

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 11 July 2011

**Public Authority:** North Tees and Hartlepool NHS Foundation Trust  
**Address:** Hardwick Road  
Stockton-on-Tees  
TS19 8PE

### Summary

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The complainant requested information under the Freedom of Information Act 2000 (the 'Act') from the North Tees and Hartlepool NHS Foundation Trust (the 'Trust'). The Commissioner has investigated and finds that, although the request was acknowledged, no response was provided under the Act. As a consequence the public authority was in breach of its obligations under the Act.

The request should be dealt with under the provisions of the Act, and the Commissioner requires the Trust to respond to the complainant confirming or denying whether information is held. If information is held the Trust should either disclose the information to the complainant or issue a valid refusal notice under section 17 of the Act.

### The Commissioner's Role

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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

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2. The complainant requested the following information from the University Trust on 17 November 2010:

*"Dear Sir*

*under the Freedom of Information Act I would be grateful if you would consider the following request?*

*In April 2006 April 2008 and April 2010 How many patients over the age of 40 were referred to your breast clinic for breast lump assessment following GP examination?*

*How many patients received a mammogram?*

*how many underwent ultrasound examination?*

*How many underwent needle biopsy?*

*how many were discharged without a mammogram?*

*what was the minimum duration the patient was in the department?*

*and what was the maximum time the patient was in the department?"*

3. The request was acknowledged by email on 22 November 2010.
4. To date the complainant has not received a response to her request for information.

## **The Investigation**

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### **Chronology**

5. On 31 January 2011 the complainant contacted the Commissioner to complain about the way her request for information had been handled, specifically about the lack of a response to her request under the Act.
6. On 24 February 2011 the Commissioner wrote to the Trust asking that it respond and copy him into that response.
7. Having received no response, the Commissioner wrote again to the Trust on 25 March 2011 asking why it had still not responded to the complainant and requesting that it do so within 20 working days.
8. On 4 July 2011 the Commissioner, having received no further update on the progress of the request, contacted the Trust to enquire about its position and ask for an immediate response.
9. On 5 July 2011 the Trust responded to his call. It was explained that the Trust had received the complainant's request for information and

had needed to obtain the information from the correct department in order to respond. Having received that information, it was sent to the complainant and returned as 'undeliverable'. The Commissioner has not been provided with a date for this email. It seems that no further attempt was made to send the information to the complainant. It was also acknowledged that the correspondence from the Commissioner had been received but not responded to. The Trust agreed to respond to the complainant and copy the Commissioner into that response within 24 hours. The Commissioner has received no further communication from the Trust as at the date of this Notice.

## Analysis

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### Procedural Requirements

10. Section 10(1) (full wording in legal annex) of the Act states the following:

*"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."*

11. By the date of this notice the Trust has failed to provide a substantive response to the complainant within the statutory time period contained within the provisions set out in section 10(1).

### The Decision

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12. The Commissioner's decision is that the Trust did not deal with the request for information in accordance with the Act. The Commissioner finds the Trust to be in breach of section 10(1) of the Act by failing to provide a response to the request within the statutory timeframe of 20 working days.

### Steps Required

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13. The Commissioner requires the Trust to take the following steps to ensure compliance with the Act:
  - Comply with the request by disclosing the requested information or

- Issue a valid refusal notice in accordance with the requirements of section 17 of the Act.
14. The Trust must take the steps required by this notice within 35 calendar days of the date of this notice.

### **Failure to comply**

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15. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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16. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

17. 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.
18. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 11<sup>th</sup> day of July 2011**

**Signed .....**

**Pamela Clements  
Group Manager, Complaints Resolution  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### Section 1

#### General Right of Access

(1) 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.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

(4) The information—

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.

(5) A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).

(6) In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.

## Section 10

Time for compliance with request.

(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) If, and to the extent that—

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

(4) The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with, the regulations.

(5) Regulations under subsection (4) may—

(a) prescribe different days in relation to different cases, and

(b) confer a discretion on the Commissioner.

(6) In this section—

- “the date of receipt” means—

(a)

the day on which the public authority receives the request for information, or

(b)

if later, the day on which it receives the information referred to in section 1(3);

- “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.