

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 24 August 2023

**Public Authority:** Dr Simon Anderson, Dr Hannah Colman, Dr Miriam Blemings – Partners of Stoke Surgery

**Address:** Belmont Villas  
Stoke  
Plymouth  
PL3 4DP

#### **Decision (including any steps ordered)**

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1. The complainant has requested statistics relating to a variety of diagnoses. Stoke Surgery disclosed some information within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, Stoke Surgery does not hold any further information within the scope of the request. However, Stoke Surgery breached section 10(1) of FOIA as it failed to provide its response to the complainant within the statutory 20 working days.
3. The Commissioner does not require Stoke Surgery to take any further steps.

#### **Nomenclature**

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4. The Commissioner has identified that the public authority for the purpose of FOIA in this case is the three partner GP's, as listed in the header of this Decision Notice, rather than Stoke Surgery in its entirety. For the purpose of the administration of this Decision Notice, the Commissioner will continue to use the name Stoke Surgery when

referring to the public authority, rather than listing the partner GP's each time.

## **Background**

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5. During the complainant's correspondence with Stoke Surgery they explained that for the past four years they have been investigating the negative health effects of industrial air pollution on residents of Plymouth from the MVV incinerator site.
6. The site is a waste management facility, based on former dockyard land in Plymouth. It is an 'energy from waste' plant, whereby waste material which is not recycled or composted is burned in a modern furnace under strictly controlled conditions in order to produce energy. Such facilities generate heat and electricity that can be used to supply suitable customers in the surrounding area and/or power to the national grid.

## **Request and response**

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7. On 14 March 2023, the complainant wrote to Stoke Surgery and requested information in the following terms:

"Please provide the surgery's annual cancer statistics from 2014 to 2023

To include the number of Patients that have suffered from gallbladder, liver, pancreas and biliary system cancers.

Pleas provide the surgery's annual statistics from 2014 to 2023 for

Asthma  
COPD  
Chest infections  
RSV  
Still births  
Stroke  
Heart disease +conditions  
Covid 19."
8. Stoke Surgery responded on 22 May 2023. It disclosed most of the figures within the scope of the request. However, it provided figures for all types of cancer diagnoses as a whole for each year, rather than broken down into the four types of cancer listed in the request, and it also stated that it was unable to search for chest infection occurrences. It explained that some of the searches for particular diagnoses only

include patients who are still alive and registered with the surgery, but will not include figures for patients who have been diagnosed with the particular conditions but have either moved away from the surgery or are deceased. This is because it no longer has access to this information once the patients are no longer registered at the surgery, meaning that the figures could appear misleadingly low the further back you go.

9. On 23 May 2023, the complainant responded to Stoke Surgery and requested further information in the following terms:

“With ref:

‘I have attached the annual data for each year since 2014 for new diagnoses for each of the requested diseases/illness’. This has been completed to the best of my ability and the limitations of the computer system.’

[1] Please expand in detail regarding the limitations of the computer system

‘Please note it is not possible to search for chest infection occurrences.’

[2] Can you please explain why? as antibiotics and hospital referrals would have been recorded.

‘Also it is worth noting some searches I am able to run include patient number of patients who are no longer registered at Stoke (either moved away or deceased). I have put an asterisk (\*) on those searches as it will make the figures e.g. for cancer. The figures could look misleadingly low the further back you go – as it will only show patients diagnosed in 2014 who are still alive and still registered with Stoke surgery.’

Please provide:

[3] The number of registered patients at the surgery for each year in the table supplied

[4] The breakdown of cancer information as requested

[5] The annual number of deaths for each listed health condition

‘This information is only as accurate as the people who are recording it at either this surgery or any previous surgery the patients have been registered at, and whether or not their notes their notes have transferred across to us electronically.’

[6] When the requested information is supplied please indicate the level of data % accuracy.”

10. Stoke Surgery responded again on 1 June 2023. It refused to provide any further information, making reference to the time involved in extracting relevant information which, it stated, on its own is not a true

representation as there are several other GP practices covering the same area of Plymouth. Stoke Surgery also referenced the potential of some information being exempt from disclosure in accordance with section 40 of FOIA due to the numbers involved being very low. Finally, Stoke Surgery advise the complainant that Devon ICB may be able to assist them further as they will hold information for patients and diagnoses across all GP practices in the area.

11. On 1 June 2023 the complainant wrote to Stoke Surgery and requested an internal review, in particular asking it to supply all outstanding explanations and information which had been requested.
12. Following an internal review Stoke Surgery wrote to the complainant on 22 June 2023. It disclosed the number of patients registered with the surgery annually from 2014 to 2023, but maintained that it was unable to provide any further information within the scope of the request.

