



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)

Appeal No: EA/2014/0032

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50510566

Dated: 14/1/2014

Appellant: William Stevenson

Respondent: The Information Commissioner

Heard at: Manchester Hearing Centre

Date of Hearing: 9 June 2014

Before

Chris Hughes

Judge

and

Anne Chafer and Malcolm Clarke

Tribunal Members

Date of Decision: 30 June 2014

Attendances:

For the Appellant: in person

For the Respondent: did not attend

Subject matter:

Freedom of Information Act 2000

REASONS FOR DECISION

Introduction

1. Mr Stevenson has been concerned at failures of governance in the NHS with respect to the University Hospitals of Morecombe Bay NHS Trust (UHMB). He has sought information from various bodies in order to bring the decision-making about clinical concerns into the open. Having become aware of a Board report prepared (in 2010) by the Medical Director of North Lancashire Teaching PCT (one of the PCTs which commissioned services from the Trust) he requested a copy of the report. He was aware that there had been a proposal to hold a joint meeting between the Boards of the Trust and the PCT. On 23 July 2013 he requested information from NHS Lancashire North Clinical Commissioning Group (a successor body of the PCT):-

... the first part of this FOIA request is for the minute (including any so-called "part 2"-euphemism for "secret", minutes) of this meeting . It appears from the text that this meeting cannot have taken place in June, and must have taken place before UHMB was authorised by Monitor on 1/10/10.

..... The paper in question is already the subject of a separate FOIA request, and is detailed in the first line to the letter. I am not requesting this "paper". I am requesting any documents which could be construed as fitting the description of "the outcome of your board discussion regarding the paper ".

2. At first LNCCG thought that a separate response to Mr Stevenson had dealt with the matter however he pursued the request and received a response on 16 October 2013. This stated that the board to board meeting referred to in the letter did not take place. It provided the minutes of the NLTPCT board meeting of 26 May 2010 with redactions. It stated that personal information had been redacted and other information had been redacted as it did not fall within the scope of the request.
3. On review LNCCG upheld its position. In further correspondence Mr Stevenson questioned the redaction of personal data and he argued that LNCCG held further information within the scope of the request which it had not provided; he felt that the proposed meeting should have taken place. LNCCG confirmed that it could not find any information from the PCT relating to why the meeting was cancelled. It also

provided minutes from a PCT subcommittee of 22 June 2010 which was also related to quality issues at UHMB as well as redacted minutes from the Board meeting of 29 September 2010.

4. Mr. Stevenson complained to the Commissioner. The two substantive issues which the Commissioner addressed in his decision notice (LNCCG having agreed that it should not have redacted names from the minutes) were the redaction of information from the minutes of 26 May 2010 and 29 September 2010 and whether LNCCG held other information concerning the proposed meeting or discussions following the presentation of the paper of 26 May 2010.
5. With respect to the first of these issues the Commissioner reviewed both sets of minutes and concluded that the terms of the request had been complied with and Mr Stevenson had been provided with the information from these minutes which was relevant to his request.
6. In considering the second matter the Commissioner noted that LNCCG was set up in April 2013 and that all files of the PCT are now "legacy files" and are not held by LNCCG but by the Department of Health. The information the LNCCG had been able to provide was some files held by individuals who used to work to the PCT and now worked for LNCCG. The Commissioner was satisfied on the balance of probabilities that LNCCG held no further information, he was also "mindful that the complainant has not requested information concerning the cancellation of any such meeting".
7. Mr Stevenson was dissatisfied with this conclusion and appealed to the tribunal. In an exceptionally lengthy appeal document he identified a number of factual errors in the decision notice, criticised the handling of the request and went into considerable detail with respect to governance issues with which he was concerned. He also suggested that the Commissioner should have used his power under section 51 of FOIA to request information from individuals as to the state of their knowledge of the arrangements for the board to board meeting.
8. The Commissioner resisted the appeal. He considered on the balance of probabilities that the meeting had not taken place and that an objective evaluation of the request could not extend to querying why the meeting did not take place. He maintained his position that LNCCG was entitled to redact information from the documents which

did not fall within the scope of the request. He argued that no specific duties upon LNCCG had arisen under s16. He acknowledged that there had been errors but these were not material to the substantive issues.

The appeal to the Tribunal

9. In his oral argument before the tribunal Mr Stevenson acknowledged that he did not now believe that the board to board meeting had been held. He wished however to extend his request in order to address ancillary points. In his submissions he had argued “the focus of my interest became how and why the meeting came to be cancelled”. He had difficulty focussing on the issue before the Tribunal.

The questions for the Tribunal

10. In considering this appeal the tribunal reminded itself that its role under s58 FOIA was to consider whether the decision notice against which the appeal was brought was not in accordance with the law and in doing so to review any finding of fact on which the notice was based. Minor errors of detail which Mr Stevenson has identified in the decision notice are not material to whether or not of the decision notice is in accordance with the law.
11. In the light of his admission that he did not believe that the board to board meeting had been held it is clear that the first request has been properly addressed. He has sought the minutes of the meeting which did not happen, there are no minutes. There was no evidence that the projected meeting, mentioned in documents, had taken place. There were therefore no records of the meeting to provide. His request did not (and indeed could not; given his state of knowledge at the time the request was made) encompass seeking information as to why the meeting had not been held. LNCCG had no knowledge of any minutes. The Commissioner has therefore correctly interpreted the request and correctly concluded that no information was held.
12. The second substantive issue is the correct construction of his request for details of the consideration of the medical director's report by the board of North Lancashire Teaching NHS PCT. FOIA creates duties on public authorities to provide information to the public. Mr Stevenson second request was clear and focused; he wanted “the outcome of your board discussion regarding the paper”. LNCCG provided documents

which were redacted versions of the minutes of the board meetings which considered the report. The other Agenda items had been minuted under their agenda numbers. These were blanked out; what was provided to Mr Stevenson was the full minute of the agenda number which related to the discussion of the report. An inspection of the unredacted minutes of both board meetings which the tribunal carried out after the hearing confirmed that the minutes of these meetings were constructed in the traditional way; There was no other information within the scope of the request which fell outside the numbered paragraphs supplied to Mr Stevenson. Here again Mr Stevenson argued to extend the scope of his original request but he cannot do so in this tribunal – the tribunal’s role is to consider whether the Commissioner’s decision is correct in law, it cannot adjudicate on newly formulated requests for information. The tribunal is satisfied that his request for information with respect to the minutes of the board meetings which considered the report has been properly complied with. There was no error of law in the decision notice of the Commissioner and accordingly the tribunal dismisses the appeal.

13. The Tribunal noted that there was assistance which the Commissioning Group might have given to Mr. Stevenson under S.16. The NHS organisational changes which had taken place since 2010, involved the demise of the PCT, it might have been helpful for the CCG to transfer the request to the Department of Health (which is holding the legacy records), and the UHMB Trust (the other body involved in the putative meeting), under the provisions of Para 7.13 of the CCGs own FOIA policy.
14. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 30 June 2014