

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 20 January 2021

**Public Authority:** West Midlands Ambulance Service NHS Trust  
**Address:** Waterfront Business Park  
Brierley Hill  
West Midlands  
DY5 1WX

### Decision (including any steps ordered)

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1. The complainant has requested the agendas, minutes and other information associated with specific meetings on particular dates. West Midlands Ambulance Service NHS Trust ('the Trust') provided some information and its position is that it does not hold any further information falling within scope of the request. The complainant disputes this.
2. The Commissioner's decision is as follows:
  - On the balance of probabilities, the Trust does not hold any further information within the scope of the complainant's request and has complied with section 1(1)(a) of the FOIA.
3. The Commissioner does not require the Trust to take any remedial steps.

### Request and response

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4. On 4 August 2019 the complainant wrote to the Trust and requested information in the following terms:

"Please provide the agendas and minutes of meetings held with WMAS BME staff raising concerns about racist staff, primarily at Willenhall

Hub, held on the following dates; 22/07/2017 - WMAS Chief Executive, Dr Anthony Marsh. 24/07/2017 - Meeting with WMAS Emergency Service Operations Delivery Director, Nathan Hudson. 28/09/2017 - WMAS Chief Executive, Dr Anthony Marsh. 09/10/2017 - Meeting with WMAS Chief Executive, Dr Anthony Marsh. Please provide all preceding and following email correspondence relating to the agendas and actions arising from the above meetings"

5. On 2 September 2019 the Trust responded, its reference FOI 2782. It stated that no formal agenda or minutes were generated for the meetings in question as they were not facilitated as formal meetings. As such, it did not hold information the complainant had requested. The Trust did however send some information that it considered was of some relevance. That information comprised two emails associated with Trust staff who were involved in facilitating the meetings, and in which actions had been noted. The Trust confirmed that it was unable to locate any further information due to the informal nature of the meetings covered by the request.
6. Following an internal review, the Trust wrote to the complainant on 8 October 2019. It confirmed it does not hold information falling within the scope of the request.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 25 February 2020 to complain about the way his request for information had been handled.
8. The Commissioner's investigation has focussed on whether the Trust holds any other information that is relevant to the specifics of the request and has complied with section 1(1) of the FOIA.

### **Reasons for decision**

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9. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to him or her if it is held and is not exempt information.
10. In his correspondence to the Commissioner, the complainant has confirmed that the Trust had provided him with the two emails from its former Deputy Chief Executive. He considers that these emails would not have gone unanswered because, in his view, there were 'action

minutes' in the emails and the Trust would hold information generated from those action minutes. The complainant considers that the Trust would also hold information relevant to his request because of the serious nature of the whistleblowing investigation that is the subject of the meetings and the request.

11. The complainant also disputes that there would not be any agendas or minutes taken at meetings attended by the Trust's Chief Executive. Finally, he considers that other emails from 2017 and already in his possession would fall within the scope of his request. The Commissioner put all these points to the Trust.
12. In its submission to the Commissioner the Trust has told her that an independent search for relevant information was conducted by its IT Department. The Director of Corporate & Clinical Services, the Emergency Service Operations Delivery Director, Head of Human Resources, Head of Organisational Development (Freedom to Speak up Guardian), Senior Operations Manager of Willenhall Hub and the Private Secretary to the Office of Chief Executive were also approached to confirm that no further information was held.
13. The search included information held on networked resources, using search terms relevant to the request. The Trust says it advises against staff holding information locally on Trust equipment such as a laptop.
14. The Trust explained that where formal minutes are taken of a meeting, they are generally shared with those at the meeting via email to ensure that they were captured accurately. Contrary to what the complainant considers, information provided [to the complainant] from a person who may have attended a particular meeting does not, in the Trust's view, suggest that a formal record of that meeting was captured at the time.
15. Regarding information being held and destroyed, the Trust says that is not relevant in this case as relevant information was never generated and so has not been destroyed or deleted.
16. The Trust closes its submission by confirming that all relevant information that was captured at the time has been provided to the complainant. The Trust says that as a result of the Commissioner's investigation, its Data Protection Officer contacted the Emergency Service Operations Delivery Director and the Senior Operations Manager, again to confirm that no further information has been held. The Data Protection Officer has also contacted the new Executive Lead for Freedom to Speak Up, the Director of Nursing & Clinical Commissioning. That Director has confirmed that no information is held with Freedom to Speak Up that relates to this request.

*Conclusion*

17. The complainant's request concerns four meetings between 22 July 2017 and 9 October 2017. He has requested agendas and minutes, and emails that preceded and followed those meetings about the discussed agenda items and any agreed actions. The complainant has sent the Commissioner material that he considers supports his view that the Trust holds information relevant to his request. This is the two emails that the Trust provided to him in response to his request, and other email correspondence from 26 June 2017 to 19 September 2017 that was provided to him separately from another source.
18. One of the two emails the Trust provided, dated 12 October 2017, does list actions from "the last meeting" and actions from a meeting on 22 June 2017. The complainant considers that the Trust would therefore hold further information (ie emails) that resulted from those actions. That is not an unreasonable conclusion to draw. However, the Commissioner has put that point to the Trust, it has reconsidered the matter and carried out further searches. It has confirmed that it does not hold any other information relevant to the request.
19. The Commissioner has also considered the other email correspondence from 2017 that the complainant sent to her. The Commissioner notes that this correspondence was sent to the complainant from another person's personal email account. One of those emails appears to concern the meeting of 22 July 2017, another the meeting of 28 September 2017 (both referred to in the request). The other emails seem to concern meetings not covered by the request. That another person has copies of these emails does not necessarily mean that, at the time of the request, the Trust also still held them.
20. The Commissioner's role is not to consider whether a public authority *should* hold information that has been requested. She must decide, based on the balance of probabilities, whether a public authority *did* hold information at the time of a request for it. In this case the complainant's focus is emails and correspondence from a period approximately two years before his request. The Trust has stated that such information was never generated and was never held, because the meetings referred to in the request were not formal meetings. However, it might also be the case that any relevant email correspondence that one or more members of staff once held was routinely destroyed in line with the Trust's retention schedule.

21. The Commissioner has considered the complainant's arguments. While it might be reasonable to expect the Trust to perhaps hold further information, she does not consider the complainant has made a compelling case that the Trust definitely did hold further information. Based on what the Trust has told her, the Commissioner considers that the Trust has carried out adequate searches for information. The Trust has confirmed that no further relevant information was identified. The Commissioner has therefore decided that, on the balance of probabilities, no information other than the two emails it has provided to the complainant was held at the time of the request. As such, she finds that the Trust has complied with section 1(1)(a) of the FOIA.

## Right of appeal

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22. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals  
PO Box 9300  
LEICESTER  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

## Signed

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**