

Freedom of Information Act 2000 (FOIA)
Decision notice

Date: 25 November 2019

Public Authority: NHS England
Address: PO Box 16738
Redditch
B97 9PT

Decision (including any steps ordered)

1. The complainant has requested copies of manuals used to train NHS England managers how to advertise job vacancies on the NHS Jobs website.
2. The Commissioner's decision is that, on the balance of probabilities, NHS England does not hold the requested information.
3. The Commissioner does not require NHS England to take any further steps.

Request and response

4. On 13 July 2019, the complainant wrote to NHS England and requested information in the following terms:

"Please share an electronic copy of the manuals used to train NHS England managers and directors how to advertise posts on the NHS Jobs website."
5. NHS England responded on 8 August 2019. It stated that it did not hold any recorded information within the scope of the request.
6. Following an internal review NHS England wrote to the complainant on 28 August 2019. It maintained that it did not hold information falling within the scope of the request.

Scope of the case

7. The complainant contacted the Commissioner on 29 August 2019 to complain about the way his request for information had been handled.
8. The scope of this case is to consider whether NHS England hold information falling within the scope of the request.

Reasons for decision

9. 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.*
10. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.

The Complainant's position

11. It is the complainant's position that the public authority hold manuals used to train NHS England managers and directors how to advertise job vacancies on the NHS Jobs website.
12. The complainant asserts that NHS England hold this information because they were previously employed by NHS England and used the requested manuals to assist with recruiting activities through the NHS Jobs website.

NHS England's position

13. NHS England's position is that they do not hold manuals used to train managers how to advertise vacancies on the NHS Jobs website.
14. At internal review, NHS England explained that NHS Business Services Authority (NHS BSA) is responsible for managing the NHS Jobs interface as part of a shared recruitment service. For this reason, NHS England advised that managers are not directly involved with advertising vacancies on the NHS Jobs website.
15. NHS England went on to explain that vacancies and recruitment activities (such as the posting of job adverts online) are managed through an "end-to-end recruitment system" that works alongside the NHS Jobs website. Because NHS BSA is responsible for managing the NHS Jobs website, NHS England advised that it would be most likely to hold information relating to the advertisement of job vacancies.
16. For clarity, NHS England provided the complainant with the contact details of NHS BSA in their internal review response.

The Commissioner's view

17. The Commissioner's view is that, on the balance of probabilities, NHS England does not hold information falling within the scope of the request.
18. 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 any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
19. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a

judgement on whether the information is held on the civil standard of the balance of probabilities.

20. From the information provided to her, the Commissioner considers NHS England to have interpreted the request correctly and conducted relevant and logical searches for information falling within the scope of the request.
21. As part of their investigation into this complaint, NHS England contacted the only NHS England manager with direct access to the NHS Jobs website. Following their search of the NHS Jobs website they located guidance documents available for recruiting managers. NHS England explain that these guidance documents were not, as the request suggests, *"used to train NHS England managers and directors how to advertise posts on the NHS Jobs website"* and this information therefore fell outside of the scope of the complainant's request.
22. NHS England informed the Commissioner that they conducted a wider search of the organisation's shared drive and intranet for information that may fall within the scope of the request. This search located general guidance documents relating to applicant shortlisting. Documents aimed at job applicants on how to save searches on the NHS Jobs website were also found. NHS England did not consider this information to fall within the scope of the request.
23. The Commissioner has had the opportunity to review some of the information located by NHS England as a result of its searches. She does not consider this information to fall within the scope of the request and is satisfied that the searches conducted by NHS England were thorough enough to potentially locate information falling within the scope of the request if it was held.
24. Subject to her published guidance, the Commissioner recognises that there will be cases when information is not held because it does not relate to matters that the public authority is responsible for¹. She has considered the complainant's arguments in that they are seeking to access information they used during their previous employment with the public authority.
25. The key issue here is that NHS England state that information falling within the scope of the request is not held because of how recruitment is managed more widely across the NHS. As stated previously, the Commissioner is not required to prove categorically whether information is held. However, she does not consider it unreasonable to suggest that recruiting managers employed by NHS England do not advertise vacancies directly through the NHS Jobs website. The Commissioner

¹ https://ico.org.uk/media/1169/determining_whether_information_is_held_foi_eir.pdf

therefore considers it to be inherently unlikely that NHS England hold the requested information (manuals used to train NHS England managers how to advertise vacancies on the NHS Jobs website) because there is no business need for NHS England to hold it.

26. The Commissioner recognises that there are instances where a public authority may suggest where information is more likely to be held. She recognises that NHS England have tried to assist the complainant by providing further contact details for NHS BSA.
27. On the basis of the responses provided to the complainant by NHS England, and the submissions provided to her over the course of her investigation, the Commissioner is satisfied that NHS England does not hold information falling within the scope of this request.

Right of appeal

28. 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

29. 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.

30. 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

Mr Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF