

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 October 2020

Public Authority: Imperial College Healthcare NHS Trust
Address: The Bays
South Wharf Road
St Mary's Hospital
London
W2 1NY

Decision (including any steps ordered)

1. The complainant requested information from Imperial College Healthcare NHS Trust (the Trust) about the total expenditure in the financial years 2017/18 to 2019/20 on equipment for Pathology services. The Trust originally relied on section 43 of the FOIA (prejudice to commercial interests) to withhold the requested information before subsequently disclosing it.
2. The Commissioner's decision is that the Trust failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner does not require any further steps.

Request and response

4. On 24 June 2020, the complainant wrote to the Trust and requested information in the following terms:

"How much has the Trust expended on equipment for pathology services in total for the financial years 2017-18, 2018-19 and 2019-2020. I would like the information limited to expenditure on physical equipment only and not new tests, buildings or training.

Where possible, expenditure on general information technology equipment and software should be shown separately from particular equipment and software used in pathology services. The expenditures may include leasing or hiring of contracted-out pathology services using automation and new technologies."

5. The Trust issued its first response on 21 August 2020. It refused to release the information and relied on section 43(2) of the FOIA as it considered that disclosing the information would, or would be likely to, prejudice the commercial interests of the Trust.
6. The complainant sought an internal review on 21 August 2020. He argued that the Trust's response did not sufficiently outline the nature of the prejudice, the likelihood of it occurring, or the causal link between the disclosure and the prejudice claimed.
7. The Trust issued its final response on 2 October 2020. It concluded that the exemption under section 43(2) of the FOIA had been "incorrectly applied" in its first response and it disclosed the requested information.

Scope of the case

8. The complainant contacted the Commissioner on 1 October 2020 to complain about the way his information request had been handled. At this point, the Trust had yet to respond to the complainant's request for an internal review.
9. On 13 October 2020 the Commissioner contacted the complainant to request further documentation in support of his complaint.
10. The complainant responded to this request on 13 October 2020 by providing supporting information which included a copy of the Trust's final response – which had been received since the original complaint had been submitted.
11. The complainant subsequently clarified that, whilst they were now content with the information that had been provided, they were unhappy at the delay to the initial response to the request.
12. The scope of this notice and the following analysis is therefore to consider whether the Trust has complied with section 10 of the FOIA.

Reasons for decision

13. Section 1(1) of the FOIA 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.*

14. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

15. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.

16. Section 10 of the FOIA states that a public authority must comply with its section 1(1) duty "*promptly and in any event not later than the twentieth working day following the date of receipt.*"

17. In this particular case, the Commissioner notes that the Trust failed to issue its original refusal notice within 20 working days. From the evidence presented to the Commissioner in this case, it is clear that, in failing to comply with its duty under section 1(1) of the FOIA within 20 working days, the Trust has breached section 10 of the FOIA.

Right of appeal

18. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

19. 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.
20. 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

Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF