

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 January 2015

Public Authority: Aneurin Bevan University Health Board

Address: Headquarters
St Cadoc's Hospital
Lodge Road
Caerleon
Newport
NP18 3XQ

Decision (including any steps ordered)

1. The complainant requested information relating the retention of radiological images of metal on metal orthopaedic implants. Aneurin Bevan University Health Board ('the Health Board') provided some information and stated that other information was not held. The complainant expressed dissatisfaction with the Health Board's response that it did not hold information relating to certain parts of his request. The Commissioner has investigated and is satisfied that the Health Board has complied with its obligations under section 1 of the FOIA and, on the balance of probabilities it does not hold any further information relevant to the request.

Request and response

2. On 4 August 2014, the complainant wrote to the Health Board and referred to statements made in a letter the Health Board sent to him dated 14 July 2014. He requested information in the following terms (the Commissioner has numbered the requests below for ease of reference within this notice):

"[1] What date was the local decision made regarding metal on metal orthopaedic implants was for radiological images to be retained indefinitely?

[2] At what meeting was the decision made to retain radiological images indefinitely for a medical implant that has been removed from the market for clinical reasons?

[3] Is the Zimmer Durom metal on metal orthopaedic implant a medical device that has been removed from the market for clinical reasons?

[4] Who was in attendance at the meeting in which the decision was made for radiological images for metal on metal orthopaedic implants to be retained indefinitely?

[5] Were minutes taken at this particular meeting in which the decision was made for radiological images for metal on metal orthopaedic implants to be retained indefinitely, and if so where can these minutes be found?

[6] What other metal on metal orthopaedic hip implants besides the Zimmer Durom has been stopped for use by the Aneurin Bevan University Health Board due to the medical device being removed from the market for clinical reasons?

[7] What other metal on metal hip orthopaedic implants has been stopped for use by the National Health Service due to the medical device being removed from the market for clinical reasons?"

3. The Health Board responded on 5 September 2014. It provided some information and stated other information was not held.
4. On 22 September 2014, the complainant wrote to the Health Board and requested an internal review in relation to parts 1, 2, 4 and 5 of his request.
5. The Health Board provided the outcome of its internal review on 3 October 2014. The Health Board confirmed that no meeting took place where a local decision was made regarding the permanent retention of radiological images of metal orthopaedic implants. The Health Board also provided some background information relating to its processes and procedures for retention of radiological images.
6. The complainant wrote back to the Health Board on 3 October 2014 and expressed dissatisfaction with the internal review response, which he considered conflicted with statements made in the Health Board's letter of 14 July 2014.

Scope of the case

7. The complainant contacted the Commissioner on 13 October 2014 to complain about the way his request for information had been handled.
8. The scope of the Commissioner's investigation into this complaint is to determine whether the Health Board holds information relevant to questions 1, 2, 4 and 5 of the request of 4 August 2014 – ie information relating to a decision made to retain radiological images of metal on metal orthopaedic implants indefinitely.

Reasons for decision

Section 1 – general right of access

9. Section 1 of the FOIA states that any person making a request for information 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.
10. 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 arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is 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 civil standard of the balance of probabilities.
11. The Health Board provided the Commissioner with details of the searches it conducted in order to locate information relevant to the request. It confirmed that enquiries were made with the following staff/departments within the Health Board:
 - Interim Medical Director, whose department has been leading on all matters relating to metal on metal implants.
 - Interim Chief Operating Officer.
 - Director of Finance and Procurement.
 - Director of Performance Improvement (who also leads on information management and records management).