### **Scope of the case**

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13. The complainant contacted the Commissioner on 27 June 2023 to complain about the way their request for information had been handled.
14. During the course of the Commissioner's investigation Stoke Surgery identified that it held further relevant information relating to the breakdown of cancer figures which had been requested, however it expressed concerns regarding disclosing that information to the complainant, specifically surrounding the accuracy of the data collection. It reiterated that the figures will not include patients no longer registered with the surgery, but also that the figures may include patients who were based elsewhere in the country when they received their diagnosis and had since registered with the surgery – suggesting that their diagnosis could not be linked to the incinerator which the complainant is concerned about. Stoke Surgery also advised that the diagnoses of the four listed cancer types could be secondary cancers and not necessarily the primary source.
15. The Commissioner advised Stoke Surgery that the role of a public authority under FOIA is firstly to consider what information it does, as a matter of fact, hold within the scope of the request. Then it should determine if that information should be disclosed in response to the request, or if it should be withheld in accordance with an exemption. The Commissioner further advised that a public authority is not obliged to determine the accuracy of the information it holds before disclosing it in response to a request under FOIA. Finally, having had sight of the surgery's cancer diagnosis figures, the Commissioner advised that it was unclear how any individual could be identified from them meaning that it

was unlikely that section 40(2) of FOIA would be applicable, as had been alluded to in earlier correspondence between the surgery and the complainant. However, Stoke Surgery was offered the opportunity to put forward any arguments as to how individuals could be identified by the figures, and as such demonstrate that section 40(2) was engaged.

16. Stoke Surgery went on to disclose the figures which it holds for diagnoses of gallbladder, liver, pancreas and biliary system cancers from 2014 to 2023.
17. The Commissioner considers that the scope of his investigation is to determine if Stoke Surgery holds any further information for the remaining parts of the requests - chest infection figures as requested on 14 March 2023, along with parts 1, 2, 5 and 6 of the request of 23 May 2023.

### **Reasons for decision**

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18. Section 1(1) of FOIA provides 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.
19. FOIA provides a right of access to recorded information which is held by a public authority at the time when it receives the request; this does not extend to the right to ask questions, or for explanations, clarification of information or to debate the contents of information, unless the answer to those questions, requests for explanation or clarification is already held by the public authority in recorded form. Essentially, public authorities are not obliged to 'create' new recorded information in order to comply with a request.
20. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
21. With regard to the figures for chest infections, Stoke Surgery explained that generic chest infections are not routinely coded. Clinical coding is the system by which unique and precise 'codes' are used to record diagnoses or various aspects of patient care. Stoke Surgery noted the complainant's suggestion of searching for antibiotic prescriptions and

hospital referrals, however it stated that these searches would not identify occurrences of chest infections alone as both antibiotic prescriptions and hospital referrals occur for a wide variety of health concerns. Stoke Surgery also noted that a suspected chest infection wouldn't necessarily require antibiotics or a hospital referral.

22. With regard to parts 1 and 2 of the request of 23 May 2023, the Commissioner is satisfied that both parts are seeking explanations rather than recorded information held by Stoke Surgery at the time when it received the request, therefore it was not obliged to respond to either part under FOIA.
23. Part 5 of the request of 23 May 2023 requested the annual number of deaths for each listed health condition. During his investigation the Commissioner sought to determine if Stoke Surgery records the date and cause of death of its patients. The surgery explained that the cause of death is recorded on the death certificate which is handwritten and sent to the Registry Office. Patients are deducted from the surgery at the time of death and their records are returned to the local health authority. As such, the information within the scope of this part of the request, is no longer held by Stoke Surgery from the point of returning the records.
24. With regard to part 6 of the request of 23 May 2023, the Commissioner is satisfied Stoke Surgery would be required to work out the accuracy of the information it was disclosing as a percentage, if such working's out were even feasible given the variety of different factors which may or may not affect the accuracy of each patients records, and as such would be 'creating' new information that it did not already hold in recorded form when it received the request. Accordingly, it was not obliged to respond to part 6 under FOIA.
25. The Commissioner concludes that, on the balance of probabilities, Stoke Surgery holds no further recorded information within the scope of the request, and therefore does not need to take any further steps on this matter.

### **Procedural matters**

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26. Section 10(1) of FOIA provides that 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.
27. As Stoke Surgery failed to provide a response to the complainant within 20 working days it breached section 10(1) of FOIA.

## Right of appeal

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28. 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](mailto:grc@justice.gov.uk)

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

29. 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.
30. 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 .....**

**Amie Murray**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**