

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 September 2012

Public Authority: South West Strategic Health Authority

Address: South West House
Blackbrook Park Avenue
Taunton
Somerset
TA1 2PX

Decision (including any steps ordered)

1. The complainant requested information from the South West Strategic Health Authority (the "Authority") related to a proposal for the transfer of the Family Health Services of Primary Care Trusts in the south west to NHS Shared Business Services. The Authority provided some information in response to the request.
2. After investigating the complaint the Commissioner's decision is that the Authority holds further relevant information within the scope of the request. He also finds that the Authority failed to provide advice and assistance under section 16 of the FOIA.
3. The Commissioner requires the Authority to take the following steps to ensure compliance with the legislation:
 - Confirm or deny whether it holds information that would falls under part (b) of the request, and disclose the requested information, or issue a valid refusal notice compliant with section 17 of the FOIA, and
 - provide the complainant with advice and assistance to enable him to make a new request.
4. The Authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

5. On 21 September 2011, the complainant wrote to the Authority and requested information in the following terms:

"Please provide me with the following information:

(a) whether any members or employees of NHS South West have been involved in the consideration of a proposal for the Family Health Service functions of PCTs in the South West to be transferred to NHS Shared Business Services and, if so, who they were and what their involvement has been

(b) copies of all correspondence (whether by letter or email) between NHS South West and South West PCTs regarding that proposal, and notes of any meetings (not limited to meetings of the Project Steering Group, but any other meetings too) at which the proposal has been discussed."

6. On 7 October 2011 the Authority explained to the complainant that it considered the request to be wide ranging and that to comply with it may exceed the appropriate limit as set out in section 12 of the FOIA. It asked the complainant for a time period and the nature of information requested in order to narrow the request.

7. On 8 October 2011 the complaint responded in the following terms:

"I note from a paper presented to NHS Gloucestershire's Board that Chief Executives, Directors of Finance and Primary Care Leads have been involved in discussions regarding this topic, so perhaps you should start with them. If you wish, I will limit part (a) of my request to the names and job titles of any staff who have played any significant role in any involvement that the Authority may have had with the proposal.

Part (b) of my request should not then be difficult to satisfy. I suggest that you ask the staff you have identified as a result of part (a) to provide you with their files regarding this topic.

I note that the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000 states, in paragraph 8, "Public authorities are entitled to ask for more detail, if needed, to enable them to identify and locate the information sought. Authorities should, as far as reasonably practicable,

provide assistance to the applicant to enable him or her to describe more clearly the information requested" and goes on, in paragraph 10: "Appropriate assistance in this instance might include: providing an outline of the different kinds of information which might meet the terms of the request; providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of the information held by the authority; providing a general response to the request setting out options for further information which could be provided on request."

Is there any advice or assistance of this sort that you can provide to me to enable me to be more specific in my request?...

... I would suggest that the 18 months prior to my request might be an appropriate period to consider."

8. The Authority responded on 19 October 2011. It explained that:

"The South West Strategic Health Authority is facilitating regional discussions regarding the proposal to transfer Family Health Services administration to NHS Shared Business Services, but all decisions will be made locally by Primary Care Trust Boards.

Facilitating the programme has been led by the former South West Strategic Health Authority Director of Finance and Performance...."

9. The Authority then disclosed information which it stated was correspondence and documents from the Director's office to Primary Care Trusts and notes of meetings at which the proposal was discussed.
10. The complainant wrote to the Authority on 17 January 2012 and requested an internal review. He explained that he had received information from another public authority that lead him to consider that further information was held by the Authority which had not been disclosed to him. Specifically, the complainant explained that he had been provided with minutes of two meetings that he considered would be held by the Authority as certain members of its staff attended those meetings. He also argued that he considered that those members of staff had played a significant role in the development of this proposal (by attending the meetings). As such, their names should have been provided to him in response to part (a) of his request.
11. On 15 February 2012 the Authority provided the results of its internal review in which it upheld the initial decision. The Authority explained that it had interpreted the term 'significant role' to apply to the then Director of Finance and Performance, as he was the lead officer (for the

Authority) involved in this project. It therefore considered that it had handled the request appropriately. It acknowledged that other employees had been involved in the project, but stated that they had not played a significant role. It also noted that if it had included these individuals within the scope of the request it still considered that this would have taken the request above the appropriate cost limit (as set out in section 12 of the FOIA).

Scope of the case

12. The complainant contacted the Commissioner to complain about the way his requests for information had been handled. Specifically, he complained that the Authority had not disclosed information which fell within the scope of his request.
13. During the course of his investigation the Authority informed the Commissioner that it did not withhold any information other than that which it did not consider within the scope of the request. Therefore the Commissioner's investigation has focused on the Authority's consideration of the request and whether it complied with the FOIA in this regard.

Reasons for decision

14. Section 1(1) of the FOIA states that any person making a request for information to a public authority is entitled –
 - to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - if that is the case, to have that information communicated to him.
15. Under the FOIA a public authority has a duty to read a request for information objectively. If more than one objective reading of a request is possible, a public authority is under a duty to clarify with the requester the scope of their request.

