

**FREEDOM OF INFORMATION ACT 2000 (SECTION 52)
ENFORCEMENT POWERS OF THE INFORMATION COMMISSIONER
ENFORCEMENT NOTICE**

DATED: 2 July 2024

**To: Barking, Havering and Redbridge University Hospitals NHS
Trust**

**Of: Queen's Hospital
Rom Valley Way
Romford
RM7 0AG**

1. Barking, Havering and Redbridge University Hospitals NHS Trust ("BHRUT") is a "public authority" listed in Schedule 1 and defined by [section 3(1)(a)(i)] of the Freedom of Information Act 2000 ("FOIA"). FOIA provides public access to information held by public authorities.
2. BHRUT's obligations as a public authority under FOIA include –
 - a. Being obliged to publish certain information about its activities;
 - b. Responding to requests for information from members of the public.
3. The Information Commissioner (the "**Commissioner**") hereby issues BHRUT with an Enforcement Notice (the "**Notice**") under section 52 FOIA. The Notice is in relation to BHRUT's:
 - a. Continuing non-compliance with section 1(1) FOIA; and
 - b. Continuing breach of section 10(1) FOIA.

4. This Notice explains the Commissioner's decision to take enforcement action. The specific steps that BHRUT is required to take are set out in **Annex 1**.

Legal Framework for this Notice

5. A person requesting information from a public authority has a right, subject to exemptions, to be informed by the public authority in writing whether it holds the information, and to have that communicated to him, if the public authority holds it. This is set out in section 1(1) FOIA–

“(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.”

6. Section 10(1) FOIA specifies that public authorities must respond to requests within 20 working days:

“... a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following receipt.”

7. There is provision under FOIA for a public authority to claim a reasonable extension to this limit in certain circumstances but in all cases, the public authority must give the requestor a written response within the standard time limit for compliance.

8. The Commissioner has various powers under FOIA. One of these is the issuing of an Enforcement Notice. Section 52(1) of FOIA states –

“If the Commissioner is satisfied that a public authority has failed to comply with any of the requirements of Part I, the Commissioner may serve the authority with a notice (in this Act referred to as an “enforcement notice”) requiring the authority to take within such time as may be specified in the notice, such steps as may be so specified for complying with those requirements.”

9. Section 52 FOIA has effect subject to section 53 FOIA, which provides details of the exceptions from the duty to comply with a decision notice or enforcement notice.

Background

10. The Commissioner first contacted BHRUT in June 2023 due to a number of complaints received about its late compliance with FOI requests. He also noticed messaging on its website which stated that it was dealing with an unusually high number of requests and there may be a delay in providing a response while its colleagues and resources were dedicated to patient facing services. It recognised its FOI obligations and would continue to make every effort to provide a response as soon as it could. The Commissioner’s engagement with BHRUT at that time did not identify any immediate concerns about its FOI compliance and he noted that it was making changes to improve its compliance.

11. However in April 2024 the Commissioner again noticed an increase volume of complaints received about delays in responding to FOI requests and therefore contacted BHRUT again to enquire about its current performance. It responded by explaining the challenges it had

experienced since June 2023 around staffing and recruitment and that its compliance rate as at March 2024 was at 31% but had been as low as 2.5% in January 2024. It explained some of the actions it was taking to improve this situation.

12. The Commissioner met with representatives from BHRUT in May 2024 and was informed that due to staffing challenges, BHRUT's compliance had dropped to an all-time low resulting in a backlog of 589 cases as at the end of April 2024.
13. In June 2024, the Commissioner met with BHRUT again. He was advised that the backlog had increased to 785 and that BHRUT's compliance rate for April 2024 was at 24%. Given the substantial increase in the backlog and lack of improvement in compliance, the Commissioner advised that he would issue an enforcement notice.
14. Recent data provided by BHRUT indicates that its timeliness has, in respect of new requests, remained poor for at least the last 12 months with an overall compliance rate of just 29.46%. Statistics from the most recent completed quarter (January – March 2024) show that BHRUT responded to only 16.26% of requests within the statutory timeframe. In April 2024, BHRUT responded to 24.05% of requests on time and in May 2024 it responded on time to all requests received that month. However, since April 2023 it has not been able to achieve more than 48% for timeliness compliance per quarter.
15. BHRUT has advised that for the reporting period, it had not received any internal review requests and therefore had no outstanding internal reviews.
16. In addition to this poor performance in relation to new requests it is receiving, at the time of reporting, BHRUT also has a backlog of 693

older requests that it has yet to respond to. Of these overdue requests, 610 requests are over three months old, 424 are over six months old and 130 requests are over a year old. The oldest request was received in January 2023.

