

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 June 2017

Public Authority: NHS Business Services Authority

Address: Stella House
Goldcrest Way
Newburn Riverside
Newcastle upon Tyne
NE15 8NY

Decision (including any steps ordered)

1. The complainant has requested information relating to the administrative costs associated with pursuing a penalty charge in respect of dental treatment.
2. The Commissioner's decision is that NHS Business Services Authority (NHSBSA) does not hold the requested information.
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

Request and response

4. On 13 January 2017, the complainant wrote to NHSBSA and requested information in the following terms:

"Could you ask your head of service under the Freedom of Information legislation if I could have a break down of the costs for your prevarication in this matter"

5. The NHSBSA originally interpreted the request to be for the cost incurred by the delay between the complainant's daughter claiming for dental treatment, and the issuing of a penalty charge notice. On this basis, the NHSBSA responded on 9 February 2017, stating that it did not hold the requested information.

6. The complainant subsequently requested an internal review, and in doing so confirmed that the information he sought was in fact the total costs of pursuing his daughter for the penalty charge notice. Following an internal review, NHSBSA responded to the complainant on 23 March 2017 and acknowledged that the request should have been clarified with the complainant before responding. However, it maintained its original position that the information being sought was not held.

Background

7. The complainant made his request after his daughter was sent a penalty charge notice for dental treatment. It appeared to the NHSBSA that she had claimed an exemption to NHS dental charges that she was not entitled to as the relevant certificate had expired. However, the complainant's daughter was unaware of this.

Scope of the case

8. The complainant contacted the Commissioner on 28 March 2017 to complain about the way his request for information had been handled.
9. In correspondence with the Commissioner the complainant raised concerns that NHSBSA is unaccountable to either the NHS or the Department of Health and therefore, as a publically funded organisation it was more imperative that it was accountable to the public and should provide information about how it operates.
10. The Commissioner considers the scope of this case is to determine whether NHSBSA is correct when it says that it does not hold the requested information.

Reasons for decision

Section 1 – general right of access

11. 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 within the scope of the request and, if so, to have that information communicated to them, subject to the application of any exemptions that are appropriate.
12. Where there is some dispute between the amount of information identified as being held by a public authority and the amount of information that a complainant believes may be held, the Commissioner,

following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.

13. Therefore, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or whether such information was held at the time of the request).
14. In its response of 9 February 2017 NHSBSA explained to the complainant that it did not hold any information that would capture the cost of a penalty charge notice being issued as there was no business need to do so.
15. The complainant's request for internal review clarified that the information he was seeking was the cost of pursuing the penalty charge in this case rather than applying some consideration of the patient's circumstances.
16. The complainant further suggested that NHSBSA could provide an approximate cost based on the time spent by staff dealing with the matter and their hourly rate of pay.
17. It was at this stage that NHSBSA carried out searches for any information that fell within the scope of the request.
18. In its internal review response NHSBSA explained that the costs or costs estimates relating to a specific case are not held. However, it did hold overall costs for this service and if this information was required the complainant should make a separate request.
19. In its submission to the Commissioner, NHSBSA explained that the following is recorded on its customer contact system:
 - A summary of any contact received,
 - the time that any outgoing job was allocated to a central queue that a number of staff pick jobs up from, and
 - the time that a member of staff closed off the request.
20. NHSBSA has stated that the exact amount of time a staff member spent handling any incoming communication or outgoing jobs is not recorded and therefore confirms that the requested information is not held.
21. NHSBSA has stated that its customer contact system is held on a network connected resource only.
22. NHSBSA has explained that it searched for the complainant's name on its customer contact system, which listed any associated case

identifier(s), each of which would then be searched for the requested information.

23. NHSBSA has confirmed that if this information was held, it would be held electronically.
24. The Commissioner understands the reasons why the complainant considers the information may be held. However, she can only consider what is held.

Conclusion

25. Although the complainant suggested a method whereby NHSBSA could provide an approximate cost the Commissioner cannot order a public authority to create information in order to answer a request. The FOIA relates to information held at the time the request is received. Having considered the response from NHSBSA, it is the Commissioner's view that, on the balance of probabilities, NHSBSA does not hold the information requested.

Other matters

26. The Commissioner notes that, as referred to above, the NHSBSA has advised her that the information the complainant was seeking was only fully understood when he requested an internal review. Full searches were therefore only carried out at that time to see if the information in question was held. However, it is important that a public authority contacts the applicant as soon as possible where more information is needed to clarify what information is being sought. The Commissioner therefore recommends that NHSBSA review the Section 45 code of practice¹.

¹ <https://ico.org.uk/media/for-organisations/documents/1624144/section-45-code-of-practice-request-handling-foia.pdf>

Right of appeal

27. 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

28. 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.
29. 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

Pamela Clements
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