Part (a) of the request

16. The complainant has argued to the Commissioner that the Authority read part (a) of his request too narrowly. He has referred to the roles cited in the first part of his email of 8 October 2011 (see paragraph 7 above) and has explained that these roles should at least have been

included in the scope of the request. The complainant has therefore stated that more information should be disclosed to him.

17. The Authority has confirmed that it read part (a) of the request in conjunction with the complainant's comments (in his email of 8 October) that he would (if it wished) limit part (a) to individuals who had played a 'significant role' in the decision in question. Bearing this in mind it has confirmed that it interpreted part (a) to relate only to the former Director of Finance and Performance – as this was the only individual who had played a significant role in the process in question. It has informed the Commissioner that this was because the decision makers in the proposal were the Primary Care Trust Chief Executives and their Board of Directors, not the Authority. Its role was to ensure that the correct processes were followed. Any of its staff who were involved with the proposal reported to the Director of Finance and Performance. He was the lead Director with responsibility for this area – although it has pointed out that even this Director did not make decisions in relation to this proposal. It also stated that any other employees involved in this proposal only performed a reporting and observational role in the meetings referred to by the complainant, in order to report back to the Director. Therefore it considers that the Director was the only member of its staff to have a 'significant role' in this process.
18. Under the FOIA a public authority has a duty to read a request for information objectively. If more than one objective reading of a request is possible, a public authority is under a duty to clarify with the requestor the scope of their request.
19. The Authority has interpreted part (a) of the request in conjunction with the comments made by the complainant, which refined this part of the request to only individuals who played a 'significant role' in the process in question. Its understanding and interpretation of whom it considers played a 'significant role' is as set out at paragraph 17 above.
20. Bearing these arguments in mind, the Commissioner is satisfied that this is an objective reading of part (a) of the request of 21 September (taking into account the email of 8 October).
21. However, the complainant has argued that part (a) should have been read with a much wider scope – effectively arguing that there is a second objective reading of the request. In his correspondence with the Authority he referred to minutes of Project Steering Group meetings (which met to discuss the proposals in question), and noted that these meetings were attended by employees of the Authority. He has argued that the Authority should have interpreted the phrase 'significant role' to include its employees who attended these meetings, as well as the individual roles referred to in his email of 8 October.

22. The Commissioner notes that this issue hangs on the question of who had a 'significant' role – and that this is very much a subjective question. The Authority has argued that this was only one employee, who took the lead on this issue – although they themselves did not make any decisions on this matter (that being done by the then Chief Executive of NHS Wiltshire). Although some of its employees attended the meetings of the Project Steering Group, this was done so in order to report back to the Director in question. In contrast the complainant has argued that the Authority's employees, who attended those meetings, and those people named in his email, played a significant role.
23. Bearing in mind the explanation given by the Authority, the Commissioner does not consider that the complainant's argued reading offers an alternative objective reading. However, the Commissioner does consider that as a matter of good practice the Authority could have provided a more detailed explanation to the complainant to better explain who had had a 'significant role' in this process.
24. Therefore the Commissioner is satisfied that the Authority was not under a duty to clarify the meaning of the complainant's request, as its reading of the phrase 'significant role' was the objective reading of this request.

Part (b) of the request

25. The complainant has informed the Commissioner that further information should have been disclosed to him in response to part (b) of his request. He has argued that the information requested should have been provided irrespective of who was identified by the Authority in part (a) of the request.
26. The Authority has explained to the Commissioner that it considered the meaning of part (b) to be linked to that of part (a). It has stated that it asked the individual it identified in part (a) for their files relating to the proposal and then disclosed information accordingly.
27. The Commissioner considers that the Authority's reading of part (b) is not an objective one, as he does not consider that the complainant's suggestion (in the 8 October email) should have been considered as a limitation on the information requested. Instead he considers that the complainant was providing advice to the Authority on a suggested search methodology – not limiting the scope of his request to information held by the people identified in part (a).
28. Section 1(1) of the FOIA states that any person making a request for information to a public authority is entitled –
 - to be informed in writing by the public authority whether it holds information of the description specified in the request, and

- if that is the case, to have that information communicated to him.
29. As the Authority limited its response to part (b) of the request by interpreting the request too narrowly, the Commissioner considers that the Authority has not met the requirements of section 1 of the FOIA in relation to this part of the request.

Advice and assistance

30. Section 16 of the FOIA states that,

"(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which in relation to the provision of advice and assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection(1) in relation to that case."

31. The provision of advice and assistance to persons who propose to make or have made, requests for information is dealt with in Part II of the section 45 code of practice. Of relevance to this case, this includes providing advice and assistance to those proposing to make requests.
32. Whilst the Commissioner is satisfied that the Authority's reading of part (a) of the request was correct, he notes that the complainant's comments in his email of 8 October (as quoted at paragraph 7 above) clearly indicated that he intended the scope of his request to be much wider. Whilst (as noted above) he is satisfied that the complainant's intended scope was not an objective reading of the request, the Commissioner considers that the Authority should have engaged with the complainant, in the light of his comments, to explain to him how it had interpreted the request, and provided advice and assistance to enable him to make a new request encompassing 'all' the information it held (of the type referred to in the 8 October email). He also considers that it would have been reasonable for the Authority to provide this advice and assistance.

Right of appeal

33. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

34. 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.
35. 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

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