

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 12 November 2007

Public Authority: Liverpool NHS Primary Care Trust
Address: No. 1 Arthouse Square
61 – 69 Seel Street
Liverpool
L1 4AZ

Summary

The complainant requested a copy of all “investigative literature” relating to any investigation carried out by Liverpool NHS Primary Care Trust (the “PCT”) into Urgent Care 24 (“UC24”) which had come about following a “public interest disclosure meeting held in July 2006”. The complainant also requested copies of any correspondence between the PCT and UC24 relating to any such investigation. The PCT informed the complainant that it did not hold any information relating to his request, and that no specific action had taken place as a result of the meeting on 20 July 2006 (the “July meeting”). During the course of this case the PCT informed the Commissioner that it had carried out a review of UC24 during 2006 – 2007, but that this had not come about as a result of the July meeting, and was in fact part of a process which had begun in February 2006. The PCT informed the Commissioner that it had told the complainant of this. After considering the information provided by both parties the Commissioner decided that the PCT did not hold any information which fell under the complainant’s request (as the PCT provided compelling evidence to show that the review had not been carried out as a result of the July meeting), and therefore the PCT had complied with section 1 of the Act. The Commissioner does not require the PCT to take any further steps.

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 6 November 2006 the complainant emailed the PCT and stated,

“I wish to make the following request under the Freedom of Information Act: I request to see the details of all investigative literature and all correspondence between Central Liverpool PCT / Liverpool PCT and Urgent Care 24, pertaining to an investigation conducted by Liz Melia on behalf of the PCT following a Public Interest Disclosure meeting held in July 2006.”

3. The PCT responded with a letter (incorrectly dated 22 September 2006, but sent on 17 November 2006), and provided the complainant with a copy of notes of the July meeting taken in relation to the statements given by him and one of the other attendees. This information was provided under the Data Protection Act 1998 (the “DPA”). The PCT withheld the notes taken in relation to the statements made by the other individuals at the meeting and cited section 40(2) of the Act, stating that it believed that the disclosure of this information would breach the first principle of the DPA. It also informed the complainant that, “RE correspondence between the PCT and UC24 pertaining to this meeting...the PCT does not hold any information regarding correspondence between the PCT and UC24.” Lastly, the PCT informed the complainant of his right to appeal and his right to complain to the Commissioner. The Commissioner is of the view that this letter constitutes a Refusal Notice.

4. The complainant emailed the PCT on 19 November 2006 and requested an internal review. In this email he wrote that he had not asked for a copy of the notes made at the meeting, and went on to state,

“I write to formally appeal against the decision of Liverpool PCT to refuse to [disclose] information under the Freedom of Information Act.

I am also confused as to why I have been sent transcripts of the conversations detailed by myself and [...] at the meeting held [...]. I did not ask for this information?

In fact, it is clear to see that there is some reason as to why this information has been confused.

I request the following information:

(1) Details of the action taken by the PCT as a consequence of the statements made by those persons attending the meeting of 20th July 2006. It is perplexing to read in the response from the PCT that no correspondence exists between the PCT and UC24 over this matter? Are we to understand that the PCT has taken no action as a result of our disclosure under the Public Interests Disclosure Act?

I do know for a fact that some action has indeed been taken by the PCT, and I am sure that this information has been documented in some way either in PCT meetings following the disclosure meeting of 20th July, and at a subsequent Contract Monitoring meetings held between UC24 and PCTs? I find it hard to believe that no documented information or correspondence exists regarding this matter? If this is indeed the case, those people making disclosures at 20th July need to know why no action has been taken.

(2) The meeting of 20th July was held under provisions of the Public Interest Disclosure Act. Ipso facto this indicates that information was made 'in the public interest', as such it would not be exempt for disclosure, as any undertaken corrective actions imposed by the PCT are by default in the public interest and it is in the public interest that the public be made aware of some of the practices undertaken by UC24 Executive Board."

5. The complainant wrote to the Commissioner on 28 November 2006 in order to complain about the PCT's handling of his request.
6. The Commissioner advised the complainant to await the outcome of the internal review.
7. The PCT responded in a letter dated 4 January 2007 and informed the complainant that it had, "...established that there is no correspondence or specific actions taken as a direct consequence of the statements made by those persons attending the meeting held on the 20th July 2006." The PCT informed the complainant of his right to appeal to the Commissioner.

The Investigation

Scope of the case

8. On 5 January 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the PCT's statements that it did not hold any information which related to his request were correct. The complainant stated,

"I find the letter I received from Liverpool PCT perplexing and contradictory. They state that they have no documentation relating to correspondence or specific actions taken by the PCT in relation to evidence given by my colleagues and I at a Public Interest Disclosure Meeting of 20 July 2006. I find this very hard to understand, as a number of PCT representatives have indeed confirmed that an investigation is being conducted by the PCT into the activities of Urgent Care 24. The PCT have themselves placed this information into the public domain by way of statements to this effect made to the media, as can be seen in the press story from the Liverpool Daily Post."

9. As the complainant did not complain about the provision of the notes of the July meeting, nor the withholding of some of those notes under section 40(2), this has not formed part of this investigation.
10. Although it did not form part of the complainant's complaint, the Commissioner has also considered whether the PCT has complied with section 10 of the Act.

Chronology

11. The Commissioner wrote to the PCT in a letter dated 8 August 2007 and informed it of the details of the complaint. In order to establish what information the PCT did hold he asked it the following:
 - To confirm whether there was any investigation of UC24 carried out by the PCT between 20 July 2006 (the date of the July meeting) and 19 November 2006 (the date of the request).
 - If there was no investigation, was one being planned at that time?
 - If there was an investigation carried out, he asked to be provided with a copy of the documentation relating to that investigation, including any terms of reference for the investigation, as well as any correspondence between the PCT and UC24 about this investigation.
12. The PCT provided a substantive response in a letter dated 13 September 2007. In this letter the PCT informed the Commissioner that:
 - In August 2006 UC24 had been informed that a formal review would be undertaken by the PCT, together with Sefton and Knowsley PCTs.
 - A formal review of UC24 had begun in September 2006, and the final outcome of the review was confirmed in January 2007.
 - This review was not, however, carried out as a consequence of the July meeting. Nor had the review been carried out by Liz Melia.
 - The review had been carried out because of concerns that had been raised within the PCT about UC24 as far back as November 2005.
 - The review was part of a programme of work between the PCT and UC24, which had begun in February 2006.
 - Following the July meeting the PCT had decided not to take any further action in terms of the allegations made at the meeting, but to continue with the programme of work that was already underway.
13. The PCT provided the Commissioner with a substantial number of documents to support the above statements, which included the terms of reference for the review and correspondence between the PCT and UC24. These documents showed that there had been concerns about UC24 prior to the July meeting, and that the PCT and UC24 were involved in a programme of work relating to those concerns. From these documents it is clear that this programme of work predated the July meeting.

14. The PCT also provided the Commissioner with a letter it had sent to the complainant on 22 January 2007. This letter informed the complainant that:
- "...the outcome of the meeting held on 20 July 2006 was that no further action could be taken in terms of the allegations made as the information provided by [...] did not provide any specific information that the PCT was able to take back to UC24 for follow up..."
 - The PCT, in conjunction with Sefton and Knowsley PCTs had been involved with a programme of work with UC24 since February 2006, in regard to UC24's systems, processes and procedures.
 - This programme of work was, "instigated by concerns that the PCT had that UC24 were struggling to provide adequate monitoring information to demonstrate how they are complying with the DoH's National Quality Requirements...for Out of Hours – a key requirement of their contract with Liverpool, Sefton and Knowsley PCTs."
 - "As a result of this programme UC24 were advised on 14 August 2006 that the PCTs were instigating a formal review of the out of hours services provided by UC24, as per the agreement under the current contract."
15. Finally the PCT informed the Commissioner that it had provided the complainant with a copy of the final report of the review of UC24, the action plan agreed following the review, and correspondence between the PCT and UC24 in regard to the review, following a further request made under the Act in March 2007.
16. Following receipt of this bundle of information the Commissioner contacted the PCT by way of a telephone call on 19 September 2007. During this call he asked the PCT whether it held any documents recording the decision not to take the allegations made at the July meeting any further. The PCT informed the Commissioner that that decision had not been made in a documented manner. It went on to state that no formal minutes of the July meeting had been made, although one of the PCT employees at the meeting had taken notes at the meeting. As stated at paragraph 3 above, a copy of those notes which related to the complainant and one of the other individuals present at the July meeting had been provided to the complainant.
17. After carefully considering the information provided by the PCT the Commissioner wrote to the complainant on 20 September 2007. In this letter he provided the complainant with the details of the PCT's response (as set out in paragraph 12 above) and informed him that the PCT had provided substantial documentary evidence in order to support this response. He informed the complainant that from the information he had been provided with it appeared that while the PCT had conducted a review of UC24, this had not been as a result of the July meeting. The Commissioner pointed out that if this was the case, the PCT would not hold the information the complainant had requested.
18. In line with his robust case handling policy, the Commissioner, where appropriate, attempts to resolve complaints informally without the serving of a decision notice. In this case the Commissioner informed the complainant that he found the PCT's response and the evidence it had provided compelling. He acknowledged that the PCT's initial responses had not clarified that there was a review of UC24

