

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 5 February 2008

Public Authority: NHS East Midlands
Address: East Midlands Strategic Health Authority
Octavia House
Interchange Business Park
Bostock's Lane
Sandiacre
Nottinghamshire
NG10 5QG

Summary

The complainant made a request under the Freedom of Information Act 2000 (the "Act") to NHS East Midlands Strategic Health Authority (the "SHA") for any documentation surrounding the decision of a Scrutiny Group which considered retrospective NHS funding for the long term care of her late husband. The SHA informed the complainant that the Scrutiny Group had reached its decision based on information provided by a representative of Charnwood and North West Leicestershire Primary Care Trust (the "PCT") and the Clinical Assessor's views, both of which had been disclosed to her at the meeting; and her late husband's medical / care records, which it no longer held. Following this the complainant contacted the SHA again and informed it that the information she sought was the rationale for the decision of the Scrutiny Group, and referred to notes taken by members of the group during the meeting. The SHA informed her that it did not hold this information. After considering the information provided by both parties the Commissioner is satisfied that the SHA does not hold any further information in relation to the Scrutiny Group, other than that previously provided to the complainant. Therefore he has decided that the SHA complied with section 1 of the Act. However, the Commissioner has also decided that the SHA acted in breach of section 10 of the Act as it took longer than 20 working days to respond to the request. The Commissioner does not require the SHA to take any further steps.

The Commissioner's Role

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 Act. This Notice sets out his decision.

The Request

2. In order to put this request into context, the Commissioner believes it is appropriate to provide some background information to this case. In a letter dated 10 May 2006 the PCT wrote to the complainant and informed her that a Review Team had met to discuss retrospective NHS funding for the long term care of her late husband. This letter informed her that the Review Team had decided to refer the matter to a meeting of the SHA's Scrutiny Group on 16 June 2006. At that time the relevant Strategic Health Authority was Leicester, Northamptonshire and Rutland Strategic Health Authority.
3. After receiving the findings of the Scrutiny Group, the complainant wrote to the PCT on 14 December 2006 raising strong concerns about the findings of the Group. In this letter she also made a request under the Act to the PCT for information about her late husband's care. The PCT replied in a letter dated 21 December 2006 and informed her that as the Scrutiny Group had been run by the SHA it was passing her letter onto it. It should be noted that by this time Leicester, Northamptonshire and Rutland Strategic Health Authority had been amalgamated into NHS East of England Strategic Health Authority – it is this SHA that this Notice refers to.
4. In a letter dated 29 December 2006 the complainant wrote to the SHA and stated that her request was for,

“...those notes which are already in your possession, and also for any notes, deliberations, clinical assessments etc... which led to the first and second panel's decisions, i.e. also the judgements and rationale behind these decisions.”
5. The complainant did not receive a response to her request, and on 30 January 2007 sent a letter to the SHA asking for a response. In this letter she stated that her request was for,

“...information relating to the case and the decisions and rationale applied to the decisions of the Scrutiny Panel...”
6. The SHA responded in a letter dated 6 February 2007 and acknowledged receipt of her letters dated 29 December 2006 and 30 January 2007. It informed the complainant that in reaching its decision the Scrutiny Group had considered her late husband's medical records, information provided by a representative of the PCT and the Clinical Assessor's opinion. It informed her that it had not retained copies of her late husband's medical records, and advised her to contact his care providers to access this information. It advised her that the only information it had retained was the information provided by the PCT representative and the opinion of the Clinical Assessor, and that this had been provided to her when she attended the meeting of the Scrutiny Group.

7. The complainant wrote again to the SHA on 9 February 2007, and stated,

"The information that I am requesting is not the documents from the various agencies that were involved in my husband's care, but the rationale and decisions of the Scrutiny Panel itself with whom we met on June 16th 2006.

Most members of the Panel took copious notes on the day, and would have deliberated upon them before coming to the decision that they eventually notified to us on 6 December 2006.

It is how the Scrutiny Panel came to that decision, and what influenced them, from the notes that they took in the meeting, to come to the conclusions that they did.

This is the rationale and decision making process that I am asking to see as evidence, because I am appealing against that decision.

That information would surely have been retained by the panel – it is crucial to the decision-making process and the outcome of the case."

The Commissioner believes that this forms a request for an internal review.

