

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 February 2018

Public Authority: Queen Mary University of London (QMUL)

Address: Mile End Road
London
E1 4NS

Decision (including any steps ordered)

1. The complainant has requested information relating to 'Comparison of adaptive pacing therapy, cognitive behaviour therapy, graded exercise therapy, and specialist medical care for chronic fatigue syndrome (PACE): a randomised trial'. QMUL confirmed that the requested information was not held under section 1(1)(a) FOIA.
2. The Commissioner considers that the information requested in parts 2-7 of the request was held at the time of the request under section 1(1)(a) FOIA and therefore QMUL breached section 1(1)(b) FOIA as the information held was not provided.
3. The Commissioner is however unable to order any steps to be taken in this case as whilst the information was held at the time the request was made, it can no longer be said to be held for the purpose of FOIA.
4. The Commissioner requires no steps to be taken.

Request and response

5. On 18 October 2016 the complainant requested information of the following description:

These requests concern 'Comparison of adaptive pacing therapy, cognitive behaviour therapy, graded exercise therapy, and specialist medical care for chronic fatigue syndrome (PACE): a randomised trial'.

I am asking for anonymized data, as determined by the recent Tribunal decision in QMUL V The Information Commissioner & Matthees (PDF) <http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i18>

[54/Queen%20Mary%20University%20of%20London%20EA-2015-0269%20\(12-8-16\).PDF](#)

1. The pre-trial protocol states the essence of Graded Exercise Therapy is that planned physical activity, and not symptoms, determines what patients are asked to do. Please provide any data collected on GET-group patients' compliance with planned activity.

Please provide for the following patient-level data for baseline, 24-week and 52-week assessments, where available.

2. EuroQOL (EQ-5D) scores.

3. Hospital Anxiety and Depression Scale scores in both anxiety and depression sub-scales.

4. Work and Social Adjustment scale scores.

5. Borg Scale scores

6. Physical Health Questionnaire 15 items (PHQ15) scores.

7. Client Service Receipt Inventory scores. (Please also include the 6-months-prior assessment.)

6. On 14 November 2016 the University responded. It said that the information requested at part 1 was not held. It said that the information requested at parts 2-7 of the request was exempt from disclosure under section 22A, 40(2) and 41 FOIA.

7. The complainant requested an internal review on 24 December 2016 in relation to parts 2-7 of the request. The Commissioner is not aware of the date the internal review was provided but is aware that this was sometime after 9 March 2017. The University upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 20 March 2017 to complain about the way his request for information had been handled.

9. During the course of the Commissioner's investigation QMUL revised its position. It confirmed that the information requested could no longer be deemed to be held under section 1(1)(a) FOIA.
10. The Commissioner confirmed with the complainant that her investigation would look at whether QMUL was correct when it said that it does not hold the requested information.

Reasons for decision

11. Section 1(1)(a) of FOIA states that, "Any person making a request for information to a public authority is entitled – to be informed in writing by the public authority whether it holds information of the description specified in the request". Section 1(1)(b) of FOIA states that, "If that is the case, to have that information communicated to him".
12. QMUL has explained that the Chief Investigator of the PACE trial retired from QMUL on 31 December 2016. While QMUL remains the holder and owner of the raw data from this clinical trial, it has effectively lost the means to locate and extract it because this requires specialist knowledge. There is no longer anyone at QMUL with the ability to produce data from this trial. QMUL no longer employs anyone involved with the PACE trial. It said that SPSS and Stata software is required to do this. When FOIA requests have been received since the Chief Investigator's retirement, QMUL has sought advice from the Co-Principal Investigators, but they are based at Oxford University and King's College London respectively. It referred to Decision Notice FS50557646, at paragraph 22 the ICO stated:

"22. The Commissioner considers that all public authorities must be treated fairly. His expectations in terms of their responses to requests for information must be equal. In this case it could be assumed that a statistician capable of analysing the dataset could be found within QMUL. However, this assumption could not equally be applied to other public authorities and is therefore not appropriate. Similarly no public authority could be expected to recruit staff to provide a response to an FOIA request."
13. QMUL considers that the above Decision Notice acknowledges the difficulties faced when public authorities do not employ an individual able to respond to requests for technical information. It said that all of the data analysis on the PACE trial has been done by statisticians, not the Principal Investigators. It reiterated that it would now have to recruit someone qualified to conduct the required extraction, analysis and preparation to comply with the request.

