

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

### **Decision notice**

**Date:** 27 July 2018

**Public Authority:** Dr KE Hosie, Dr LPJ Hosie, Dr JF Davies,  
Dr J Graham, Dr C Hart and Dr P Glatzel;  
partners at the Dicconson Group Practice

**Address:** Boston House  
Frog Lane  
Wigan  
WN6 7LB

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

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1. In three requests, the complainant has requested information about references that a doctor at Dicconson Group Practice (DGP) made in correspondence to him, and information about the redaction of Practice meeting minutes. In its response, DGP indicated that it holds no relevant information.
2. The Commissioner's decision is that:
  - DGP breached section 1(1)(a) with regard to requests [1] and [2] but, on the balance of probabilities, has complied with section 1(1)(b) with regard to all three requests.
  - DGP breached section 10(1) as it did not comply with section 1(1) within 20 working days.
3. The Commissioner does not require DGP to take any steps to ensure compliance with the legislation.
4. The Commissioner notes that the medical practice itself is not a public authority for the purposes of the FOIA. Rather, each GP within the

practice is a separate legal person and therefore each is a separate public authority. The Commissioner acknowledges that when an applicant makes a freedom of information request to a medical practice it is reasonable to expect for convenience that the practice will act as a single point of contact. However, each GP has a duty under section 1 of the FOIA to confirm or deny whether information is held and then to provide the requested information, subject to the application of any exemptions. For ease and clarity, this decision notice refers to the Practice where appropriate in detailing the correspondence and analysis that has taken place.

## Request and response

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5. On 12 March 2018 the complainant wrote to DGP and requested information in the following terms:

*"Please inform me whether or not you hold the information specified below, and if you do please send me a copy of all the recorded information you hold fitting the criteria of my requests.*

*1). I am requesting a copy of all information, that you first processed between 01/08/09 and 28/01/10, regarding the; ' suggestion of racism within our organisation.' comment that Dr [Redacted], in her 16/06/10 letter, claimed was made during a 03/08/09 surgery appointment.*

*2). I am requesting a copy of all information, that you first processed between 01/08/09 and 28/01/10, regarding the;' suggestion that a person's ethnicity may impact on the health care they receive ' comment that Dr [Redacted], in her 16/06/10 letter, claimed was made during a 03/08/09 surgery appointment.*

*To assist you the 16/06/10 letter (which I have attached to this email) I refer to above was a letter written, by Dr [Redacted], in response to a 2010 BME service user complaint.*

*3). Please inform me whether or not you hold the following information and if you do please send me a copy.*

*I am requesting information regarding the practice meeting minutes you were ordered to provide by a 2016 decision of the FIRST-TIER TRIBUNAL Appeal No: [Redacted] GENERAL REGULATORY CHAMBER (INFORMATION RIGHTS). In respect of the minutes you provided to the appellant please send information of how long it took you to redact the practice meeting minutes:-*

- a) *Of each year for the period 2009 to 1 September 2015.*
- b) *For all the years in total for the period 2009 to 1 September 2015."*

6. DGP responded on 24 April 2018. With regard to [1] and [2], DGP explained that the doctor concerned prepared her response to the complainant after she had reviewed the consultation notes held within the complainant's medical records. With regard to [3], DGP indicated that it does not hold relevant information.
7. DGP provided a review on 3 May 2018. It indicated that it had no further information it could provide to the complainant.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 8 May 2018 to complain about the way his request for information had been handled.
9. He is dissatisfied that DGP did not:
  - respond to his request within 20 working days
  - confirm or deny whether they held all the information specified in his request
  - provide him with a copy of all the information he requested which he considers DGP is likely to hold; or
  - provide a proper/valid refusal notice.
10. The complainant also considers that DGP has intentionally mishandled his request in order to delay him receiving information, which he considers was disrespectful and an act of bullying. Along with refusal notices, this matter is discussed under 'Other Matters'.
11. The Commissioner's investigation has focussed on whether DGP complied with its obligations under section 1(1)(a), section 1(1)(b) and section 10(1) of the FOIA.

### **Reasons for decision**

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#### **Section 1 – general right of access to recorded information held by a public authority**

12. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled (a) to be told if the authority holds the

information and (b), if it does, to have the information communicated to him or her if it is not exempt information.

*Section 1(1)(a) – confirming whether recorded information is held*

13. With regard to all three of this requests, the complainant had specifically asked DGP to confirm whether or not it holds the requested information.
14. The Commissioner notes that DGP confirmed that it does not hold the information requested in request [3] and it complied with section 1(1)(a) in this regard.
15. DGP did not, however, explicitly confirm whether or not it holds recorded information within the scope of requests [1] and [2]. The Commissioner is aware of DGP's previous interactions with the complainant and considers that DGP should have quite clearly stated whether or not it holds recorded information within the scope of requests [1] and [2]. It did not and so the Commissioner finds that DGP breached section 1(1)(a) with regard to these two requests.

