

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 October 2023

Public Authority: University Hospitals Dorset NHS Foundation Trust

Address: Longfleet Road
Poole
BH15 2JB

Decision (including any steps ordered)

1. The complainant has requested information relating to maternity services at University Hospitals Dorset NHS Foundation Trust (the Trust). The Trust provided some information to the complainant and stated other information was not held.
2. The Commissioner's decision is that, on the balance of probabilities, the Trust has provided all of the information it holds falling within the scope of the request, and therefore it has complied with section 1 of the FOIA.
3. The Commissioner finds the Trust breached section 10 (time limits for compliance) of FOIA by not responding to the request within 20 working days.
4. The Commissioner does not require the Trust to take any steps as a result of this decision.

Request and response

5. On 3 August 2022 the complainant wrote to the Trust and requested information in the following terms:
"Maternal visiting hours – provision to partners to stay overnight on antenatal and postnatal wards.

Q1. How many women have you consulted about this decision?

Q2. How are the Trust justifying it as a proportionate restriction to family's rights under Article 8 in line with their duties under human rights law?

Q3. How are the Trust mitigating this against the staffing crisis and inevitable incidences of understaffing on the wards?

Q4. What consideration has the Trust given to its public sector equality duty under the Equality Act 2010? Please provide us with a copy of an equality impact assessment. Please confirm the following factors were taken into account:

a) Acknowledgement that these restrictions are more likely to impact disabled women ... Please provide us with a copy of your procedure to request reasonable adjustments, including how this is communicated to women and their families. (Consider this a request under the Freedom of Information Act 2000).

b) Acknowledgement that black and brown women are 4-5 times more likely to die during childbirth and how this policy may affect these women.

Q5. Please provide the Trust's most recent risk assessment underpinning this decision as well as their rationale for the restriction. (Consider this a request under the Freedom of Information Act 2000) if the following is not covered in the risk assessment, please answer them separately.

a) Why is this situation different to pre-pandemic?

b) if COVID is a reason (which was not originally proposed) what other measures have been put in place to mitigate the risk?

c) Will restrictions be lifted if the ward is understaffed?

d) If you want to make exceptions and all single rooms are occupied will exceptions be made in shared rooms?

e) Will women who have history of mental health problems be treated as an exception?

f) Will women who have experience of psychological and/or physical birth injury be exempt?

g) Will women who have had c-sections and or suffered a birth injury, limiting their movement be exempt?

- h) Will women who become psychologically distressed, i.e. crying and asking for their partner will then be allowed in to support them?
- i) What else have you tried to mitigate the worries by the trust before restricting partners on the ward?
- Q6. How has the decision been transparently communicated to service users?
- Q7. What is the plan for re-introducing overnight stays to get back to "pre-pandemic or better" as the Chief Executive of NHS England has said must be done?
- Q8. If a woman goes into labour during the night on an antenatal ward and they ask for their partner, are there instances where they will be denied until they are in "established" labour?
- Q9. When will the restriction next be reviewed? How will service users be consulted? If this is through the MVP, how will the MVP consult service users and what resources will they be provided with?
- Q10. What percentage of shifts on the antenatal wards and postnatal wards have been understaffed during the past 2 months? (Consider this a request under the Freedom of Information Act 2000).
- Q11. We believe in 2021 there was a review of the maternity unit by Birthrate Plus, please provide a copy of this report and the findings. (Consider this a request under the Freedom of Information Act 2000)
- Q12. Will the trust be willing to meet a representative group of service users to hear our concerns and answer any further question we have?
6. The Trust responded on 3 November 2022. For Q1 it explained the consultation process was undertaken by the Maternity Voice Partnership (MVP) and as such the Trust did not hold data on MVP activity. For Q2 it stated no information was held in documented format. For Q3 it explained the Trust's maternity service has an escalation guideline for staff shortages and went on to explain the current staffing in maternity services.
7. In response to Q4 the Trust stated no Equality Impact Assessment took place and stated no information was held in documented format with regard to the follow-up points asking for acknowledgement of specific statements.
8. Q5 asked for a risk assessment underpinning the decision regarding visiting hours and the Trust stated no risk assessment existed for this but did state risk assessments were undertaken during the pandemic but were not needed now. With regard to the follow-up points in this

request asking questions about specific scenarios, the Trust stated information was not held in a documented format.

