

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 January 2012

Public Authority: Cumbria Partnership NHS Foundation Trust
Address: Voreda
Learning Network and Trust HQ
Portland Place
Penrith
Cumbria
CA11 7QQ

Decision (including any steps ordered)

1. The complainant requested that Cumbria Partnership NHS Foundation Trust ("the Trust") disclose the number of dental procedures which had been postponed or cancelled between 27 April 2010 and 27 April 2011. The Trust provided the figure for the total number of cancellations by patients and by the Trust combined. The complainant contended that her request was for the number of cancellations by the Trust alone.
2. The Information Commissioner's decision is that, given the context of the request, the complainant's intended interpretation of the request was an alternative objective reading of it. By not providing the information, or a valid refusal notice relating to that alternative reading of the request, the Trust breached section 1 of the FOIA.
3. The Information Commissioner ("the Commissioner") understands that the Trust has now provided the complainant with the figure for the number of dental procedures it cancelled in the relevant period. He has therefore not required the Trust to take any further steps to ensure compliance with the FOIA.

Request and response

4. On 27 April 2011, the complainant wrote to the Trust and requested that it:

"[d]isclose figures for the number of dental procedures which have been postponed or cancelled in the past 12 months."

5. The Trust responded on 3 June 2011. It provided the total number of cancellations for the period 27 April 2010 to 27 April 2011. It went on to state that *"[u]nfortunately the records do not show how many of the cancellations were due to patient cancellations or cancellations by Cumbria Partnership NHS Foundation Trust."*
6. On 20 August 2011, the complainant wrote to challenge the Trust's contention that it was unable to differentiate between its own cancellations and cancellations by patients and to request an internal review.
7. Following an internal review the Trust wrote to the complainant on 20 September 2011. It stated that it believed that it had provided a reasonable response to the original request. In its view, the request was clear and was for the total number of cancellations by the Trust and patients combined rather than for the number of cancellations by the Trust alone.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way her request for information had been handled, and specifically the Trust's interpretation of her request as being for the total number of cancellations by the Trust and patients combined rather than for the number of cancellations by the Trust alone.
9. The Commissioner considered whether the Trust had correctly applied the FOIA by interpreting the complainant's request as being for the total number of cancellations by the Trust and patients combined rather than being for the number of cancellation by the Trust alone.

Reasons for decision

10. This decision notice may not contain full details of all of the submissions put to the Commissioner by the parties. However he has taken all the relevant arguments into account before arriving at his decision.
11. The Trust explained to the Commissioner that it did not consider the complainant's request to be ambiguous ie that it could be objectively read in more than one way. It believed that when requesters wanted breakdowns, or wanted the request to relate to figures in a particular

category only (for example cancellations by the Trust only), they would say so, and frequently did. In this case the request taken at face value was clear.

12. The Trust went on to explain that its information governance team addressed the complainant's expectation of a broader interpretation of the request. In its initial response it had provided a figure for the total number of appointments and cancellations but had gone on to say that unfortunately it could not provide a breakdown between those cancellations by the Trust and those by patients. This information was not provided because the Trust believed that the request, either expressly or by implication, was for a breakdown between Trust/patient cancellations. It was because the Trust felt it should explain why no further details could be provided. This was due to limitations with the computer systems that it was using at the time of the request.
13. The Trust informed the Commissioner that the request was part of a letter which contained a complaint. It explained that health service complaints were, necessarily, dealt with completely separately from information requests as they are governed by a separate statutory framework, with separate statutory requirements. The processes and procedures were therefore quite separate.
14. As a consequence of the need to maintain confidentiality concerning health service complaints, the Trust said that its complaints team only disclosed complaints information outside its team on a need to know basis. There was also a requirement to ensure compliance with the Data Protection Act ("DPA") in the handling of sensitive personal data. The Trust's information governance team was therefore only given the FOIA request which was made within the complaint, no details of the complaint were provided. This was to ensure there were no breaches of confidence or breaches of the DPA.
15. The Trust explained that no further details of the complaint were provided to the information governance team as the complaints team did not consider any further disclosure (for example of non-sensitive details of the complaint) was necessary. The view of the complaints team which handled the complaint, and had full knowledge of the wider context, was that the request did not suggest the interpretation placed on it by the complainant.
16. Even if the information governance team had been given details of the wider context of the complaint, the Trust did not believe that it would necessarily have read a request for a breakdown by Trust/patients into the request.

17. In the Commissioner's view it was not unreasonable for the Trust to interpret the complainant's request in the way that it did. However, the letter containing the request detailed at length the complainant's concerns about the Trust's cancellation of a number of her appointments for dental treatment and complained about the Trust's failure to provide an acceptable level of service in this area.
18. Given that the context in which the request was made was the Trust's cancellation of appointments, with no mention of the cancellation of appointments by patients, the Commissioner is satisfied that the complainant's contention that she was only seeking information about cancellations by the Trust was an alternative objective reading of the request.
19. The Trust pointed out that the information governance team that responded on its behalf was not aware of the context of the request. While the Commissioner accepts that this is the case, the context was known to others within the Trust. This context could have been provided to the information governance team, if necessary, by an explanation in general terms rather than by providing the full details of the complaint that had been made.
20. The Commissioner accepts that the Trust was only aware of one reading of the request when it provided its response to the complainant and that it therefore did not breach the duty to provide advice and assistance under section 16 of the FOIA.
21. However, the Commissioner has determined that the request could have been objectively read in accordance with the complainant's interpretation of it. Therefore, there was a breach of section 1 of the FOIA as the Trust did not either provide the information relating to the complainant's intended alternative objective reading of the request or provide a valid refusal notice in respect of this alternative objective reading of the request.
22. The Commissioner notes, however, that the Trust has now provided the complainant with the information that she was seeking and so he does not require the Trust to take any further steps to ensure compliance with the FOIA.

Right of appeal

23. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

24. 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.
25. 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

Faye Spencer
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