

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 November 2018

Public Authority: Department of Health & Social Care

Address: 39 Victoria Street

London

SW1H 0EU

Decision (including any steps ordered)

1. The complainant has requested the Department of Health & Social Care (the DHSC) to disclose a full list of MPDS (Medical Priority Dispatch System) determinants and the categories that they map to under the ambulance response programme. The DHSC refused to disclose the information under section 38 of the FOIA.
2. The Commissioner's decision is that the DHSC has acted appropriately by refusing to disclose the requested information under section 38 of the FOIA. The Commissioner does not therefore require any further action to be taken.

Request and response

3. On 29 December 2017, the complainant wrote to the DHSC and requested information in the following terms:

"Would you be able to provide me the following under the freedom of information act:

1) a full list of MPDS determinants and the categories that they map to under the ambulance response programme

2) a full list of NHS pathways outcomes that result in an ambulance attendance and the categories they map to under the ambulance response programme"

4. The DHSC responded on 29 January 2018. It stated that it holds recorded information relevant to the complainant's request but it is exempt from disclosure under section 38 of the FOIA.
5. The complainant requested an internal review on 30 January 2018.
6. The DHSC carried out an internal review and notified the complainant of its findings on 9 April 2018. It confirmed that it remained of the opinion that section 38 of the FOIA applied.

Scope of the case

7. The complainant contacted the Commissioner on 17 April 2018 to complain about the way his request for information had been handled. Specifically, the complainant remains dissatisfied with the DHSC's decision to withhold the requested information. He stated that he considers some the DHSC's arguments are tenuous at best as it is already possible for a member of the public who wishes for a high priority ambulance response to be generated to look at information already in the public domain and to use this to influence how a 999 call is assessed. The complainant is of the opinion that there are several reasons why the disclosure of this information is in the public interest. He stated that the ambulance service has recently undergone a large change in the way things are triaged and knowing how the outcome of telephone triage map against categories is very much in the public interest. In addition, he stated that he felt the outcome of triage indicates how severe symptoms are so it is in the public interest to know what high priority symptoms require an ambulance response. He accepted that whilst the DHSC's arguments do carry some merit, it is already possible for a member of the public to generate a high priority ambulance response using the symptoms described on publicly available websites.
8. During the Commissioner's investigation the DHSC confirmed more precisely that it holds recorded information falling within the scope of point 1 of the request but it does not hold any recorded information falling within the scope of point 2. The NHS Pathways determinants and codes requested in point 2 are owned by NHS Digital and therefore the DHSC does not hold them. It stated that the complainant was therefore directed to put this element of his request directly to NHS Digital on 29 January 2018.
9. The Commissioner considers the scope of her investigation is to determine whether the DHSC has appropriately applied section 38 of the FOIA to point 1 of the request.

Reasons for decision

10. Section 38 of the FOIA states that information is exempt from disclosure if its disclosure would or would be likely to –
 - (a) endanger the physical or mental health of any individual, or
 - (b) endanger the safety of any individual.
11. This exemption is also subject to the public interest test. So, in addition to demonstrating that the exemption is engaged, the DHSC must consider the public interest arguments for and against disclosure and demonstrate that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption.
12. The DHSC confirmed that it is not the information asset owner for the codes and determinant descriptors; they are in fact owned by a third party known as Priority Dispatch Corporation. As a member of the Emergency Call Prioritisation Advisory Group (ECPAG), the DHSC received files within the scope of point 1 of the request and it supplied these to the Commissioner on a confidential basis (it will be described as the withheld information for the remainder of this notice). It explained that the withheld information includes the new Ambulance Response Programme (ARP) categories and determinant descriptors.
13. The DHSC stated that disclosure of the withheld information would enable the manipulation of the priority of ambulance responses, potentially diverting scarce resources away from actual high priority patients. It explained that the withheld information contains keywords and condition specific detail mapped to ambulance response categories which would allow an individual to manipulate the response time they receive by using keywords to elicit a higher priority ambulance response. It confirmed that the re-direction of resources to lower priority patients would put those who genuinely require a higher priority response at risk and endanger their lives. The DHSC said that it would only take one potential misuse of the information to put another life at risk. It went on to say that whilst it may already be possible to do this without specific knowledge of the information requested (for example, by falsely stating that the patient is not breathing), the specificity of the information would allow for the manipulation of response priority in a more convincing way, that is less likely to be detected by ambulance call handlers. The DHSC also commented that ambulance services are facing very high demand on their resources, which already inhibits their ability to respond to patients within expected timeframes. The disclosure of the withheld information would make this worse and increase the risks

involved. Accordingly, it considers that disclosure of the withheld information would have a detrimental effect on the physical or mental health of any individual and that there is a significant chance of this endangerment occurring as a result.