9. For Q6, Q7 and Q9 the Trust provided explanations. Q8 asked a question about a specific scenario and the Trust again stated no information was held in a documented format. Q10 asked about percentages of understaffed shifts and the Trust provided a document containing information on this point. For Q11 the Trust provided the report document.
10. The complainant responded to the Trust on 22 November 2022 expressing dissatisfaction as they had asked for recent policies and risk assessments and did not accept they did not exist. They argued whatever policy is being used at the moment is the current one and if a risk assessment has not been done since 2010 then that is the most recent policy.
11. The Trust responded on 23 November 2022 stating none of the questions in the request asked for access to Trust policy documents and only Q5 related to a risk assessment. The Trust understood this to be asking for a documented risk assessment associated with the recent changes to visiting hours and any risk assessment undertaken at another point in time under different circumstances would not be in scope of the request. The Trust offered to consider any risk assessments undertaken in the past with regard to visiting restrictions within maternity if this was required by the complainant as part of the internal review.
12. The complainant responded to the Trust in February 2023, some months later, due to crossovers with another request and some confusion over whether the internal review process had begun. The complainant clarified Q5 and asked if the Trust could provide all the risk assessments that cover the period from the beginning of the pandemic up until the most recent one that is held. The complainant also questioned the 'not held in a documented format' response to several of the questions, asking the Trust to clarify this as it suggested only verbal conversations had taken place. The complainant argued this seemed unlikely given that the Trust would want to see evidence of how many women were contacted and the response from women in the MVP before deciding how to proceed.
13. The Trust responded on 9 February 2023 apologising for the delays in responses. It explained that as FOIA only applies to the disclosure of documented information held by the Trust and does not require the creation of information or apply to the information in an employee's head, it considered it was appropriate to state information was not held in a documented format for many of the questions asked as the information formed part of a conversation which was not documented or

minuted. In addition, the Trust stated many of the questions within the request were not in scope of the FOIA as they required speculation or the provision of an opinion.

14. Further correspondence followed in June 2023 with some confusion still over whether the internal review was underway and the Trust was still considering the additional risk assessment for disclosure.
15. The Trust provided its final response on 5 July 2023. It stated it initially did not think there was any further documentation to disclose but had since found some written risk assessments. It therefore issued a revised response to the information request. For Q4 it stated a formal Equality Impact Assessment was not documented in 2020 but an Equality Impact Assessment was undertaken in March 2022 and this document was provided to the complainant. For Q5 the Trust provided several documents – “COVID19 Physical distancing assessment June 2020”, “Aug 20 Visiting Risk Assessment”, “Oct 20 Visiting Risk Assessment” and “March 22 Visiting Risk Assessment”.

Scope of the case

16. The complainant contacted the Commissioner on 12 June 2023 to complain about the way their request for information had been handled.
17. The Commissioner wrote to the complainant to confirm the scope of his investigation, asking the complainant to clarify what parts of the response they were challenging. The complainant stated it was all parts but for different reasons. Where it was stated information was not held in documented format or was undertaken by MVP they argued this was unlikely as hospitals would not make decisions or policy changes without explanation or evidence. Where information was provided the complainant argued it was either irrelevant as it was out of date or did not answer the questions asked. In the case of the document relating to staffing levels there was no supporting information to explain what the numbers meant.
18. The Commissioner considers that the scope of his investigation is to determine if there is any further recorded information held that is in scope of FOIA and the requests made.

Reasons for decision

19. Section 1 of the 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 within the scope of the request, and if so, to have that information communicated to them.

20. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
21. The Commissioner wrote to the Trust to obtain further information on its relationship with MVP to understand why it had been stated that no documented information was held for several parts of the request.
22. The Trust explained that the MVP are a community group providing a link between families and NHS maternity services in Dorset. They are employed by NHS Dorset. The role of the partnership is to seek and collate feedback from women/families locally and pass this back to the relevant NHS organisations.
23. It further explained that during the pandemic the MVP held weekly 'touchpoint' meetings with NHS organisations that were not formally minuted. The MVP put out a request for comments and feedback on social media and the Trust considers this is the 'consultation' referred to in the request and, as such, this was not a formal documented consultation, the Trust played no role in organising it and received no documented feedback. Any feedback would have been delivered verbally through the touchpoint meetings.
24. The Trust added that it considered the bulk of the request should not have been dealt with under FOIA as the questions are subjective and ask for opinions and only a few of the questions asked for a response under FOIA. The Trust acknowledged its approach to the request was inconsistent, providing narrative answers in some cases but not in others.
25. On a general point the Trust advised that if information were to be held it would likely be held in policy and procedure documents but these are high-level documents that do not deal with every possible permutation of a situation. Answers to specific questions about specific scenarios would need to be based on professional clinical judgement taken at the time, taking into account all of the circumstances. The Trust points to Q5 to illustrate its point – the questions and scenarios asked here relate to very specific circumstances. These scenarios would not be detailed in any policy document. Each person is treated according to their needs and these will vary from person to person. Circumstances within the

maternity department will also vary and all of these factors will inform the decisions made.

26. The Commissioner has revisited the request and is of the view that only certain parts would fall within the scope of FOIA. Much of the correspondence is framed as questions and asks for views from the Trust. Whilst questions can be FOIA requests if there is recorded information held by a public authority that could answer the questions, the phrasing of many of the requests in this case are quite leading and ask for confirmation of scenarios or for the Trust to comment on very particular circumstances. The Commissioner accepts the Trust's point on this, that there is no recorded information that would answer these questions or cover these specific scenarios.
27. For the questions the Commissioner considers are valid FOIA requests (Q1, Q4, Q5, Q10, Q11) the Commissioner has reviewed the information provided. Q1 related to the 'consultation' which the Trust has explained it holds no recorded information on. The Commissioner considers the Trust's explanation around MVP's touchpoint meetings and how feedback was communicated is reasonable and he has no reason to dispute the position that no formal minutes were taken and no recorded information is held on this point.
28. For Q4, copies of Equality Impact Assessments have now been provided. The follow-up parts to this request asked the Trust to acknowledge certain statements and the Commissioner does not consider these to be requests under FOIA.
29. For Q5, risk assessments were provided to the complainant and the follow-up questions asked about very specific circumstances which, as the Trust has explained, will often require clinical judgements and will be determined on case-by-case bases taking into account the situation at the time they occur. The Commissioner accepts it is extremely unlikely any recorded information will be held that details how to react in each of these scenarios.
30. For Q10 the Trust provided a document on percentages of understaffed shifts. The complainant has stated that without any explanatory information to accompany this it is of no use as little sense can be made of it. Whilst the Commissioner would encourage public authorities to provide explanation if it is appropriate to do so it is not required to under FOIA.
31. Finally, for Q11 the report referred to has been provided to the complainant.
32. Based on the above, the Commissioner has determined that, on the balance of probabilities, the Trust holds no further information and has provided everything it holds falling within the scope of the requests.

33. The Commissioner therefore finds that the Trust has complied with section 1 of the FOIA.

Procedural matters

34. Section 10(1) of FOIA says that a public authority should comply with section 1(1) promptly and no later than the twentieth working day following the date of receipt of the request.
35. In this case, the Trust provided its response to the request of 3 August 2022 on 3 November 2022, which is significantly outside the 20 working day time limit. Therefore, the Trust breached section 10(1) of FOIA.

Other matters

36. The Commissioner notes the time taken for the Trust to respond to the complainant's internal review request significantly exceeded 40 working days. Although there is no statutory time limit for carrying out a review, it is best practice to do so within 20 working days, or in exceptional circumstances, 40 working days.
37. The delayed responses from the Trust have been noted and the Trust acknowledges the delays were unacceptable. The Trust should ensure that future reviews conform to the recommendations of the section 45 Code of Practice.

Right of appeal

38. 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

39. 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.

40. 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

Jill Hulley
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