

FOIA s.1(1) –right of access

John William Brigden v IC & North Lincolnshire and Goole NHS Trust

EA/2006/0034

5th April 2007

Cases:

Facts

The Appellant requested the Trust to provide documents relating to their withdrawal of medical treatment from him in 2002. The Appellant sought this information to support his complaint that the Trust withdrew his treatment without sufficient grounds. The Trust provided him with several documents, but the Appellant maintained that the Trust had indicated that it had a policy in force which it had not provided.

The IC found that at the time of the Appellant's request, the Trust did not have a policy specific to it relating to the withdrawal of treatment. Rather, there were a host of national and historic guidance and policy of relevance, and these had been provided. The IC was satisfied that the Trust had complied with s.1 of the Act and required no further steps to be taken by the trust.

Findings

Had the Trust and IC correctly interpreted the Appellant's request?

Both the Trust and the IC misinterpreted the Appellant's request. He had requested information not only as to the policy applicable at the time his treatment was withdrawn ("Part A" of his request), but also as to which policy was actually applied by the Trust in deciding to withdraw his treatment ("Part B" of his request). If the Trust had any doubt as to what information he was seeking, it had an obligation to assist him to clarify this. The Tribunal directed further evidence to be provided in order to consider the Part B request.

Part A - When the Trust withdrew treatment from the Appellant in 2002, it did not have a policy, specific to the Trust, in relation to the withdrawal of treatment. The Trust was in the process of formulating a policy. This came into effect in 2003 and had been supplied to the Appellant. The Appellant's belief that there was a policy specific to the Trust was a misinterpretation of a certain press release. The Trust had complied with its obligations under section 1 in relation to the Part A request.

Part B - The Trust did not respond properly to this part of the request, and had given inconsistent responses. The Tribunal accepted that the Trust did not have a record of which policies, if any, were referred to in withdrawing treatment. However, the Trust was in breach of section 1(a) of FOIA for failing to inform the Appellant that it did not hold the information.

Conclusion

Appeal allowed. However, since the Trust did not hold the relevant information, no action by the Trust was required.