- Head of Health Records.
 - Directorate Manager of Radiology.
12. The Health Board confirmed that the searches it undertook engaged with the specialists in the field of orthopaedics, medical records, radiology and procurement as they were the individuals best placed to provide relevant background and information relevant to the request. The individuals were also ones with access to the relevant systems and areas within the Health Board to undertake searches to determine what information was held relevant to the request. The searches were undertaken through the Health Boards networked systems including its on line Policy Database, the Oracle Financial and Procurement System and the Clinical Workstation, which is a portal to the Health Boards' Clinical Systems and Information and provides access to clinical information about procedures and medical records. The Health Board advised that electronic searches were conducted using the terms/key words "radiological images retention", "metal on metal Hip implants" "Zimmer Durom", "hip prosthesis", "records retention" and "x ray retention.
13. The Health Board explained that enquiries were made with its Head of Health Records and Directorate Manager of Radiology to determine details of the policy in place regarding retention of radiological images and local arrangements regarding the matter. The enquiries confirmed that the Health Board's Non Clinical and Clinical Retention Schedule stated that its policy, and that of its predecessor organisations, for retention of radiological images was seven years until 2005 and following review was increased to eight years from 2005. It was also confirmed that there have been local arrangements in place to review the requirements for longer retention periods in the event of a medical device being removed from the market for clinical reasons. However, the Health Board confirmed that it did not review the position with the Zimmer Durom implant as it was not withdrawn for clinical reasons - the manufacturers simply stopped making the implant.
14. The parts of the request which the complainant remains dissatisfied with broadly relate to information about any decision made to retain radiological images relating to metal on metal orthopaedic implants definitely. In its responses to the requests the Health Board has stated that it does not hold information relevant to the requests as no local decision was made to retain such images indefinitely. The complainant raised concern that this response appears to conflict with a response he received from the Health Board dated 14 July 2014 in relation to an earlier information request. In its letter of 14 July 2014, the Health Board stated that:

"Aneurin Bevan University Health Board's policy for retention of all radiological images was 7 years until 2005 and following review was increased to 8 years from that year.....There are local arrangements in place to review the requirements for longer retention periods in the event of a medical device being removed from the market for clinical reasons. The local decision regarding metal on metal orthopaedic implants was for radiological images to be retained indefinitely".

15. In its initial response to the request in this case, the Health Board stated that it was legally obliged to retain images for 8 years, and longer in some circumstances. However, it confirmed that, since implementation of PACS (Picture Archive and Communication System) in 2008, "digital images on the system can be stored indefinitely due to the data storage capacity". In its internal review response, the Health Board further clarified that no local decision had been made to retain radiological images of metal on metal orthopaedic implants indefinitely, and in fact the permanent retention of such images was simply a consequence of the implementation of the PACS system in 2008 (which had expanded storage capacity). As a result, the Health Board confirmed that it did not hold any information about any local decision made to retain any radiological images indefinitely, or any meetings held to discuss such a decision as no local decision had been made.
16. During the Commissioner's investigation, the Health Board acknowledged that its responses relating to the subject matter were inconsistent. The Health Board accepted that the phrase used in its response to an earlier information request dated 14 July 2014 that "the local decision regarding metal on metal orthopaedic implants was for radiological images to be retained indefinitely" was not helpful. It became clear when the Health Board received the request of 4 August 2014 (which is the subject of this notice) that the phrase (and the local decision referred to) in fact related to the decision made to implement the new PACS system in 2008. Due to increased storage capacity the PACS system automatically retains all digital images and has done so since it was implemented. The Health Board confirmed that no local decision had been made to retain any radiological images relating to metal on metal orthopaedic implants indefinitely. The decision to retain radiological images indefinitely "happened de facto as part of the commissioning, installation and implementation of the system [PACS] and its capabilities".
17. Based on the representations provided by the Health Board the Commissioner is satisfied that it has carried out adequate searches of all places where relevant information would be held. There is no evidence of any inadequate search or grounds for believing there is a motive to withhold information. The Commissioner has also considered the Council's representations in relation to the subject matter of the

request. Based on the searches undertaken and the other explanations provided, the Commissioner is satisfied that, on the balance of probabilities, the Health Board does not hold information relating to any local decision to retain indefinitely radiological images relating to metal on metal orthopaedic implants. This is because the Health Board confirmed that no local decision was made and the permanent retention of such images was in fact simply a consequence of the implementation of PACS.

Right of appeal

18. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

19. 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.
20. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF