

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 September 2021

Public Authority: NHS Blood and Transplant
Address: 500 North Bristol Park
Northway
Filton
Bristol
BS34 7QH

Decision (including any steps ordered)

1. The complainant requested information with regards to organ donation. The NHS Blood and Transplant (the NHSBT) provided information it held in its initial response to the complainant and further information during the Commissioner's investigation.
2. The complainant considers that more information is held.
3. The Commissioner's decision is that the NHSBT has now provided all the information it holds within the scope of the request.
4. The Commissioner does not require the NHSBT to take any steps.

Request and response

5. On 12 July 2020 the complainant made the following request for information:

"All "internal" NHS guidelines currently in force, relating to the Organ Donation (Deemed Consent) Act 2019. This shall include, but not be limited to, guidelines given to Doctors, Nurses, SNOD/SR, Legal Personal, etc."

6. NHSBT responded on 10 August 2020, disclosed some information and provided links to pages on its website.
7. On 18 August 2020, the complainant requested an internal review as he was of the view that NHSBT held further information within the scope of the request. The internal review found that no further information was held.

Scope of the case

8. On 25 October 2020, the complainant contacted the Commissioner as he believed further information was held.
9. During the Commissioner's initial investigations, further information falling within the scope of the request was provided to the complainant with links and explanations of how to obtain it.
10. Following these further responses the complainant told the Commissioner that he considers NHSBT must hold specific guidance for:

"how nurses (or relevant person/s) should handle a scenario where it is deemed consent for donation has been given by the deceased person because they had not opted out and the NHS wishes to go forward with removal & transplantation of organs and/or tissues. But the family object to the donation, and the family do not know what the deceased family members position was with regards to donation. How should this scenario be handled?"

11. The scope of the case is therefore for the Commissioner to determine whether the NHSBT has identified all the information it holds that is within the scope of the complainant's request.

Reasons for decision

Section 1 of the FOIA – Information held / not held

12. Section 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 within the scope of the request, and if so, to have that information communicated to him.
13. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
14. NHSBT has explained to the Commissioner that no further information is held over and above what has already been provided to the complainant.
15. On the specific point made by the complainant and referred to at paragraph 10 above, NHSBT has informed the Commissioner, in a letter of 4 June 2021, specifically where information on this topic can be found in the links and PowerPoints that it has provided to the complainant to date (this explanation was also provided to the complainant).
16. However, the complainant considers there should be a specific document or video on how to deal with the situation, not just several documents from different links covering different sections.
17. He argues that if there is specific clear and comprehensive guidance to a relatively simple issue such as footwear, then he questions how the NHSBT can claim that it does not have similar clear guidance to the information he seeks.
18. The NHSBT has told the Commissioner that it has had staff consultations with Business Owners and Subject Matter Experts across the NHSBT which included Legislation Implementation, Professional Development Team and the Opt-Out Programme.
19. This included consultations with the accountable executive and leads responsible for training and operational delivery, whose role it is to determine that workforce and supporting structures are aligned to new legislation, such as the Deemed Consent Act.

20. The staff consulted also act as the leads for understanding the guidance provided by the Human Tissue Authority.
21. NHSBT has stated that searches were conducted on all of its documents that relate to Policy, Standard Operating Procedures, Forms, Information Sheets, Management Process Descriptions and Data Sheets from its Controlled Document Library in its Quality Management System.
22. This is the repository for all up-to-date version controlled documents describing or instructing how staff should carry out an action in line with best practice or regulatory guidance.
23. The NHSBT has advised the Commissioner that if documents are not held in this library, then they have not been validated or approved as internal guidance for staff to follow. So searches were not carried out on staff computers or emails or elsewhere outside of this system.
24. The NHSBT has confirmed to the Commissioner that all searches were for electronic data as it held in its electronic system and it used search terms such as Opt-Out Programme, deemed, deemed Consent and consent. It also confirmed that no information has been deleted or destroyed relevant to the request.
25. NHSBT maintains the information provided is all that is held.
26. On review of the response above, the Commissioner is satisfied that the NHSBT has carried out relevant searches with staff that would be most likely to know if specific guidance is held on the scenario in question, as well as where and how to locate it.
27. The NHSBT does hold information relevant to what the complainant is requesting, and it has directed him on how to find it. However, it is not held in a way that the complainant expects it to be, that being one specific document to address the scenario rather than in multiple locations.
28. Whether the information it holds fully sets out the NHSBT's position on what to do in the scenario specified by the complainant and referred to at paragraph 10 above is not the Commissioner's remit to determine, nor is it in her remit to determine if it should be held in one piece of guidance.
29. She is only able to determine whether the requested information is held. Having considered the responses provided, the Commissioner finds on the balance of probabilities that all the information within the scope of the request that is held by NHSBT has now been disclosed to the complainant, albeit that some of this information was not identified and disclosed until the time of the Commissioner's investigation.

Right of appeal

30. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

31. 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.
32. 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
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