14. The DHSC went on to address the complainant's submission that information is already in the public domain which would enable an individual to manipulate the triage process and a response. It said that some information related to this request is indeed in the public domain. Following the implementation of the new response time standards, 999 calls are now allocated to one of four categories which relate to the type and severity of incident, with an associated response time expectation for that type of call. Information available to the public includes descriptions of these four categories, including the type of call and expected response time. It stated that information can be found via NHS England's website and some ambulance trusts also publish information about categories and examples of some conditions which may be included in each.
15. However, it is of the opinion that the publicly available information is considerably different to the withheld information, as what is already publicly available provides a broad overview of the categories and focuses on helping the public to understand the changes that have been made to response time standards. Whilst there are some examples of conditions which might be allocated to each category, this is limited to the condition itself and does not describe symptoms or contain keywords which would allow people to manipulate ambulance responses. The withheld information is highly granular and would easily lead to manipulation that is less likely to be detected by ambulance services.
16. The Commissioner asked the DHSC to demonstrate more precisely, providing examples if possible from the withheld information itself, how the withheld information would have the consequences it described. The Commissioner commented that the withheld information did not provide detail with respect to the specific questions a caller would ask whilst triaging the call and how answers to these are used to assign the call to the appropriate response time category.
17. The DHSC responded, stating that it is correct that the withheld information does not necessarily include the information about specific questions or keywords in the call taking process. However, even without this information it considers it would be easy for a person to use the information requested to calibrate their answers to questions so that they are assigned a higher priority response than is actually warranted by their condition or receive a face-to-face ambulance response where one is not actually required.

18. It used an Accidental Overdose to illustrate this point to the Commissioner. It stated that the withheld information delineates the response categories and therefore the assigned responses time. It is not possible for the Commissioner to elaborate further on this specific example because the DHSC has used the withheld information itself to demonstrate this point. But the Commissioner is satisfied from what the withheld information contains and how the DHSC has described how this could be used, that it could be used convincingly by someone wishing to manipulate the response time to their call. She is satisfied from the example provided that the requested information would enable sophisticated manipulation of response times in a way that is convincing and less able to be detected by call handling staff (compared to such attempts that are not informed by the requested information). Additionally, the DHSC has said that the assigned 90th centile response times vary hugely depending on the aggravating circumstances determined to be present, ranging from 15 minutes to three hours. It argued that there is a large incentive for the 'gaming' of the prioritisation process.
19. The DHSC went on to say as well that many lower priority calls (predominantly in categories 3 and 4) receive secondary phone triage by trained clinical staff such as paramedics or nurses (as opposed to 999 call handlers, who are not clinically trained). Many such calls are able to be safely closed with medical advice provided over the phone (known as 'hear and treat'). It explained that this process avoids the need to send a face-to-face ambulance response and the manipulative use of the requested information would also subvert this vital process.
20. In terms of how such concerns could result in the endangerment of the physical or mental health of an individual or the safety of an individual, the DHSC stated that it is important to recognise that ambulance services, like other parts of the NHS, are facing record demand on their resources. It argued that it is a consistent challenge for them to meet nationally mandated performance targets. It is therefore exceedingly important that they are able to effectively prioritise the use of limited resources to respond to the sickest of patients fastest, and to effectively signpost callers to other, non-urgent clinical services where appropriate. It went on to say that the effective prioritisation of responses to 999 calls through the use of automated call handling software like MPDS is a vital element of this, as is the effective use of 'hear and treat'. Where these processes are distorted and resources are wrongly assigned to lower priority patients over those in acute clinical danger (such as those in cardiac arrest), it is axiomatic that significant and avoidable harm is being caused to those patients. The DHSC confirmed that it has sought expert opinion from clinical leadership in the ambulance service, which strongly supports that the information should not be released due to these risks.

21. The Commissioner questioned how someone that would use the 999 service (considering the emotional state, the fact that they consider it is an emergency; not a planned incident) be in a position to use the withheld information to manipulate the response they received. In response the DHSC stated that it should be noted that expected ambulance times can be as long as 2 hours (category 3) or 3 hours (category 4). Category 3 and 4 calls comprise around 30% of all 999 calls received. It stated that even for higher priority category 2 calls (which can include conditions like heart attack and stroke), patients can expect a response within 40 minutes 90% of the time. Category 2 calls comprise around 60% of calls. It confirmed that the reality of these clinically-evidence response times is at odds with the public perception that ambulances are dispatched to them immediately upon calling 999, where this is true of only the most life-threatening issues. The DHSC commented that callers are often anxious or in pain, or acutely concerned about the person they are calling on behalf of. It is common for them to call multiples times over a number of hours to request a more prompt response.
22. The DHSC said if the withheld information was disclosed there is an unacceptable risk that it will be made available to the public more broadly, where it may be accessed by a large number of patients waiting for low-priority ambulance responses. Patients will have the time to access the information, and will be motivated to use it to manipulate the priority of the call when re-contacting the ambulance service.
23. Furthermore, it said, while it is correct that the majority of calls will be from people in genuine need, many 999 calls are made by people that call ambulance services very frequently, requesting ambulance responses when they are not clinically required, or responses that are quicker than is actually needed. The DHSC argued that it is difficult to be precise with respect to proportion of calls generated by these 'frequent callers', however it is accepted that it is substantial, and creates an outsized burden on ambulance resources.
24. The DHSC referred the Commissioner to the following newspaper article to highlight further this point:

<https://www.standard.co.uk/news/london/nuisance-caller-rang-london-ambulance-service-3600-times-over-12-months-a3783746.html>

It advised that ambulance services have a duty to determine appropriate responses to all 999 calls, including calls made by frequent callers. It is reasonable to assume that this cohort of callers would be motivated to understand and use this information to manipulate responses to their calls, and would subsequently be much more difficult for ambulance services to effectively manage.