14. The Commissioner explained QMUL's revised position to the complainant, who wrote back with a number of further queries. On the back of this the Commissioner did ask QMUL for some further clarification in relation to their submissions. In particular the Commissioner highlighted the following argument 'All of the data analysis on the PACE trial has been done by statisticians, not the Principal Investigators'. The Commissioner queried why, since analysis has been done by statisticians and not the Principal Investigators, the retirement of one of the Principal Investigators would have an effect on QMUL's ability to produce the information. She asked whether any of the statisticians were ever employed by QMUL and if they were when they ceased to be employed? She also asked if the analysis was only done by statisticians why the Chief Investigator would have been able to do this work.
15. QMUL explained that although the Principal Investigator did not undertake the detailed analysis of the PACE trial's data, he was the only individual from QMUL with knowledge of the terminology and raw database to actually locate the information. Depending on what data is requested, it is possible that he could have provided some, but it does not know if that was the case with the current request. It said he would have at least been able to confirm what was and was not held and what it consists of.
16. It went on that, PACE, like many clinical trials, was a collaborative project involving individuals from across higher education and the NHS. This is demonstrated by the list of authors in the right-hand column of the first page of the main PACE paper (White et al. 2011) and which was provided to the Commissioner. It noted that the other Principal Investigators were from King's College London and the University of Oxford. It confirmed that none of the statisticians were ever employed by QMUL. It said that QMUL certainly employs statisticians on other clinical trials and projects, but no individual on PACE, the funding for which would have finished several years ago.
17. The complainant has also said that one of the credited authors of the PACE paper remains at QMUL and he considers could undertake the work to compile the information he had requested. He provided the name of the individual who he believes is employed by QMUL and could undertake this work.
18. QMUL advised that this individual left QMUL's employment in March 2017. It does not believe that she would have had the expertise to be able to respond to this request in any case.
19. In exceptional circumstances the Commissioner has the discretion to find a breach of s1(1)(b) (ie. that information was held at the time of

the request and was not provided) but can indicate in the Decision Notice that no steps are required.

20. In this case QMUL has argued that the technical expertise to provide the information is simply not now available and therefore that it is just not possible to obtain the requested information from the raw data. As highlighted above, previous Decision Notice FS50557646 has confirmed that no public authority could be expected to recruit staff to provide a response to an FOIA request or to refer to other public authorities for help. Therefore this case is one of those exceptional circumstances where at the time of the request QMUL did hold the information but as the Chief Investigator has retired, leaving it no way to obtain the information now, it can no longer be said to hold the information for the purpose of FOIA and so no steps can be ordered
21. In this case the request was made on 18 October 2016, prior to the Chief Investigator's retirement, and therefore the requested information could have been said to be held at the time of the request. The Commissioner is however unable to order QMUL to take any steps as she cannot find that the information is held now because QMUL no longer has the means to obtain it.
22. Based upon QMUL's submissions the Commissioner is satisfied that on the balance of probabilities, it was likely that some or all of the information requested at parts 2-7 was held under section 1(1)(a) FOIA at the time of the request and it therefore breached section 1(1)(b) FOIA in the handling of this request as the information held was not provided. As explained above, as the information can no longer be said to be held by QMUL the Commissioner is unable to order any steps under the circumstances of this case.

Other matters

23. In this case the complainant requested the internal review on 24 December 2017. The result of the internal review was not provided until after 9 March 2017.
24. The Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review, and in no case should the total time taken exceed 40 working days. In this case this time frame was exceeded.
25. Internal reviews are referred to in the section 45 Code of Practice - <http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/code-of-practice>.
26. The Commissioner would therefore take this opportunity to remind QMUL of its obligations in relation to internal reviews.

Right of appeal

27. 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@hmcts.gsi.gov.uk

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

28. 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.
29. 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

Gerrard Tracey
Principal Adviser

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