The Contravention and Reasons for this Notice

17. FOIA requires a public authority to inform people whether it holds information they have requested and to communicate it to them within 20 working days of receipt of their request.
18. BHRUT has explained that in June 2023 its FOI lead left the organisation and this caused the backlog to develop while the department took on FOI responsibilities and rebuilt the team. It advised that compliance did improve to 61% in November 2023 but, due to a recruitment freeze in December 2023 and temporary staff leaving, it had to rebuild the team again and recruit in January 2024 causing its compliance to hit an all-time low. BHRUT explained that, in October 2023, it began collaborating with Barts Health on FOI responses, however this arrangement ended in January 2024, compounding the issues with compliance.
19. The Commissioner recognises that staff recruitment and retention is an issue across the public sector. However, BHRUT still has a statutory duty to respond to requests for information in a timely manner. It is important that it has proper plans in place to reach, and then maintain, high levels of compliance with FOIA.
20. BHRUT has tried to assure the Commissioner that it is focusing on reducing the backlog and improving compliance for recent requests. It has advised that it is developing an action plan to improve its FOI processes and that senior leaders recognise the progress that needs to

be made. The Commissioner welcomes the engagement he has had recently from BHRUT.

21. Responding to requests for information is a statutory duty. It is imperative that BHRUT recognises the importance of clearing its backlog and the legal implications of failing to do so. Imposing a legally enforceable deadline makes clear the priority that the Commissioner considers this task should be given. He has taken into account the scale of the backlog and the timing of this notice when setting the timeframe by which he expects compliance.

22. Taking into account the significant volume of unanswered FOI requests, their age profile including many requests subject to considerable delay, and the need for significant and sustained improvement in timely FOI responses, the Commissioner considers it a proportionate regulatory step to issue an Enforcement Notice requiring BHRUT to comply with section 1(1) of FOIA in respect of all of its outstanding requests. It is essential that the improvements described in **Annex 1** are implemented which compliance with this Notice will support.

23. The Commissioner also considers it a proportionate regulatory step to require BHRUT to devise and publish an action plan, which formalises measures to mitigate delays. This action plan should be supported by a 'lessons learned' exercise, which examines the root cause of delays in request handling, from allocation through to clearance at different stages, with mitigations for any recurring problems addressed specifically in the plan.

Other Matters

The Commissioner considers that BHRUT may benefit from using his [self-assessment toolkit](#) which is designed to help public authorities assess their current FOI performance and provide indicators of where efforts should be focused in order to improve. The first topic is particularly relevant as it deals with timeliness.

24. The Commissioner notes that BHRUT does not publish timeliness statistics. The Commissioner cannot require this as part of an enforcement notice under FOIA, but reiterates that BHRUT should do this in line with the section 45 Code of Practice. He would also recommend that BHRUT publishes, on a monthly basis, its progress in clearing its FOIA backlog in line with the updates it gives the Commissioner about its compliance with this notice.

25. The Commissioner would draw BHRUT's attention to his recent guidance on [publishing FOI compliance data](#) and recommends this approach is taken.

Terms of this Notice

26. The Commissioner therefore exercises his powers under section 52 of FOIA to serve an Enforcement Notice requiring BHRUT to take specified steps to comply with FOIA. The specified steps are set out in **Annex 1** of this Notice.

27. The consequence of failing to comply with an Enforcement Notice is that the Commissioner may make written certification of this fact to the High Court pursuant to section 54 of FOIA. Upon consideration and inquiry by the High Court, BHRUT may be dealt with as if it had committed a contempt of court.

Right of Appeal

28. By virtue of section 57 of FOIA there is a right of appeal against this Notice to the First-tier Tribunal (Information Rights). If an appeal is brought against this Notice, it need not be complied with pending determination or withdrawal of that appeal.

29. 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 9368963

Email: GRC@justice.gov.uk

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

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

Phillip Angell
Head of Freedom of Information Casework
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1

TERMS OF THE ENFORCEMENT NOTICE

THIS NOTICE REQUIRES BHRUT TO TAKE THE FOLLOWING STEPS BY THE DATES SPECIFIED BELOW::

By 31 December 2024, BHRUT shall:

- (i) in respect of each information request where the response is outside of 20 working days as at the date of this notice, and where a permitted extension has not been applied, comply with section 1(1)(a) of FOIA and, if information of the description specified in the request is held, either:
- (ii) communicate that information pursuant to section 1(1)(b) FOIA; or issue a valid refusal notice under section 17 FOIA, unless section 17(6) FOIA applies.

Within 35 calendar days of this notice, BHRUT shall:

- (iii) devise and publish an action plan formalising the measures it will take to ensure it complies with its legal duties under Part 1 of FOIA to respond to information requests in a timely fashion, while also clearing its backlog of late requests by 31 December 2024 as required by this notice.