25. The Commissioner has considered the withheld information and the submissions received from the DHSC and she is satisfied that section 38 of the FOIA is engaged in this case. She will now explain why.
26. Firstly it is noted that the DHSC has relied on 'would' rather than 'would be likely', which ultimately means that the burden of proof is higher. The Commissioner has considered the information already available in the public domain and compared it to the withheld information in this case and she is satisfied that the withheld information is far more detailed and sufficiently different. The example the DHSC used from the withheld information to demonstrate how the withheld information could be used demonstrates that it could be used by someone wishing to manipulate a response time. For the example provided it contains keywords for various presentations of this category and illustrates how such keywords and the differences between them trigger a certain response category and therefore response time. The DHSC has said that members of the public can wait up to 4 hours for an ambulance dependent on the patient's condition. Yet this is not the general perception of the public; people do generally expect to receive an ambulance much quicker than this and in certain situations will consider that they *should* have a quicker response time than the reality. Understandably, patients themselves, concerned family members, friends and makers of the call will be anxious and worried. Where a lower category response time has been allocated there is sufficient time for those concerned to access the withheld information (if it was freely available to the world at large, which is what disclosure under FOIA effectively means), call back and use keywords detailed in the withheld information to access an ambulance sooner.
27. It cannot be ignored that the ambulance service is abused. The article referred to above illustrates that the misuse of the service is a frequent and reoccurring problem and quotes that 10% of 999 calls are from frequent callers. If the information could be used to manipulate the response time (and the Commissioner is saying that she is satisfied that it could from the submissions received from the DHSC) it must follow that such manipulation or misuse of the service would endanger the physical or mental health of an individual or endanger the safety of an individual. Misuse of the service or manipulation of how the call is triaged will inevitably put others at risk. It will result in a response that is not clinically required in the time that it is made making the availability of the service for those that should take priority or have life threatening conditions more restrictive. It will be endangering the health and safety of other individuals that are in greater need of medical assistance.

28. As the Commissioner is satisfied that disclosure would endanger the health and safety of individuals and that section 38 of the FOIA applies, she now needs to go on to consider the public interest test.
29. The DHSC said that there is a public interest in promoting transparency and openness in the way public authorities operate through the release of information. There is a general public interest in transparency of discussions within government and in particular how it plans and implements its strategy for presentation of its policies. It argued that information about the NHS and in particular ambulance services remain live, open to debate and scrutiny and it recognises the public interest in favour of disclosing information relating to this issue. The withheld information relates to measures that rightly continue to remain at the forefront of the public's mind and it acknowledges this is demonstrated by the unrivalled national media coverage it receives on a frequent basis.
30. However, the DHSC maintained that section 38 applies and the public interest is best served by maintaining this exemption. It referred again to the consequences of disclosure as detailed earlier in this notice and confirmed that such consequences are not in the interests of the general public.
31. The Commissioner acknowledges the public interest in favour of disclosure. There is a public interest in openness, transparency and accountability and in members of the public having access to information that enables them to understand more clearly what specific measures or policies are in place. She accepts the disclosure of the withheld information in this case would enable the public to understand more closely which conditions trigger certain response times and how variations in one condition can trigger a low priority response on the one hand and a higher priority response on the other. The NHS and its ambulance services is always an important and high profile subject and often an emotive one too. There will therefore often be compelling public interest arguments in favour of disclosing some information about the NHS.
32. However, that being said, the Commissioner has concluded in this case that disclosure of the withheld information would endanger the health and safety of individuals. The DHSC has demonstrated clearly how the information could be used to manipulate the triage of a 999 call, that this is likely to happen considering the published misuse of the service to date and the genuine anxiety and worry that the majority of patients feel and callers when contacting this service in what they consider to be an emergency situation. It is not in the public interest to disclose information that would disrupt the ambulance service and put those in need at risk. Instead it is in the public interest to ensure that the

ambulance service continues to run as efficiently and effectively as possible and this is reliant on 999 calls be triaged correctly and the most appropriate response category being allocated to each call.

Other matters

33. The section 45 code of practice advises public authorities to carry out internal reviews within 20 working days of receipt and certainly no later than 40 working days for those cases that are particularly complex or voluminous. In this case the DHSC took just short of 10 weeks to carry out the internal review and notify the complainant of its findings. The Commissioner would therefore like to take this opportunity to remind the DHSC of the requirements of the section 45 code of practice and the need to complete internal reviews within the timeframes quoted.

Right of appeal

34. 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

35. 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.
36. 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

Samantha Coward
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