

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 19 August 2019

Public Authority: Swansea Bay University Health Board
(formerly Abertawe Bro Morgannwg University Health Board)

Address: FOIA.Requests@wales.nhs.uk

Decision (including any steps ordered)

1. The complainant requested various pieces of information relating to Talybont Surgery. Abertawe Bro Morgannwg University Health Board ('ABMUHB') stated that it did not hold the information requested. The Commissioner's decision is that, on the balance of probabilities, ABMUHB does not hold any recorded information falling within the scope of the requests. The Commissioner does not require any steps to be taken.

Request and response

2. On 23 December 2018 the complainant wrote to the ABMUHB and requested information in the following terms:

"I would like to make a FOI request for any and all information preferably application files that contain the word Facebook that have been generated or accessed by Talybont surgery Pontarddulais please".

3. On 29 December 2018 the complainant submitted two further requests about Talybont surgery for information in the following terms:

"I would like to make a FOI request to ABMU IT department. My request is for all files including from backups for any file containing the word

"facebook" generated or accessed by Talybont surgery, Station Road, Pontarddulais, Swansea SA4 8TJ".

"I would like to make a FOI request for all CCTV footage from Talybont surgery, Station Road, Pontarddulais, Swansea SA4 8TJ".

4. ABMUHB issued separate responses to each of the three requests on 11 January 2019 and stated that *"GPs are independent contractors and are not employees of ABMU Health Board, therefore we would not hold this information"*.
5. On 14 January 2019 the complainant referred to previous responses he had received from Talybont Surgery He pointed out that as the surgery uses health board systems *"the response is at best a fob off"*. The complainant confirmed on 15 January 2019 that he was seeking an internal review of ABMUHB's handling of the requests.
6. ABMUHB provided the outcome of its internal reviews on 5 February 2019 and maintained its position that no information was held in relation to the three requests.

Scope of the case

7. The complainant contacted the Commissioner on 29 January 2019 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 establish whether ABMUHB holds any recorded information relevant to the requests of 23 and 29 December 2018.

Reasons for decision

Background

9. Swansea Bay University Health Board (formerly ABMUHB) was created on April 1, 2019 after responsibility for providing healthcare services in the Bridgend County Borough Council area passed from ABMUHB to the new Cwm Taf Morgannwg University Health Board. The initial information requests were made to ABMUHB. As such, this notice refers to ABMUHB throughout but has been served on Swansea Bay University Health Board.

Section 1 – general right of access

10. 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.
11. 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. She 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. She 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; she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
12. In its response to the request dated 11 January 2019 ABMUHB explained that GP surgeries were independent contractors and not employees of the health board. As such, it recommended that the complainant redirect his requests to Talybont Surgery. In its internal review response ABMUHB reiterated that it did not hold any relevant information and again suggested that the complainant contact Talybont Surgery itself or NHS Wales Informatics Services (NWIS) who may hold the information in question.
13. In its response to the Commissioner ABMUHB confirmed that as the request referred to IT systems, Facebook and CCTV footage, any relevant information would be held in electronic format. On receipt of the first request ABMUHB contacted its Information Management & Technology department in December 2018 and again in January 2019. It was confirmed that the systems referred to in the request were not health board systems and, as such, no searches were deemed necessary nor indeed could they be conducted by ABMUHB.
14. ABMUHB confirmed to the Commissioner that it does not have responsibility for the systems used by GP surgeries. The systems in question are managed and operated by NWIS rather than health boards and that is the reason that ABMUHB explained to the complainant in its internal review response that he may wish to consider contacting NWIS.
15. In coming to a conclusion upon this case the Commissioner has considered what information she would expect ABMUHB to hold and whether there is any evidence that the information was ever held. The Commissioner notes that Talybont Surgery is a separate legal entity to

ABMUHB. It provides health care services, under contract, to ABMUHB. The Commissioner also notes that the systems referred to in the request are GP systems which ABMUHB does not have involvement in, or responsibility for.

16. Taking into account the available information on this matter, the Commissioner's view is that ABMUHB's explanation as to why it does not hold the requested information is reasonable in the circumstances. She therefore finds that, on the balance of probabilities, ABMUHB does not hold any of the requested information.

Right of appeal

17. 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@justice.gov.uk

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

18. 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.
19. 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

Joanne Edwards
Senior Case Officer
Information Commissioner's Office
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Water Lane
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