8. The SHA responded in a letter dated 19 March 2007, and stated,

"I have checked with the members of the Scrutiny Group. All of them have annotated the documents presented to them on the day with information you gave to them. There is no further information available."

The Commissioner believes that this forms the outcome of the internal review.

The Investigation

Scope of the case

9. On 26 March 2007 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider whether the SHA's statement that it did not hold any further information was correct.
10. The Commissioner also considered whether the SHA had responded to the complainant's request in compliance with section 10 of the Act.

Chronology

11. The Commissioner contacted the complainant on 31 August 2007 and asked for a copy of her request to the SHA dated 28 December 2006. After an exchange of correspondence this was provided to him in a letter dated 3 October 2007.

12. The Commissioner also contacted the SHA on 31 August 2007 in order to discuss its handling of the complainant's request. In order to establish whether the SHA held information covered by the complainant's request the Commissioner asked the SHA to answer the following questions about its record management policies and its retention of information similar to that requested:
- (i) What information did the Scrutiny Group base its decision on?*
 - (ii) Was any information relating to the Scrutiny Group retained by the SHA, and if so, what information?*
 - (iii) What information was disclosed to the complainant?*
 - (iv) In the letter to the complainant dated 19 March 2007 the SHA made reference to notes taken by the Scrutiny Group of the information provided by the complainant. Did the SHA retain copies of these annotated documents?*
 - (v) Did the Scrutiny Group make any other notes during the meeting relating to its deliberations? If so, did the SHA retain a copy of these notes?*
 - (vi) Does the SHA have any procedures or policies regarding the retention or deletion of any notes taken in such meetings?*
 - (vii) Were minutes taken of the meeting of the Scrutiny Group? If so, were copies of these minutes provided to the complainant?*
 - (viii) Does the SHA have a formal records management policy? If so, what does it say about the retention and deletion of records of this type?*
 - (ix) Are there any statutory requirements to keep the information that has been requested?*
13. The SHA responded to the Commissioner in a letter dated 25 September 2007, and provided the following answers to the questions he had asked:
- (i) The Scrutiny Group based its decision on a summary of the case, Clinical Assessor's Report, general correspondence and the deceased's medical records.*
 - (ii)&(iii) Following the meeting of the Scrutiny Group the medical records were returned to the PCT. The complainant had attended the meeting, and the above documents were made available to her during this meeting. The only information retained by the SHA would have been that already disclosed to the complainant, i.e. the information provided by the PCT representative and the opinion of the Clinical Assessor.*

- (iv) *The SHA did not retain copies of these annotated documents.*
 - (v) *The SHA is unaware of any other notes taken in the meeting.*
 - (vi) *The SHA does not have any specific written policies or procedures regarding the retention or deletion of notes taken in Continuing Care Review meetings (such as the Scrutiny Group). It was its practice to retain a copy of the Panel's report, the correspondence file and the records which were presented to the Panel.*
 - (vii) *The SHA confirmed that the outcome of the meeting was recorded and the formal record was the final outcome response which was circulated to all parties.*
 - (viii) *The SHA informed the Commissioner that it used the policies of its predecessor organisations until such time as its own were formally adopted. It informed the Commissioner that it had adopted the Records Management Policy of the former Trent SHA, and provided the Commissioner with a copy of this policy. It pointed out that this Policy did not refer to retention or deletion of 'rough notes' taken in meetings.*
 - (xi) *The SHA was not aware of any statutory requirements to keep 'rough notes' made by panel members in a meeting.*
14. After carefully considering the information provided by the SHA the Commissioner wrote to the complainant on 28 September 2007 and provided her with the details of the SHA's response. He informed the complainant that after considering the information she had provided, especially her letter to the SHA dated 9 February 2007 (see paragraph 7 above), he believed that she was seeking access to any notes made by the panel members at the meeting of the Scrutiny Group on 16 June 2007. He went on to state that the SHA had informed him that it did not hold this information, and that it had answered the questions he had asked when seeking to establish this.
15. In line with his robust case handling policy the Commissioner, where appropriate, can attempt to resolve complaints informally without the serving of a decision notice. In this case the Commissioner informed the complainant that he believed the SHA's responses to his questions were reasonable, and asked the complainant whether she wished to withdraw her complaint. He also asked the complainant to inform him if she disagreed with the SHA's response, and to provide him with any evidence she might have to show that the SHA did indeed hold information which fell under the terms of her request. He also advised the complainant that if she wished to obtain copies of her late husband's medical records the appropriate way to do this was through the Access to Health Records Act 1990.

