



Tribunals Service
Information Tribunal

Information Tribunal Appeal Number: EA/2008/0004
Information Commissioner's Ref: FS50152083

Determined on the papers
On 11 April 2008

Decision Promulgated
On 16 April 2008

BEFORE

CHAIRMAN

MURRAY SHANKS

and

LAY MEMBERS

MARION SAUNDERS AND TONY STOLLER

Between

SUSAN FORTUNE

Appellant

and

INFORMATION COMMISSIONER

Respondent

and

NATIONAL PATIENT SAFETY AGENCY

Additional Party

Representation: N/A

Decision

The Tribunal upholds the decision notice dated 18 December 2007 and dismisses the appeal.

Reasons for Decision

1. Ms Fortune's baby daughter Sherin died in the Paediatric Intensive Care Unit of the Hull Royal Infirmary on 7 January 2003. The circumstances were logged as a critical incident and Dr Hilary Klonin, the consultant in paediatric intensive care, stated in a letter to the Chief Executive of the hospital dated 19 March 2003 that she wished to report the incident to the National Patient Safety Agency (NPSA). It appears that in the course of litigation against the hospital a copy of this letter was disclosed to Ms Fortune.
2. On 21 January 2007 Ms Fortune made a request under the Freedom of Information Act 2000 to the NPSA for a copy of the report sent to them by Dr Klonin about the critical incident on 7 January 2003. (She also requested details of other incidents at the Unit between 2000 and 2003 reported to the NPSA but these do not feature in her appeal.) The NPSA responded to Ms Fortune's request by denying that the information she had requested was held by them. They advised her that such information would normally be collated within the National Reporting and Learning System (NRLS) but that this system was not operational until November 2003.
3. Ms Fortune complained to the Information Commissioner but, having sought detailed explanations from the NPSA, he concluded on the balance of probabilities that they did not hold the information requested. She appeals to this Tribunal against the Commissioner's decision. The Tribunal must decide on the basis of all the evidence now before it whether the Information Commissioner was correct in coming to this conclusion.

4. In addition to the facts found by the Commissioner in the course of his investigation (see paras 11 to 19 of the decision dated 18 December 2007), we have been provided with a copy of the letter from Dr Klonin to which we refer in para 1 above and another such letter dated 26 March 2003 to the Medical Director of the hospital (neither of which were seen by the Commissioner), and with a witness statements from Ms Fortune and Glyn Barnes, who was the person at the NPSA responsible for handling Ms Fortune's request.
5. Ms Fortune does not dispute what the NPSA say about the NRLS. She maintains, however, that Dr Klonin sent a report about the incident to the NPSA and that the report has been either withheld or destroyed by the NPSA (see paras 2 and 9 of her statement). As we have indicated the Tribunal has had the benefit of seeing the two letters from Dr Klonin on which Ms Fortune primarily relies. Dr Klonin does not state in either of those letters that she has actually reported the incident to the NPSA; at most she is indicating that in March 2003 she intended to do so. Bearing in mind that there is no obligation to report incidents to the NPSA (see para 14 of the Information Commissioner's decision) and that at the relevant time there was no NRLS, and in the absence of any evidence from Dr Klonin herself, we are therefore unable to find, solely on the basis of what is stated in the letters that, on the balance of probabilities, she did in fact make any such report.
6. However, even if we had been satisfied on balance that Dr Klonin had sent a report to the NPSA, that would not have been the end of the matter. Mr Barnes's statement describes in para 4 the places which were searched in response to Ms Fortune's request made nearly four years after March 2003. There is no basis for a finding that any further searches ought to have been made or that his evidence that no information within the terms of Ms Fortune's request was found is wrong. In those circumstances the Tribunal would in any event conclude on the balance of probabilities that the NPSA did not hold the information.
7. Ms Fortune's appeal must therefore fail. We of course understand her very natural desire to obtain as much information as possible about this terrible incident but in the light of the factual position as we have found it to be this Freedom of Information Act request cannot help her further.

8. Our decision is unanimous.

Signed

Murray Shanks
Deputy Chairman

Date 16th April 2008