



Appeal number: EA/2018/0115

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

SOPHIA KONNARIS

Appellant

- and -

THE INFORMATION COMMISSIONER

Respondent

TRIBUNAL: JUDGE ALISON MCKENNA

Determined on the papers, the Tribunal sitting in Chambers on 7 March 2019

DECISION

1. The appeal is, by consent, allowed in part. The Tribunal makes a substituted Decision Notice by consent (see paragraph 17 below).
2. The remaining part of the appeal is dismissed.

REASONS

Background to Appeal

3. The Appellant made a request to Plymouth Hospital NHS Hospitals Trust (now University Hospitals Plymouth NHS Trust) (“the Trust”) on 19 October 2017. Her request was subsequently refined to read as follows:

“The request is for PHNT GUM YourSHIP department and service line local policies, procedures, practices, standards and guidelines, including:

Clinical

Safeguarding

Operational Management, governance and administration

Policy development, implementation, and governance

Communications

Clinical records management and information governance

Appraisal and performance management”.

4. The Trust responded to the information request in reliance upon s. 21 of the Freedom of Information Act 2000 (“FOIA”) and said that the information requested was available on its website. It confirmed this position after an internal review on 29 January 2018. The Appellant complained to the Respondent.
5. The Respondent issued Decision Notice FS50712640 on 23 May 2018, upholding the Trust’s reliance on s. 21 FOIA. The Decision Notice found that the information requested was either available or that no further information within the scope of the request was held. It made procedural findings and recommendations but formally required no steps to be taken.

Appeal to the Tribunal

6. The Appellant's Notice of Appeal dated 2 June 2018 submits that the Trust's website had broken hyper-links so that the requested information is not in fact available. She enclosed a screen shot dated the same day as the Decision notice was issued evidencing the broken links. She submitted that further information was held. She asked the Tribunal to uphold her complaints, direct that the information requested is provided to her, and additionally, for the Tribunal to direct the Information Commissioner's Office to ensure that the Trust improves its information management practices and governance.

7. The Respondent's Response dated 27 July 2018 (an extension of time having been granted) accepted that the Decision Notice was erroneous in concluding that the requested information was accessible when it was not in fact accessible. It is submitted that the broken links have subsequently been fixed. The Respondent maintains her conclusion that no more information is held. It is suggested that the Tribunal makes a substituted Decision Notice.

8. The Appellant's Reply dated 3 August 2018 consents to the terms of the suggested substituted Decision Notice but asks for the matter to continue to determination by the Tribunal so that it may consider granting her the additional relief sought in the Notice of Appeal. It appears from the Reply that she no longer maintains that further information is held by the Trust.

9. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. The Tribunal considered an agreed open bundle of evidence, including submissions made by both parties, for which it was grateful.

The Law

10. Section 1 FOIA provides a general right of access to information held by public authorities. However, that right is disapplied where the information requested falls within an exemption in part II of FOIA.

11. Section 10 FOIA provides the procedural framework for a public authority to respond to a request.

12. Section 21 FOIA provides that an absolute exemption applies to "*information which is reasonably accessible to the applicant*".

13. The powers of the Tribunal in determining an appeal against a Decision Notice issued by the Respondent are set out in s.58 of FOIA, as follows:

"If on an appeal under section 57 the Tribunal considers -

(a) that the notice against which the appeal is brought is not in accordance with the law, or

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.

On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.”

Conclusion

14. As noted above, the Respondent does not oppose this appeal to the extent that she accepts that, at the time the Decision Notice was issued, the requested information was not reasonably accessible because the links on the Trust’s website were broken. She has exhibited correspondence with the Trust showing that the links were mended on 26 June 2018. I am satisfied that the Decision Notice contained an error of law in concluding that s. 21 FOIA was engaged. I conclude that the appeal should be allowed in part on this basis.

15. I am unsure if the issue about further information being held is still being pursued as further information was provided. However, in order to ensure that all relevant issues are determined here, I have considered whether there is any evidence on which I might conclude on the balance of probabilities that more information is held. I am satisfied that there is not and so to the extent necessary I must formally dismiss the remainder of the appeal.

16. I understand that the Appellant wishes me to consider granting her the additional relief mentioned in her Notice of Appeal (see paragraph 6 above) but my powers are limited to those set out in s. 58 FOIA and so I am unable to make the directions sought.

17. I now allow the appeal in part and make the following substituted Decision Notice:

The requested information was not reasonably accessible at the time of the request and so the public authority was not entitled to rely on s. 21 FOIA.

As the requested information has subsequently become reasonably accessible, no steps are required to be taken.

No further information within the scope of the request is held by the public authority.

This decision was corrected under rule 41 of the Tribunal Procedure (First-tier Tribunal) (General Regulation Chamber) Rules 2009 as amended, and reissued as dated below.

(Signed)

ALISON MCKENNA

CHAMBER PRESIDENT

DATE: 20 March 2019
PROMULGATED: 21 March 2019