16. The complainant responded in a letter dated 3 October 2007. She informed the Commissioner that she wished him to issue a decision notice on this case, and went on to state that,

"I would have expected that usual practice would have been to have retained all the gathered information including rough notes, since it would have been those very notes that would have influenced the decision of the Scrutiny Panel, and I do not believe that these notes, if they were important enough to have been the basis of the investigation/deliberation in respect of making a decision at that time, should have been destroyed."

She informed him that she was seeking advice about the Access to Health Records Act 1990.

17. Following a further exchange of correspondence with the complainant, in a letter dated 15 November 2007 the Commissioner informed her that he would begin to draft a decision notice in relation to her complaint.
18. After reviewing the file, the Commissioner wrote to the SHA again on 23 November 2007. He referred to the SHA's response to question (vi) that, *"it is our practice to retain a copy of the Panel's report, the correspondence file and the records which were presented to the Panel,"* and noted that this seemed somewhat at odds with its earlier statement that following the meeting of the Scrutiny Group in June 2006 the only information it retained was that already provided to the complainant (i.e. the information provided by the PCT representative and the opinion of the Clinical Assessor). He asked the SHA to clarify this issue.
19. The SHA responded in a letter dated 29 November 2007. It informed him that its statement that it is its practice to 'retain a copy of the panel's report, the correspondence file and the records which were presented to the panel,' referred to the current policy of the SHA, rather than that of its predecessor, Leicester, Northamptonshire and Rutland Strategic Health Authority. It apologised for any confusion, and reiterated that the only information it held was that which had already been provided to the complainant.

Analysis

Procedural matters

Section 1

20. Section 1(1) of the Act states that:

“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.”

21. The Commissioner has considered whether the SHA has complied with section 1(1) of the Act by stating that it did not hold any information which fell under the scope of the complainant's request. In order to do this the Commissioner has considered whether the information requested by the complainant is held by the SHA.
22. In order to determine the exact information requested by the complainant in this case the Commissioner has focused on her letter to the SHA dated 9 February 2007 (see paragraph 7 above). After considering this letter the Commissioner believes that the information requested from the SHA was any notes taken by the members of the Scrutiny Group, or any record of the decision making of the Group. In reaching this view the Commissioner has also been mindful of the complainant's comments in her letter to him dated 3 October 2007 (see paragraph 16 above).
23. Establishing what information the SHA holds has been complicated by the fact that the Scrutiny Group was held by the Leicestershire, Northamptonshire and Rutland SHA, but by the time the request was made this had been amalgamated with other SHA's to form NHS East Midlands SHA. During the course of the Commissioner's investigation the SHA informed him that the member of staff who had organised the Scrutiny Group was no longer with the SHA.
24. Therefore, in reaching a decision on this case the Commissioner has considered the SHA's responses to his questions, as listed at paragraph 13 above. In particular he has noted that:
- There is no reference in the Records Management Policy to the retention of notes taken in Scrutiny Group meetings.
 - The SHA has informed him that there is no statutory requirement to retain any such information.
25. He has also noted that the complainant has not been able to provide any evidence to suggest that this information is held by the SHA.

26. Having considered the responses of the SHA to his questions the Commissioner believes that they are reasonable. Given this, and as the complainant has not been able to provide any evidence to the contrary, the Commissioner is satisfied that the SHA does not hold copies of any notes taken by the members of the Scrutiny Group, or any record of the decision making of the Group.

Section 10

27. Section 10(1) of the Act requires that 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 of the request.
28. Although it is not clear whether the complainant's initial request to the PCT, which was forwarded to the SHA, was actually received by the SHA, her letter to the SHA dated 29 December 2006 was. This request was not, however, responded to until 6 February 2007.

The Decision

29. The Commissioner's decision is that the SHA correctly informed the complainant that it did not hold any information which fell under the scope of her request and therefore complied with section 1 of the Act.
30. However, the Commissioner has also decided that the SHA did not comply with the requirements of section 10 of the Act, in that it did not respond to the complainant's request within twenty working days.

Steps Required

31. The Commissioner requires no steps to be taken.

Right of Appeal

32. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.

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

Dated the 5th day of February 2008

Signed

**Gerrard Tracey
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**