*Section 1(1)(b) – communicating recorded information*

16. In its submission to the Commissioner DGP has confirmed that it holds no recorded information falling within the scope of any of the three requests.
17. Requests [1] and [2] are for information, processed between particular dates, about references a Practice doctor had made in a letter to the complainant, about comments the doctor claimed he had made during an appointment in 2009. DGP has told the Commissioner that the letter referred to by the complainant was drafted by the Practice doctor in response to a complaint from the complainant. DGP has consulted with the doctor concerned, who has confirmed that, other than the letter itself, no additional information was processed to prepare this document.
18. First, the Commissioner has noted that requests [1] and [2] are for very particular information that is specific to the complainant's circumstances. Second, the Commissioner considers it very likely that the doctor in question would have simply drafted the letter in question and that additional, associated information about two references within the letter would not have been produced. Finally, she has also noted the date of the letter – 16 June 2010 – and considers that, if such information ever *had* been held, it was unlikely to be held still at the time of the request, almost eight years later. Having considered the matter, the Commissioner accepts that DGP does not hold recorded information falling within the scope of requests [1] and [2].

19. Request [3] is for information on how long it took DGP to redact meeting minutes that that were referred to in a particular First Tier Tribunal (Information Rights) hearing from 2016.
20. In its submission, DGP has advised that one member of its staff redacted the minutes in question and that that member of staff had not recorded how long this took. The Commissioner sees no reason why DGP *would* have recorded how long it took to redact the minutes and considers that given the small size of its administration team, the administrative staff would have a good knowledge of whether such a task had ever been done. The Commissioner therefore accepts DGP's position that it does not hold recorded information within the scope of request [3].
21. The Commissioner is satisfied that DGP complied with its obligation under section 1(1)(b) of the FOIA with regard to the three requests.

### **Section 10 – time for compliance**

22. Section 10(1) says that a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
23. On this occasion, the complainant submitted his request on 12 March 2018 and received a response on 24 April 2018. DGP therefore breached section 10(1).

### **Other Matters**

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24. The Commissioner has seen no evidence to suggest that DGP intentionally mishandled the complainant's requests. That said, the Commissioner is aware that DGP has, over recent years, received a number of requests for information from the complainant, some of which have resulted in complaints to the Commissioner. The complainant has appealed three of the Commissioner's resulting decisions at the First Tier Tribunal (Information Rights). Some of these earlier decisions dealt with issues that are similar to the current decision ie breaches of section 1(1)(a) and section 10(1).
25. The Commissioner considers that by now DGP has sufficient experience such that it should have been able to provide a response to the complainant's request that complied with its basic FOIA obligations; namely:
  - to recognise that it is a request for information under the FOIA
  - to respond to the request within 20 working days

- to confirm whether or not it holds recorded information relevant to each request; and if it does
- to release this to the complainant (if it is not exempt information).

The Commissioner is disappointed that, again, DGP has failed to comply with the complainant's instructions and as a result has again breached certain sections of the FOIA.

26. Generally, it is sometimes not necessary for an authority to handle requests for information formally under the FOIA, and an authority can provide a narrative response to a question or request which the applicant may find satisfactory. In this case, as with this previous requests to DGP, the complainant has specifically asked DGP to treat his requests under the FOIA – the 'Subject' of his 12 March 2018 email is 'FREEDOM OF INFORMATION REQUEST'. The Commissioner expects DGP to act on her current findings and to handle under the FOIA any future requests for information that it may receive from the complainant.

#### Section 17 – refusal notices

27. As above, public authorities have two basic duties under FOIA; to confirm or deny whether requested information is held and to provide the requester with that information. If a public authority is refusing to meet either of these duties under section 17 of the FOIA it will usually need to issue a refusal notice to the requester explaining why.
28. Broadly, refusal notices are associated with cases in which an authority is relying on an exemption to withhold information, or to neither confirm nor deny information is held. Refusal notices are also necessary if the authority is relying on section 12 or 14 not to comply with a request.
29. DGP did not confirm whether or not it holds particular information but the Commissioner has found that this was simply an omission rather than an explicit refusal to confirm or deny that it holds the information.
30. Section 17 – and so the matter of a refusal notice, which was one of the complainant's concerns – does not come into play in the circumstances of this case, where DGP's position is that it does not hold the information that has been requested. The Commissioner therefore did not include any section 17 matters within the scope of her investigation.

## Right of appeal

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31. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

32. 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.
33. 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

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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