

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 March 2024

Public Authority: Liverpool University Hospitals NHS Foundation Trust

Address: Aintree Hospital
Lower Lane
Fazakerley
Liverpool L9 7AL

Decision (including any steps ordered)

1. The Commissioner's decision is that, on the balance of probabilities, Liverpool University Hospitals NHS Foundation Trust ('the Trust') doesn't hold the requested explanation about two "contradictory" answers and has complied with section 1(1)(a) and 10(1) of FOIA.
2. It's not necessary for the Trust to take any corrective steps.

Request and response

3. As part of wider, ongoing correspondence with the Trust which the Commissioner understands concerns demolition works, the complainant submitted the following information request on 27 October 2023:

"...I also requested details an explanation as to why the FOI team and the Board gave two contradictory answers relating to the provision of accommodation by the Trust for employees."
4. The Trust responded on 6 November 2023. It confirmed it doesn't hold the requested information. The Trust advised that FOIA doesn't require public authorities to create information, or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

5. The complainant requested an internal review on 7 November 2023. They said to the Trust that “there must be some supporting documentation to your and the Board's contradictory responses to this information”.
6. The Trust provided an internal review on 15 November 2023. It advised that it had concluded that the complainant’s request wasn’t a valid request under section 8 of FOIA. That was because it didn’t describe the recorded information they wished to receive.
7. The Trust went on to say that if the complainant had had asked for recorded information it holds “describing contradictory responses”, then it had cited section 1 of FOIA correctly. This was on the grounds that the complainant had specifically asked for an explanation. The Trust re-stated that under section 1 of FOIA, it isn’t obliged to provide explanations or to create information, answer questions or give opinions unless this is recorded information it already holds.
8. Similarly, the Trust said, the complainant’s request for internal review was a statement suggesting that in their opinion, there must be some supporting documentation. Following discussions with the Head of Corporate Information Compliance and the Deputy Company Secretary, the Trust said it could confirm that it doesn’t hold any relevant information in recorded format.
9. In their complaint to the Commissioner the complainant said the issue related to two contradictory pieces of information the Trust provided in response to separate requests for information. The Trust’s Board had advised that it does provide accommodation for employees, but the Trust’s FOIA team said that the Trust doesn’t provide accommodation for employees. They indicated this was typical of the misleading, dishonest, incompetent, and corrupt communications they’d had from the Trust.

Reasons for decision

10. The reasoning is focussed on whether the Trust has met its obligations under sections 1(1) and 10(1) of FOIA.
11. FOIA concerns recorded information only. As the Trust advised the complainant, it doesn’t oblige a public authority to give explanations or opinions or to create information it doesn’t hold in order to comply with a request. Nor does FOIA concern the accuracy or otherwise of information that a public authority discloses.

12. Under section 1(1) of FOIA a public authority must (a) confirm to an applicant whether or not it holds the information they've requested and (b) communicate the information to the applicant if it's held and isn't exempt information.
13. Section 10(1) states that a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
14. Section 8 of FOIA describes a valid request for information as being one that's in writing, states the applicant's name and contact address and describes the information requested.
15. In this case the complainant has requested "an explanation as to why the FOI team and the Board gave two contradictory answers relating to the provision of accommodation by the Trust for employees."
16. The Commissioner agrees with the Trust that the request is phrased as a request for an explanation, which FOIA doesn't require the Trust to provide.
17. However, for the sake of this notice the Commissioner's prepared to accept that the request is valid and that the Trust could hold "supporting documentation" relevant to its "contradictory" answers. For this to be the case, prior to receiving the complainant's current request, members of the Trust's Board and members of the Trust's FOIA team would have had to have discussed the "contradictory" answers given in response to the complainant's two earlier questions. This discussion would then have had to be recorded and filed.
18. The Commissioner doesn't consider this is a likely scenario at all and notes that the Trust has discussed whether it holds relevant information with individuals in appropriate teams. He's satisfied that, on the balance of probabilities, the Trust doesn't hold the information the complainant has requested.
19. The Commissioner is satisfied that the Trust doesn't hold the requested information and has complied with section 1(1)(a) and 10(1) of FOIA.

Right of appeal

20. 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

21. 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.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF