point at which it responded to the request.

## Reasons for decision

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### Section 1 (Held/Not Held)

12. Section 1(1) of the FOIA states that:

*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.*
13. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by

the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.

14. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
15. In correspondence with the Commissioner, the complainant appeared to accept that the Trust probably did not hold the information but he felt that it ought to do so. Given the importance of the issue and the information provided to NHS England, he felt that, if the Trust did not hold information which it ought to hold, there was a substantial interest in that fact being in the public domain.

#### *The Trust's position*

16. The Trust had already explained in correspondence with the complainant that the information provided on NHS England's website was incorrect. It noted that it was not part of a vascular services with UHDBT and that, whilst UHDBT had provided a submission stating that a formal network did exist, this was not in fact the case. As such, there was no requirement for it to hold such information.
17. Notwithstanding its position in respect of a formal network, the Commissioner asked the Trust to carry out searches to establish whether it did in fact hold relevant information.
18. The Trust explained that it had searched its internal intranet using search terms such as "vascularization" and "ischemia" (which are the correct medical terms and would have appeared in any relevant documents). This search had included both shared and personal hard drives, mailboxes and paper records. It noted that it had consulted the surgical team and the clinical director who had all confirmed that no relevant information was held. It argued that if such documents existed, this is where they would be found and that the surgical team would be aware of such documents.
19. The Trust reiterated that, as it was not part of a formal vascular services network there was no statutory requirement to hold the requested information. It noted that whilst having such documents would be:

*"a reasonable aspiration, this needs to be balanced against available resources and time being allocated to produce and maintain such documentation."*

*The Commissioner's view*

20. The Commissioner considers that, on the balance of probabilities, the Trust did not hold any relevant information at the time of the request.
21. It is not for the Commissioner to determine what information a public authority ought to hold at any given moment – she is only required to consider the information the public authority does, as a matter of fact, hold.
22. The Commissioner is aware that UHDBT has already confirmed that the information it submitted to NHS England was inaccurate and that no formal vascular services network exists. Whilst the situation is admittedly odd, the Commissioner has not been presented with any other evidence which would suggest that a formal network does in fact exist and therefore she has to accept that this is the case. She also notes that it is extremely unlikely that a formal network would exist without the people involved being aware that it existed.
23. Notwithstanding this point, the Commissioner considers that the Trust has made reasonable searches to establish whether relevant information is held. She also notes that, if any of the information described in the request were held by the Trust, its existence would be widely known within the relevant surgical teams.
24. The whole point of policies such as the ones described in the request is that all staff within the relevant teams would know what the policies were and where to find them. If such policies were hidden in an obscure archive, they would be of no use because the people who would need to follow them would not know where to find them.
25. If no formal network exists, the Commissioner accepts that that there would be no statutory or regulatory requirement to hold the information that the complainant requested.
26. The Commissioner has seen no evidence that would suggest that the Trust holds any information within the scope of the request and the Trust appears to have carried out reasonable steps to establish that it does not. She is therefore satisfied that, on the balance of probabilities, the Trust holds no further information within the scope of the request.

## Right of appeal

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27. 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: 0300 1234504

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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

**Phillip Angell**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**