

Decision Notice

Decision 05/2019: Bermuda Hospitals Board

Safety event records

Reference no: 04022016

Decision date: 06 February 2019

Summary

The Applicant made a request under the Public Access to Information (**PATI**) Act 2010 to the Bermuda Hospitals Board (**Board**) for records relating to safety events at the King Edward VII Memorial Hospital. The Board disclosed a record to the Applicant containing some responsive information. The Applicant sought an internal review challenging the reasonableness of the search. The internal review decision upheld the initial decision.

The Information Commissioner has found that the Board did not conduct a reasonable search when it processed the request. The Information Commissioner is satisfied that the Board conducted a reasonable search during the Information Commissioner's review.

The Information Commissioner did not require the Board to take any further action in response to this request.

Relevant Statutory provisions

Public Access to Information (**PATI**) Act 2010: section 12 (access to records).

Public Access to Information Regulations (**PAIR**) 2014: regulation 5 (reasonable search requirement).

The full text of the statutory provision cited above is reproduced in Appendix 1 to this Decision. The Appendix forms part of this Decision.

Background

1. On 23 September 2015, the Applicant made a Public Access to Information (**PATI**) request to the Bermuda Hospitals Board (**Board**). The Applicant sought records related to safety events which occurred at King Edward VII Memorial Hospital between 2011 and 2015.
2. On 11 and 23 December 2015, the Board provided the Applicant with responsive document and some responsive information.
3. On 26 January 2016, the Applicant made a written request to the Board for an internal review on the basis that the Applicant did "not believe all the information ... requested was disclosed."
4. On 2 February 2016, the Board issued an internal review decision upholding its original decision.

5. The Applicant submitted a timely application on 4 February 2016, seeking an independent review by the Information Commissioner. The Applicant challenged the reasonableness of the search conducted by the Board.

Investigation

6. The application was accepted as valid. The Information Commissioner confirmed that the Applicant made a PATI request to a public authority and asked the public authority for an internal review before asking her for an independent review. Additionally, the Information Commissioner confirmed the issues the Applicant wanted her to review.
7. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate because submissions were required from the Board to determine whether its search was reasonable.
8. On 29 April 2016, the Information Commissioner's Office (**ICO**) notified the Board that the Applicant had made a valid application. During investigation, the parties agreed to attempt a facilitated resolution because it appeared that the Board had misunderstood the scope of the PATI request.
9. As part of the facilitated resolution, the Board conducted additional searches between June and November 2018, which were verified by the ICO. The Board subsequently provided the Applicant with partial access to additional responsive records.
10. The Applicant exercised the right to a decision by the Information Commissioner on the application for review.
11. Section 47(4) of the PATI Act requires the Information Commissioner to give all parties to the review a reasonable opportunity to make representations. Both parties made representations in this case.

Information Commissioner's analysis and findings

12. In coming to a decision on this matter, the Information Commissioner considered all of the relevant submissions, or parts of submissions, made by both the Applicant and the Board. She is satisfied that no matter of relevance has been overlooked.

Reasonable search – section 12 of the PATI Act and regulation 5 of the PATI Regulations

13. Section 12(2)(b) of the PATI Act and regulation 5 of the Public Access to Information Regulations (**PAIR**) 2014, require a public authority to conduct a reasonable search for records held by the public authority, in support of the right to access public records set

out in section 12(1). The Information Commissioner has set out the standards for a reasonable search in Decision 04/2017, Department of Health.

Public authority's submissions

14. The Board agreed that it did not conduct a reasonable search during its processing of the PATI request.

Applicant's submissions

15. The Applicant provided submissions on the Board's handling of the PATI request. The Applicant did not believe that the number of safety events at the hospital that happened during the responsive period only occurred in 0.01% of hospitalisations, as reported by BHB in its initial response to the PATI request. The Applicant was also concerned that BHB might have used a narrow definition of safety events in interpreting the PATI request.
16. The Applicant did not make submissions on the search conducted by the Board during the facilitated resolution.

Discussion

17. The Board accepts that it did not conduct a reasonable search. The Information Commissioner notes that this was one of the first PATI requests handled by the Board and its practices have developed since that time.
18. The Information Commissioner is satisfied that the Board did not conduct a reasonable search during its original handling of the PATI request, and that this led to an incomplete and inaccurate initial response to the PATI request.
19. During this review, however, the Board agreed to conduct additional searches and identified additional responsive records. The Information Commissioner recognises that the Board correctly interpreted the PATI request and identified the potential locations during the facilitated resolution. The Board issued a new initial decision and provided the Applicant with partial access to the records.
20. The ICO verified the Board's additional search and the results. The Information Commissioner is satisfied that BHB's additional search was reasonable and expresses appreciation to the Board for its efforts during this review.

Decision

The Information Commissioner finds that the Board failed to comply with Part 3 of the Public Access to Information (PATI) Act 2010 in responding to the Applicant's PATI request. Specifically, the Board failed to conduct a reasonable search as required by section 12 of the PATI Act and regulation 5 of Public Access to Information Regulations 2014. The Information Commissioner annuls the Board's original decision in accordance with section 48(1)(b) of the Act.

The Board has now conducted a reasonable search and informed the Applicant of the results of the additional search. The Information Commissioner does not require the Board to take any further action in response to this request.

Judicial Review

Should either the Applicant or the Board wish to seek judicial review according to section 49 of the PATI Act against this Decision, they have the right to apply to the Supreme Court for review of this Decision. Any such application must be made within six months of this Decision.



Gitanjali S. Gutierrez
Information Commissioner
06 February 2019

Appendix 1: Relevant statutory provisions

Public Access to Information Act 2010

Access to records

12 (1) Subject to this Act, every person who is a Bermudian or a resident of Bermuda has a right to and shall, on request, be given access to any record that is held by a public authority, other than an exempt record.

(2) Public authorities shall make every reasonable effort to-

- (a) assist persons in connection with requests; and
- (b) respond to request completely, accurately and in a timely manner.

...

Public Access to Information Regulations 2014

Reasonable search

5 (1) An information officer shall make reasonable efforts to locate a record that is the subject of an application for access.

(2) Where an information officer has been unable to locate the record referred to in paragraph (1), he shall make a record of the efforts he made.

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