

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 January 2023

Public Authority: London School of Hygiene & Tropical Medicine
Address: Keppel Street
London
WC1E 7HT

Complainant: Vera Wilde
Address: vera@verawil.de

Decision (including any steps ordered)

1. The complainant has requested the IRB protocol of a specific health study.
2. The London School of Hygiene and Tropical Medicine disclosed some information in response to the request.
3. The Commissioner's decision is:
 - In failing to respond to the request within twenty working days of receipt, the public authority breached section 10 (time for compliance with the request) of FOIA.
 - There is only one objective reading of the request and the public authority did not interpret the request in line with this objective reading and therefore breached section 1 (General right of access to information held by public authorities) of FOIA.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response to the request based on the correct objective reading.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court

pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

6. On 4 May 2021 the complainant wrote to the London School of Hygiene & Tropical Medicine ('the School') and requested the following information:

"Would it be possible to please release the IRB¹ protocol relating to the MRC Gambia-associated research published by A.R. Last et al in 2018 entitled "Population-based analysis of ocular Chlamydia trachomatis in trachoma-endemic West African communities identifies genomic markers of disease severity" (indexed in PubMed at <https://pubmed.ncbi.nlm.nih.gov/29482619/>)² ?

If so, please release the protocol including informed consent form/process, and any other attachments or supporting documents."

7. The complainant requested an internal review on 21 September 2021, based on the timeliness of the School's response.
8. The School responded on 22 November 2021. It disclosed three documents that it confirmed to be 'the requested IRB approvals.'
9. The Commissioner understands that Institutional Review Boards are responsible for ensuring that research is ethical. The board will approve research but will also presumably have a protocol, or criteria, which it uses in order to make such decisions.
10. On 22 December 2021 the complainant wrote to the School and explained that it appeared to have misinterpreted the request.
11. Once this complaint was brought to the Commissioner, he requested the School conduct the outstanding internal review which it did not do. The Commissioner used his discretion and accepted the case for investigation without an internal review.

² [Population-based analysis of ocular Chlamydia trachomatis in trachoma-endemic West African communities identifies genomic markers of disease severity - PubMed \(nih.gov\)](https://pubmed.ncbi.nlm.nih.gov/29482619/)

Reasons for decision

12. Before a public authority begins to process a request, it must ensure that it has obtained the correct objective reading of the request.
13. Public authorities must avoid reading into the request any inferences that are not clear from the wording. If the request clearly specifies exactly what information or documents the requester wants, then there will only be one objective reading to the request. If the public authority considers that there is more than one interpretation of the request, it must seek clarification from the requestor as to which interpretation of the request is the correct one.
14. To reiterate, the complainant has requested:

“Would it be possible to please release the IRB **protocol** relating to the MRC Gambia-associated research published by A.R. Last et al in 2018 entitled "Population-based analysis of ocular Chlamydia trachomatis in trachoma-endemic West African communities identifies genomic markers of disease severity" (indexed in PubMed at <https://pubmed.ncbi.nlm.nih.gov/29482619/>)³ ?

If so, please release the **protocol** including informed consent form/process, and any other attachments or supporting documents.”
(Emphasis added by the Commissioner).
15. In the school’s response to the request, it confirmed ‘please find attached the requested IRB approvals.’ In the request the complainant clearly requests the IRB protocol relating to the study.
16. The complainant has explained to the School ‘What you released on 22 November 2021, is instead documentation of an IRB approval in the form of three images. The second appears to be a duplicate close-up of part of the first. The third appears to be part of the fuller IRB protocol which was requested in full. It is marked "Appendix IV. Ethical Approval Documents" and states in part "Approval is dependent on local ethical approval having been received." The document featured in the first two disclosed pages/images appears to be that local approval.’

³ [Population-based analysis of ocular Chlamydia trachomatis in trachoma-endemic West African communities identifies genomic markers of disease severity - PubMed \(nih.gov\)](https://pubmed.ncbi.nlm.nih.gov/29482619/)

17. The complainant and the School clearly have different interpretations of the request. The information that the School has disclosed focuses on the IRB approval, rather than the protocol. Looking at part 2 of the request, the Commissioner acknowledges that the complainant asks for 'consent form/process, and any other attachments or supporting documents.' However, they clearly ask for this information in relation to the IRB protocol.
18. In the Commissioner's view, there is only one objective reading of the request, which is the complainant's. The complainant is clearly asking for a copy of the IRB protocol used within the study, rather than the IRB approval in relation to the study.
19. The Commissioner acknowledges that the information disclosed in relation to this request is not in English. However, when a public authority receives a request for information it must first ensure that it has the objective reading of the request, before it begins to search for the information that it thinks might be relevant – and seek clarification from the requester if necessary. It does not appear that the School has done so in this instance and has therefore breached section 1
20. Therefore, the School must take the steps ordered by the Commissioner in paragraph 4 of this notice. For the avoidance of doubt, the correct interpretation of this request is the complainant's description (as outlined in paragraph 16).
21. Since the complainant has identified that Appendix IV makes up part of the IRB protocol it seems likely that the School holds further information that falls within the scope of the correctly interpreted request. Should this be the case, the School must either disclose this information or issue a valid refusal notice under section 17 (refusal notice) of FOIA. If the School does not hold any further information that falls within the correct interpretation of the request, it must confirm so to the complainant.
22. Section 10 of FOIA states that a public authority must respond to a request for information within 20 working days of receipt. Despite several chasers from the complainant, the School failed to respond to the request for six months, which grossly exceeds the statutory timeframe. Therefore, the School breached section 10.

Other matters

23. In the Commissioner's opinion, this case highlights the importance of the internal review process in FOIA. Had the School conducted an internal review when requested, it would have realised the error in its interpretation of the request and a complaint to the Commissioner could have been avoided.

Right of appeal

24. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. 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.
26. 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 *A Gradwell*

Alice Gradwell
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