

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 November 2018

Public Authority: Merton Clinical Commissioning Group
Address: 5th Floor
120 Broadway
Wimbledon
London
SW19 1RH

Decision (including any steps ordered)

1. The complainant has requested information in respect of proposals for the Wilson Health and Wellbeing Campus.
2. The Commissioner's decision is that the Merton Clinical Commissioning Group (the CCG) has breached section 1(1) and 10(1) of the FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires the CCG to take the following steps to ensure compliance with the legislation.
 - The CCG must issue a substantive response to the request in accordance with its obligations under the FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 21 January 2018, the complainant wrote to the CCG and requested information in the following terms:

"This is to ask for copies of all correspondence since 1 January 2016 between Merton Council and NHS Merton CCG in respect of the proposals for the Wilson Health & Wellbeing Campus. For the sake of clarity this request relates to correspondence with both officers and members and to all aspects of the proposals (including service provision, public health and town and country planning issues)."

6. The CCG responded on 13 February 2018 and withheld the requested information on application of section 12 of the FOIA, it said that the cost to determine whether it holds the information would exceed the appropriate limit. It said that the requester may wish to consider narrowing the scope of the request.

7. On 14 February 2018, the complainant wrote to the CCG and refined his request:

"This is to amend my request to restrict it to (1) any report or signed letter relating to communications between Merton Council and NHS Merton CCG in respect of the proposals for the Wilson Health & Wellbeing Campus and (2) any correspondence involving any elected member of Merton Council or officer in Merton Council's Environment and Regeneration Department."

8. The CCG acknowledged the refined request on 15 February 2018 but failed to provide a substantive response within 20 working days. It wrote to the complainant on 26 April 2018 to apologise for the delay.
9. Due to the CCG's failure to provide a response, on 23 May 2018, the complainant requested an internal review. This was acknowledged by the CCG on 17 June 2018, it however failed to provide a review decision.

Scope of the case

10. The complainant contacted the Commissioner on 1 October 2018 to complain about the CCG's failure to respond to his information request.
11. The Commissioner wrote to the CCG on 5 October 2018, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
12. Despite the Commissioner's intervention the CCG has, to the date of this notice, failed to respond to the request.

Reasons for decision

13. Section 1 (1) of the FOIA 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."

14. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and *"not later than the twentieth working day following the date of receipt."*

15. From the evidence provided to the Commissioner in this case, it is clear that the CCG did not deal with the refined request for information in accordance with the FOIA. The Commissioner finds that the CCG has breached section 1(1) and 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the FOIA.

Right of appeal

16. 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

17. 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.
18. 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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