

## **Freedom of Information Act 2000**

### **Decision notice**

**Date:** 17 June 2013

**Public Authority:** NHS Commissioning Board  
**Address:** Southside  
105 Victoria Street  
London  
SW1E 6QT

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from NHS Berkshire regarding the cost of the Health Space Project.
2. The Commissioner's decision is that NHS Berkshire has released all of the information it holds in relation to the complainant's request.
3. At the date of the information request and subsequent complaint to the Information Commissioner the responsible public authority was NHS Berkshire. However from 1 April 2013 NHS Berkshire was disbanded and its functions taken over by the NHS Commissioning Board. Therefore, for the purposes of this decision notice, the public authority is the NHS Commissioning Board. However, for the sake of clarity, this decision notice refers to NHS Berkshire as if it were the public authority.

#### **Request and response**

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4. On 12 June 2012, the complainant wrote to NHS Berkshire and requested information in the following terms:  
*"How much public money has been spent to date, in total, on the Health Space project, and what have been the key components of this expenditure?"*
5. NHS Berkshire responded on 26 July 2012 with a table setting out details of costs incurred by the project over the period April 2010 to March 2013.

6. On 2 August 2012 the complainant wrote to NHS Berkshire and indicated that he remained dissatisfied with the response and stated:

*"It would be helpful to know also what services the various companies listed in your response provided and the cost of the participation of NHS and BFC staff. BFC tell me that their costs were charged to the PCT, so there was no net cost to BFC. But there is no reference in your table to either their labour costs or those incurred in the NHS."*

7. On 23 August 2012 NHS Berkshire provided to the complainant further information breaking down the external fees incurred on the project. With regard to internal staff costs NHS Berkshire explained as follows:

*"You also asked about staff time spent on the project. The majority of this cost is captured in the costs charged to Berkshire Shared Services as they provided the dedicated staffing resource to lead and deliver the project. There would also have been additional time spent by PCT staff directly on the scheme as part of their normal duties. No specific records exist of the exact breakdown of time spent on individual projects."*

8. The complainant remained dissatisfied with the response. NHS Berkshire did not carry out a formal internal review of the request although it did indicate that it held no further information and could not progress the matter any further.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 22 February 2013 to complain about the way his request for information had been handled.
10. The Commissioner considers the scope of the case to be whether or not NHS Berkshire holds further information pertaining to the complainant's request. Namely, information regarding internal staff costs with regard to the Health Space project.
11. Therefore the Commissioner has gone on to consider whether any further information is held.

### **Reasons for decision**

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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 of the description specified in the request, and if that is the case, to have that information communicated to him.

13. On 18 March 2013 the Commissioner asked NHS Berkshire for details of the searches it had carried out in order to reach a determination concerning whether any further requested information was held.

14. NHS Berkshire answered the Commissioner's questions on 27 March 2013. It stated that electronic and manual records had been searched and that no records of staff time spent were found. NHS Berkshire explained that;

*"Staff engaged on this project ..... were doing this work as part of their overall responsibilities. We do not require staff to separately account for the time spent on this or indeed any other project."*

15. The complainant remains of the opinion that NHS Berkshire should provide an estimate of time spent by its staff on the project, based on its memory of the project. However, the FOIA only applies to 'held' information. The FOIA does not place a requirement on a public authority to manipulate data, create documents or provide conclusions or estimates.

16. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the public authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "*on the balance of probabilities*".<sup>1</sup>

17. In deciding where the balance lies, the Commissioner considers the scope, quality and thoroughness of searches conducted by the public authority together with any reasons offered by the public authority or the complainant as to why the information is not held or should be held, where appropriate.

18. The Commissioner is satisfied that NHS Berkshire has carried out adequate searches and does not hold any further information relating to the costs of the Health Space Project.

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<sup>1</sup> This approach is supported by the Information Tribunal's findings in Linda Bromley and Others/ Environment Agency (31 August 2007) EA/2006/0072

19. The complainant does not accept that NHS Berkshire has no obligation under the FOIA to create an estimate of costs. However, as explained in paragraph 15, there is no obligation upon the authority to create information. Instead the FOIA is only concerned with what information is held by the authority. In this case, after taking into account the details of the searches carried out by the authority, the Commissioner is satisfied that as NHS Berkshire does not hold any further relevant information.
20. For the above reasons, the Commissioner has concluded that, on the balance of probabilities, no further information that would fall within the scope of this case is held.

### **Other matters**

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21. Section 10(1) of FOIA states that a public authority in receipt of a request for information has a duty to respond within 20 working days.
22. From the information provided to the Commissioner in this case it is evident that NHS Berkshire did not respond to the complainant within the statutory time frame.
23. Furthermore, Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaints. The Commissioner is concerned that, despite the complainant making it clear to NHS Berkshire that he was dissatisfied with the response, no internal review of the matter was carried out.

## Right of appeal

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24. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

25. 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.
26. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**