

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 May 2024

Public Authority: University Hospitals Coventry and Warwickshire NHS Trust

Address: Clifford Bridge Road
Walsgrove
Coventry
CV2 2DX

Decision (including any steps ordered)

1. The complainant has requested information about parking charge notices issued by a contractor at one of the car parks on the hospital site. University Hospitals Coventry and Warwickshire NHS Trust ('the Trust') advised that it did not hold the requested information.
2. The Commissioner's decision is that the requested information is not held by the Trust as per section 3(2) of FOIA – Information held on behalf of.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 24 September 2023, the complainant wrote to the Trust and requested information in the following terms:

"I want to know the number of parking charge notices issued by the contractor 'Car Parking Partnership' (trading name of Parkingeye Limited (REDACTED)) who manage the car park 'University Hospital, Coventry Blue Badge 6 for the period since 1st May 2021 to the 1st September 2023. And how many have been cancelled since issued and the number that remains due with the total value."

5. The Trust responded on 20 October 2023 and advised that it did not hold the requested information.
6. The Trust wrote to the complainant on 21 November 2023 with its internal review response and maintained its position that it did not hold the requested information.

Scope of the case

7. The complainant contacted the Commissioner on 21 November 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of his investigation is to determine whether the Trust holds the requested information for the purposes of FOIA.

Reasons for decision

Section 3(2) – Information held by or on behalf of a public authority

9. Section 1 of FOIA provides a general right of access to recorded information that is held by public authorities. When a request for information is made, a public authority must confirm whether it holds information of the specified nature in the request and if it does, it must provide it to the requestor unless a valid exemption applies under FOIA for not doing so.
10. Section 3(2) sets out that for the purposes of FOIA, information is held by a public authority if:
 - a) It is held by the authority, otherwise on behalf of another person, or
 - b) It is held by another person on behalf of the authority.
11. As explained in the Commissioner's published guidance¹, each case needs to be reviewed individually to determine whether a public authority holds information for its own purposes. There are various factors that will assist in determining whether the public authority holds the information for the purposes of FOIA. The weight attached to each

¹ [Information you hold for the purposes of FOIA | ICO](#)

one will vary from case to case. In some circumstances, one factor may outweigh all the others.

12. Factors that would indicate the information is not held by a public authority include:
 - the authority has no access to, use for, or interest in the information;
 - access to the information is controlled by the other person
 - the authority does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information; or
 - the authority is merely providing storage facilities, whether physical or electronically.
13. The Commissioner has therefore sought to determine whether, on the balance of probabilities, whether the Trust holds the requested information, or if it is held on behalf of the Trust.

Background information

14. University Hospitals Coventry and Warwickshire NHS Trust is part of a private finance initiative (PFI) that has delivered a new hospital in Coventry. The PFI has been delivered by a PFI consortium called Rugby and Coventry Hospital Company, with a range of contractor partners delivering different elements of the redevelopment phase and ongoing facilities services.
15. A private finance initiative (PFI) is a way of financing public-sector projects through the private sector. Under a PFI, a private company handles the up-front costs and contract management functions instead of the public sector. In return, the public sector partner makes payments to the private company over the PFI contract term.

The complainant's position

16. In their request for an internal review, the complainant stated that they believe the parking contractor holds the requested information on behalf of the Trust, and that the Trust therefore has a duty to disclose it under FOIA. The complainant stated that: "I believe that the 'Car Parking Partnership' (trading name of Parkingeye Limited) is exercising a public function on the NHS Trust's behalf and its behaviour, decisions, acts and failures to act are potentially challengeable by judicial review, namely the operation of the Blue Badge car park 6."

17. The complainant provided copies of the NHS Private Finance Initiative (PFI) contract guidance, a land registry entry showing the Trust owns the hospital site and a job description for a role in the Trust that mentions overseeing the PFI contract.

The Trust's position

18. The Trust has explained in its responses to the complainant, and submission to the Commissioner, that it operates under a PFI contract and all hard and soft services connected with the hospital site are managed by its PFI service providers. This includes the management of car parking.
19. It explained that the PFI service provider for car parking is ISS Facilities, and management of the specified car park is operated on its behalf by the Car Parking Partnership with no involvement from the Trust.
20. In its internal review response, the Trust further explained that because the management of the car park is not an outsourced contract, Car Parking Partnership is not a contractor of the Trust and it is not exercising a public function on behalf of the Trust. The Trust explained that its contract is with ISS Facilities, and that the Trust itself has no business need for information relating to the issuing of penalty charge notices.
21. In its submission to the Commissioner, the Trust confirmed that it had consulted with its Estates Team and stated that as there is no business need for parking penalty notice information, this is not reported in any forum at the Trust, and therefore the Trust considers that the information is not held by the Trust.
22. The Trust provided a copy of the PFI service specification for car park management. The Commissioner notes that the specification gives general instruction for management of the car parking service and it contains no mention of penalty charge notice reporting. The Trust also explained that the focus of the service specification is staff car parking rather than public parking at the hospital site.
23. At the Commissioner's request, and to demonstrate if the information could be accessed if the Trust needed to, the Trust made a formal request for the information about car park penalty notices from ISS Facilities, which then requested it from its parking sub-contractor. The sub-contractor refused to provide the requested information explaining that it was commercially sensitive.

The Commissioner's position

24. The Commissioner acknowledges the complainant's reasons for believing that the requested information would be held on behalf of the Trust, given that the specified car park is on the hospital site and is used by visitors to the hospital.
25. He also notes that the Trust has explained why, due to its PFI contract structure, the information is not held. The Commissioner recognises that contractor and sub-contractor arrangements under PFI schemes can be complex. He understands that while the PFI contract concerned the improvement and maintenance of the hospital, it has been implemented and managed by a PFI consortium rather than the Trust itself.
26. The Commissioner is satisfied that the requested information is not held on behalf of the Trust, as there are no reporting requirements for car parking penalties specified in the PFI specification with the Trust and the Trust has no access to it. This is demonstrated where the Trust has been unable to obtain the requested information from the parking sub-contractor when it tried to do so.
27. The Commissioner therefore finds that the requested information is not held by the Trust for the purposes of FOIA as per section 3(2) of the FOIA.

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: 0203 936 8963

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.

Keeley Christine
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF