



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2018/0080

Determined, by consent, on written evidence and submissions

Before
Judge Stephen Cragg Q.C.

Tribunal Members
Mr Narendra Matanji
Mr Michael Jones

Between

Wolverton Health Centre

Appellant

And

Information Commissioner

Respondent

DECISION AND REASONS

BACKGROUND

1. The complainant wrote to Wolverton Health Centre on 18 September 2017 asking for (original typographical errors retained):-

Copies of the minutes of all meetings of the Wolverton Health Centre GP Practice of-

- (a) all Internal Meeting of the Partners' Meetings from 1.12.2015 to 30.12.2016
- (b) all Meetings held with the external bodies like the LMC, MPS Peninsula UK from 1.12.2015 to 30.12.2016.

Please send the information by email only, to this email [email address redacted].

2. The Appellant responded to the complainant a number of times maintaining that the complainant should make a request under the Data Protection Act, rather than FOIA, and did not disclose the information sought.
3. The complainant contacted the Commissioner on 10 December 2017 who considered whether the Appellant had dealt with the request in accordance with its obligations under s10 FOIA.
4. In the Decision Notice of 15 March 2018, the Commissioner noted that s1(1) of FOIA states that any person making a request is entitled to be told whether the information they have asked for is held and, if so, to have that information communicated to them, subject to any appropriately applied exemptions.
5. Section 10 FOIA states that where a public authority is obliged to communicate the requested information, that must be done within 20 working days of the request being received. As the request was made on 18 September 2017, the Commissioner found that the Appellant was in breach of section 10.
6. The Commissioner states in the Decision Notice that she advised the Appellant, on 14 December 2017, to make disclosure or issue a refusal notice pursuant to s17 FOIA. The Commissioner did not hear from the

Appellant again before the issue of the Decision Notice on 15 March 2018. The complainant informed the Commissioner on 31 January 2018 that he had not received a response to the request.

7. However, the Appellant did appeal against the Decision Notice on 20 March 2018. Very brief grounds of appeal set out:-
 - (a) that the minutes of meetings requested included those pertaining to the complainant (who had been, at the relevant time, a partner at the practice)
 - (b) Meetings with the LMC and the HR company were not minuted.
 - (c) The 'remaining partners meeting minutes' were sent to the complainant on or around 29 December 2017, with some individual information redacted.
 - (d) The complainant had been asked on a number of occasions to make an application under the DPA.
8. The Commissioner's response dealt with the case in two parts: in relation to the internal minutes and in relation to the external minutes requested.
9. In relation to the internal minutes, the Commissioner points out that the Appellant was obliged, whatever the nature of the information to confirm that it held the information under s1(1), and then either disclose it or state that an exemption was being relied upon (for example, s40(2) FOIA in the case of personal information)), within the 20 day time limit in s10 FOIA.
10. We agree with the Commissioner on this point, and that the Appellant failed to take these steps and so was in breach of s10 FOIA. Even if the information was sent to the complainant on 29 December 2017 (see below), there was still a significant breach of s10 and we dismiss the Appellant's appeal in relation to the internal minutes.

11. In relation to the request for minutes of external meetings, the response by the Commissioner now accepts that on 5 October 2017 (within the 20 days required by s10 FOIA) the Appellant sent an email to the complainant, stating that ‘...no minutes were taken and therefore there is nothing to disclose’. On that basis the Commissioner suggests we allow the appeal in relation to the external minutes requested. We agree, and do allow that part of the appeal. We also reiterate the point made by the Commissioner that the complainant can make a fresh complaint if he wishes to argue that the Appellant did, in fact, hold the information it claims not to have.
12. Finally, we point out that the complainant told the Commissioner on 31 January 2018 that he had not received the information claimed to have been sent on 29 December 2017, and we have seen an email from the complainant shortly before the consideration of this appeal where the complainant confirms that is still the case.
13. Although it is outside the remit of this appeal it seems to us that the Appellant should consider re-sending the information to the complainant again, by email as he has requested. We note that we have made no finding as to whether the information was sent or not. The Commissioner will need to consider whether it is appropriate or not to take the steps referred to in paragraph 4 of the Decision Notice – namely, written certification of a failure to provide a FOIA response (if that it is what the Commissioner decides has happened) to the High Court pursuant to s54 FOIA.

CONCLUSION

14. For the reasons set out above we dismiss the appeal in relation to the ‘internal meetings of the partners’ requested, but allow the appeal in relation to the minutes of meetings held with external bodies. No further steps are required as a result of allowing part of the appeal.

Signed *Stephen Cragg QC*

Stephen Cragg QC

Judge of the First-tier Tribunal

Date: July 30, 2018.

(Case considered by Panel on 13 July 2018).

Promulgated: July 30, 2018