underway (although not as a result of the July meeting) – however, he further noted that the letter dated 22 January 2007 from the PCT to the complainant did advise him of this. The Commissioner asked the complainant whether he wished to withdraw his complaint. He also asked the complainant to inform him if he disagreed with the PCT's response, and to provide him with any evidence he might have to show that the PCT did indeed hold information which fell under the terms of his request.

19. The complainant responded in a letter dated 21 September 2007. He informed the Commissioner that he did not agree with the PCT's response, and argued that he had alerted the PCT to UC24's actions and poor performance in January 2006, and that the July meeting was a result of these actions.
20. The complainant drew the Commissioner's attention to concerns that had been raised by the attendees during the July meeting as to, "UC24's ability to initially assess patients, and prioritise conditions, and filter out immediately life threatening conditions," and he informed the Commissioner that the review completed by the PCT in January 2007 illustrated that the PCT had investigated these concerns. Finally, the complainant asked the Commissioner to issue a Decision Notice on this case.

Analysis

Procedural matters

21. The Commissioner has considered whether the PCT complied with its obligations as set out in section 1 of the Act.

Section 1(1) – the general right of access

22. Section 1(1) of the Act 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."

23. The Commissioner has considered whether the PCT has complied with section 1(1) of the Act by stating that it did not hold any information which fell under the scope of the complainant's request. In order to do this the Commissioner has considered whether the information requested by the complainant on 6 November 2006 was held by the PCT.
24. The PCT has advised the Commissioner that although a review of UC24 was undertaken between September 2006 and January 2007 this was not as a result of the July meeting. It has advised the Commissioner that since February 2006 the PCT, together with Knowsley and Sefton PCTs, were involved in a

programme of work with UC24, which involved scrutiny of UC24's systems, processes and procedures. This programme of work had begun after concerns had been raised in November 2005 in regard to UC24's ability to provide data to show it was meeting National Quality Requirements (as required in its contract with the PCTs). It has gone on to advise the Commissioner that this review was the result of this programme of work. The PCT provided documentary evidence to support these statements.

25. The Commissioner notes the comments of the complainant in his letter to the Commissioner dated 21 September 2007 (see paragraph 19 above), that he had reported concerns about the performance of UC24 as far back as January 2006. In this letter the complainant informed the Commissioner that he believes that "the definition of the results of the meeting held with Liverpool PCT on 20 July, have been in my opinion too stringent on the part of the PCT. It is true that the PCT had concerns over UC24 before this meeting, but what they neglect to state is that it was myself who first alerted the PCT to UC24's activities & poor performance back in January 2006...I would argue that the meeting of 20 July was as a result of this earlier dialogue, therefore the meeting of the 20th gave no new information but simply reiterated in a formal setting the issues I had raised in January 2006."
26. After considering these comments the Commissioner believes that the complainant has argued that as he had raised concerns with the PCT prior to the July meeting, information relating to any actions taken as a result of those concerns would also fall under the scope of his request.
27. The Commissioner is mindful of the wording of section 1 which requires a public authority to provide information of the description specified in the request. He has considered carefully the clear wording of the original request and the natural meaning which the PCT would give to it on receipt. He has also considered the wording of the request for an internal review which stated what information was being requested in clear terms.
28. In this case the Commissioner has noted that the complainant's request referred solely to the July meeting, and events which had happened as a consequence of that meeting. There was no reference in the request to any concerns raised by the complainant prior to the July meeting.
29. Therefore, whilst the Commissioner appreciates that the complainant feels strongly about this issue, he has had to consider the request for, "details of the action taken by the PCT as a consequence of the statements made by those persons attending the meeting of 20th July 2006," on its own.
30. The Commissioner has noted the comments made by the complainant in his letter dated 21 September 2007 (see paragraph 20 above), that the attendees at the July meeting had raised concerns regarding, "UC24's ability to initially assess patients, and prioritise conditions, and filter out immediately life threatening conditions," and that these concerns had been part of the review of UC24 that was completed in January 2007. The complainant has again stated that he also raised concerns with the PCT regarding UC24 and these issues in January 2006.

