

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 October 2013

Public Authority: South Eastern Health & Social Care Trust

Address: Lough House
Ards Hospital
Church Street, Newtownards
Co. Down
BT23 4AS

Decision (including any steps ordered)

1. The complainant submitted a request to the South Eastern Health and Social Care Trust ("the Trust") under the Freedom of Information Act 2000 ("FOIA") for information about her post and the Agenda for Change process taking place within the Trust. The Commissioner has investigated the complaint and finds that the Trust failed to provide the complainant with the information she requested or to issue a valid refusal notice within the statutory timeframe of 20 working days as set out in section 10(1) of FOIA. The Trust was in breach of its procedural obligations under FOIA in respect of sections 1(1)(a) and 10(1) of FOIA.
2. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation.
 - Issue a response to the complainant's request
3. The Trust 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 Act and may be dealt with as a contempt of court.

Background

4. The complainant has been in correspondence with the Trust since 2009, seeking information regarding her post and the Agenda for Change process, which is ongoing.

Request and response

5. On 14 August 2012, the complainant wrote to the Trust and requested information in the following terms:

I had previously e-mailed you regarding FOI for the Agenda for Change process for [name redacted] and myself. At that time you had asked us to wait, as it was hoped that this process would soon be completed. Unfortunately this has not happened, and we are again requesting FOI information."

6. On 28 August 2012, the Trust responded to the complainant stating that the Agenda for Change process had not been completed and that therefore she was not entitled to the information she requested.
7. The complainant sought an internal review of the Trust's response on 28 August 2012, however to the Commissioner's knowledge this has never been carried out.

Scope of the case

8. The complainant contacted the Commissioner on 16 November 2012 to complain about the way her request for information had been handled. As this was originally treated as a request for her personal data, the Commissioner handled the matter as a data protection complaint and corresponded with the Trust accordingly. The Trust confirmed that the information around the Agenda for Change process related to posts, not individuals. Therefore, the Commissioner opened the issue as a complaint under FOIA.
9. The Commissioner has considered the Trust's handling of the complainant's request.

Reasons for decision

Section 10(1): Time for compliance

10. Section 1(1)(a) of FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be

disclosed to the complainant unless a valid refusal notice has been issued.

11. Section 10(1) requires that the public authority comply with section 1 promptly and in any event no later than 20 working days after the date of receipt of the request.
12. The Commissioner notes that the complainant's request for information was made on 14 August 2012. Although she received a response from the Trust on 28 August 2012, this did not constitute a valid refusal notice. From the information provided to the Commissioner in this case it is evident that the Trust did not respond properly to the complainant under FOIA within the statutory time frame and therefore it breached section 10(1) of FOIA. The Trust, although it stated that the complainant was not entitled to the information as the Agenda for Change process was ongoing, failed to apply a valid exemption under FOIA as a basis for refusal of the complainant's request. The Trust also failed to confirm or deny that it held information in relation to this. Therefore, it has breached section 1(1)(a) of FOIA.

Right of appeal

13. 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

14. 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.
15. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF