



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

Appeal No: EA/2014/0106

ON APPEAL FROM:

**The Information Commissioner's Decision Notice No: FS50530799
Dated: 2 April 2014**

Appellant: Liam O'Hanlon

**Respondents: (1) The Information Commissioner
(2) Barnet Enfield and Haringey Mental Health
Trust**

Date of "paper" hearing: 22 October 2014

Venue: Field House, London EC4A 1DZ

**Before
HH Judge Shanks
Judge
and
Roger Creedon and Pieter de Waal
Tribunal Members**

Date of Decision: 24 October 2014

Subject matter:

Freedom of Information Act 2000

s.1	Right of access
s.10	Time for compliance

DECISION OF THE FIRST-TIER TRIBUNAL

For the reasons set out below the Tribunal allows Mr O'Hanlon's appeal and substitutes the following decision notice in place of the Commissioner's decision notice dated 2 April 2014.

SUBSTITUTE DECISION NOTICE

Public Authority: Barnet Enfield and Haringey Mental Health Trust

Complainant: Liam O'Hanlon

The Substituted Decision

For the reasons set out below, the Tribunal finds that the Complainant's request for information made on 31 October 2013 was not dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 in that (a) in breach of section 1(1), the Public Authority failed to supply all the information requested and (b) in so far as it did supply him with requested information, it did not do so promptly or within 20 working days, in breach of section 10(1).

Action required

In the interests of complete clarity, the Public Authority must by 16.00 on 31 October 2014 supply to the Complainant a full and complete print-out of the DATIX Admin Incident Review Form relating to the incident of 25 May 2013 which must include all entries made under any field save for any personal data which is exempt by virtue of section 40 of the Act, which must be redacted.

HH Judge Shanks

24 October 2014

REASONS FOR DECISION

Factual background

1. On 25 May 2013 the Appellant, Mr O'Hanlon, and another man visited a patient in a hospital run by the Second Respondent NHS Trust. There was an incident involving the two men and nursing staff on the ward about which it is unnecessary to say any more.

2. Following the incident Mr O'Hanlon made a formal complaint to the Trust. The Trust's Chief Executive responded in a long letter dated 27 June 2013 rejecting his complaint. In the course of her letter the Chief Executive stated:

... A DATIX incident form was raised following this incident in line with Trust policy and escalated to the senior nurse.

3. On 31 October 2013 Mr O'Hanlon made a FOIA request for "... a copy of the ... DATIX incident form" referred to in the Chief Executive's letter.

4. On 21 December 2013 Mr O'Hanlon raised a formal complaint with the Information Commissioner that the Trust had not responded to his request.

5. On 16 January 2014 the Trust provided him with a print-out dated 14/01/14 of the relevant DATIX "Admin Incident Review Form." The accompanying email stated that it was "... a copy of the Datix form ... requested under [FOIA]" with all "patient identifiable information removed". The print-out showed the "Opened Date" for the form as 28/05/13 and the "Closed Date" as 16/07/2013. On the same day Mr O'Hanlon responded by email complaining about the Trust's delay in responding to his request, asking for further information and stating that his request had not been complied with properly, because, he said, his request had been for "... an existing document referred to in the ... letter of 27 June 2013" and the document sent to him contained reference to a later date (16/07/2013), meaning that it could not be the document referred to in the letter.

6. On 20 January 2014 Mr O'Hanlon wrote to the Information Commissioner referring to his email to the Trust of 16 January 2014 which, he said, accused the Trust of sending him an "incorrect version of the document ... requested by me." The Commissioner in effect treated this as a new complaint under section 50 of FOIA and in due course he issued a decision notice dated 2 April 2014. His decision was that no further relevant information was held by the Trust beyond the print-out dated 14/01/14 but that the Trust had breached the requirement of section 10(1) of FOIA because it had not complied with section 1(1) within 20 working days.

The appeal

7. On 26 April 2014 Mr O'Hanlon appealed against the Commissioner's decision notice. His notice of appeal runs to 18 pages (with a large number of supporting documents) but his essential complaints, as we understand them, were (a) that the Commissioner had failed to grasp his point (referred to in para 5 above) that the document supplied on 16 January 2014 could not be the document he had requested (b) that the Trust had not explained the delay until 16 January 2014 or why they had not then supplied the correct document and (c) that the Commissioner had failed to investigate those matters properly.
8. In the course of the appeal the Trust has disclosed a further print-out of the DATIX Admin Incident Review Form dated 30/06/2014. This contains data which was not in the print-out dated 14/01/2014, in particular under the field headed "Investigation" (which was blank in the 14/01/2014 print-out). The Trust's proffered explanation for this apparent omission (which was set out in their solicitors' letter of 6 June 2014) is that "minimising" the "Investigation" and the "Contact" sections of the form was standard practice because they would often " ... contain personal data of either Trust staff or patients." The solicitors went on to say that the Trust's view was now that the "Investigation" section should be disclosed and the 30/06/2014 print-out has accordingly been provided to Mr O'Hanlon and included in the open bundle.
9. In the light of this development the Trust and the Commissioner have conceded that the appeal should be allowed because it is accepted that the full DATIX form was not supplied to Mr O'Hanlon on 16 January 2014. Before considering the consequences of that concession, we turn to consider the relief sought by Mr O'Hanlon in his notice

of appeal as expanded on in the various other substantial documents which he has lodged in the course of the appeal.

Relief sought by Mr O'Hanlon

10. It is not entirely clear whether Mr O'Hanlon is still maintaining that he should have been supplied with a copy of a "document" which was in existence at the time of the Trust's letter of 27 June 2013. In any event we are of the view that this point is misconceived. We are quite satisfied that there was never any such "document" and that the letter of 27 June 2013 was referring to a computer "form" which by its nature is filled in and updated electronically over time. In our view, in order to comply with Mr O'Hanlon's request, the Trust was obliged to disclose the contents of the "form" as they were when he made his request, and not some earlier date. On the assumption that the "form" was indeed "closed" on 16 July 2013 (an assumption we have no reason to doubt), what should have been disclosed to Mr O'Hanlon were therefore the contents of the "form" as it was on that date.

11. In para 1 on (our) page 21 of his notice of appeal Mr O'Hanlon seeks a declaration that his complaint made on 21 December 2013 (to the effect that the Trust did not respond to his request) has been upheld. As the history indicates, that complaint was overtaken by events; the position is, as we will record, that the Trust responded to his request on 16 January 2014 but was late in doing so and only supplied some of the information he was entitled to. In para 2 he seeks a declaration that "... the document provided ... on 16 January 2014 was not the document requested but a later, changed version of it." As we have already indicated in our view Mr O'Hanlon was never entitled to a "document" as such but the terms of this declaration are accurate to the extent that the print-out supplied did not contain all the information in the "form" which it should have contained.

12. At paras 3, 4 and 5 on page 21 of his notice of appeal Mr O'Hanlon seeks a number of declarations about failures he ascribes to the Trust. Also, following on from the late disclosure of the Investigation section in the DATIX form, he is (perhaps understandably) suspicious and he seeks a direction that the Trust now co-operate with a proper investigation as to why they did not immediately disclose that section of the form in particular. Although we can understand why he may feel entitled to seek

such relief from the Tribunal, we are afraid that these are not matters within our purview. A complaint under section 50 (which is the basis, and the only basis, of both the Commissioner's and the Tribunal's jurisdiction) can only relate to an alleged breach of Part I of FOIA (see section 50(1)), typically, as here, a breach of section 1(1) (a failure to communicate information properly requested) or section 10(1) (a failure to do so promptly or in any event within 20 working days). The Tribunal has no free-standing jurisdiction to investigate or rule on the reasons for any such failure or delay or to grant the kind of declaratory relief Mr O'Hanlon seeks.

13. At paras 6-9 on page 21 of his notice of appeal Mr O'Hanlon seeks from the Tribunal various directions to be addressed to the Commissioner requiring him to investigate and decide upon aspects of the Trust's behaviour in connection with his request. For the reasons set out in para 12 above, these are not matters within the purview of the Commissioner any more than they are matters within the purview of the Tribunal. But even if they had come within the Commissioner's original jurisdiction on a complaint under section 50, it is clear that the Commissioner's role as an investigator and adjudicator is finished once he has issued a decision notice: from that stage, the complainant's route is to appeal to the Tribunal, the Commissioner becomes a party to the appeal and the Tribunal is the body which makes any necessary finding of fact (see section 58(2)).

Disposal

14. As we have said, it is now conceded that the full DATIX form was not disclosed to Mr O'Hanlon and that (subject to redaction of personal data, to which Mr O'Hanlon expressly does not object) it should have been. There is no doubt that what was supplied was supplied late. We therefore allow the appeal and issue the substituted decision set out above.
15. At para 10 of its Skeleton Argument the Trust states emphatically that it does not hold any information coming within Mr O'Hanlon's request which is beyond that contained in the print-outs of 14/01/2014 and 30/6/2014 and a further print-out which has been disclosed to us in a closed bundle. We are slightly concerned to note that the print-out in the closed bundle contains some details under the field "Additional Information" which are not in either of the other two. In the light of this and the

unfortunate background we will therefore require the Trust to consider the whole form carefully once more and to supply a final definitive print-out in accordance with the “Action Required” set out above within a week.

16. This decision is unanimous.

HH Judge Shanks

24 October 2014