Therefore the Commissioner has considered whether these particular concerns raised in the July meeting resulted in the review of UC24 (which began in September 2006).

31. In reaching a view on this the Commissioner has considered the Department of Health's publication, "National Quality Requirements in the Delivery of Out-of-Hours Services,"¹ as the review of UC24 was carried out in reference to its compliance with the national quality requirements ("NQR") as set out in this document. In particular he has considered NQR 9 and 10 as he believes that these most closely relate to the concerns referred to by the complainant in the previous paragraph.
32. NQR 9 refers to Telephone Clinical Assessment and states, amongst other things, that in relation to the identification of immediate life threatening conditions, "Providers must have a robust system for identifying all immediate life threatening conditions and, once identified, these calls must be passed to the ambulance service within 3 minutes."²
33. NQR 10 refers to Face to Face Clinical Assessment and states, amongst other things, that in relation to the identification of immediate life threatening conditions, "Providers must have a robust system for identifying all immediate life threatening conditions and, once identified, these calls must be passed to the most appropriate acute response (including the ambulance service) within 3 minutes."³
34. After examining the evidence provided by the PCT, the Commissioner has formed the view that the PCT was considering UC24's compliance with NQR 9 and NQR10 as part of the ongoing 'programme of work', and prior to the July meeting (see paragraph 24 above). These considerations fed into the review which was begun in September 2006.
35. Therefore, after careful consideration of the evidence provided by the PCT and the information provided by the complainant, the Commissioner is satisfied that the review of UC24 which was undertaken by the PCT in 2006-2007 did not come about as a consequence of the July meeting. Consequently, the Commissioner is satisfied that the PCT did not hold any information which fell under the terms of the complainant's request.
36. As such the Commissioner is of the view that the PCT has complied with section 1(1) of the Act.

¹ The 'National Quality Requirements in the Delivery of Out-of-Hours Services' (Gateway no. 3776), was issued in October 2004, and was reissued in July 2006 (Gateway no. 6893). The new edition states that, "The Department will not...be making any changes to the Quality Requirements that were published in October 2004." Therefore the Commissioner has referred to the 2004 edition. Both editions are available on the Department of Health's website.

² 'National Quality Requirements in the Delivery of Out-of-Hours Services' (Gateway no. 3776), page 5.

³ 'National Quality Requirements in the Delivery of Out-of-Hours Services' (Gateway no. 3776), page 5.

The Decision

37. The Commissioner's decision is that the PCT complied with section 1 of the Act when it responded to the complainant and informed him that the information requested was not held, as the Commissioner is satisfied that the PCT had not conducted a review of UC24 as a result of the July meeting.

Steps Required

38. The Commissioner requires no steps to be taken.

Other matters

39. Although they do not form part of his formal decision the Commissioner wishes to highlight the following matters of concern:

The Commissioner believes that the PCT could have assisted the complainant by advising him that a review of UC24 was underway (albeit not as a consequence of the July meeting) when initially refusing the complainant's request. However he notes that information about the PCT eventually supplied this information to the complainant on 22 January 2007.

Right of Appeal

40. 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@tribunals.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 12th day of November 2007

Signed

**Graham Smith
Deputy Commissioner**

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