

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 13 March 2024

**Public Authority:** Kent Community Health NHS Foundation Trust

**Address:** The Oast, Unit D  
Hermitage Lane, Barming  
Maidston  
Kent ME16 9NT

#### **Decision (including any steps ordered)**

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1. The Commissioner's decision is that, on the balance of probabilities, Kent Community Health NHS Foundation Trust ('the Trust') doesn't hold information within scope of the request for changes made to a report template and has complied with section 1(1) of FOIA.
2. It's not necessary for the Trust to take any corrective steps.

#### **Request and response**

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3. The complainant submitted the following information request to the Trust on 23 September 2023:  

"Please could you detail the changes made to Psicon's autism assessment report template in order to comply with the Advertising Standards Agency's ruling in case ref: A23-1201817."
4. The Trust responded on 12 October 2023 – its reference FOI 232. It advised that it doesn't hold the requested information.
5. In correspondence to the Trust of 12 October 2023, the complainant noted a previous internal review of a response to an earlier request (Trust's reference FOI 122). That request of 5 July 2023 was for the template in use on 11 April 2023. The Trust had confirmed that it held

the template Psicon Ltd used at that date and had detailed some changes that had been made to the template in June 2023. The Commissioner has considered a separate complaint about the Trust's handling of that request under reference IC-283032-N4V5.

6. In further correspondence to the Trust on 13 October 2023, the complainant said it was "obvious" that Psicon Ltd held versions of its template from which it could extract details of any changes made (or to confirm none have been made). They also said that, as a sub-contractor, anything Psicon held in relation to its NHS assessments is also deemed to be held by the Trust [under FOIA].
7. In its internal review of 5 December 2023, the Trust confirmed that it holds no record of any changes that have been made "as a result of this case" by which the Commissioner understands the Trust to mean the "ruling" the complainant had referred to in their request. Regarding this "ruling", the Trust said it understood that it related to private assessments Psicon Ltd conducted and therefore it fell outside the remit of the Trust's contractual control.
8. The Trust advised that, in order to support as far as possible, it had requested confirmation [from Psicon Ltd] of any changes that have been made to remove reference to either 'ADOS' [Autism Diagnostic Observation Schedule] or 'DISCO' [the Diagnostic Interview for Social and Communication Disorders]. Psicon Ltd confirmed that when using the report template the wording has been updated to ensure that in cases where an ADOS trained member of the team isn't present in the assessment, anything referencing "ADOS informed" is removed from the template.
9. The Trust concluded its review by confirming that it had "provided all information in response to this request" of 23 September 2023.

## Reasons for decision

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10. This reasoning covers whether, on the balance of probabilities, the Trust holds information within scope of the complainant's request.
11. Under section 1(1) of FOIA a public authority must (a) confirm to an applicant whether or not it holds the information they've requested and (b) communicate the information to the applicant if it's held and isn't exempt information.
12. The complainant has requested details of changes made to Psicon Ltd's autism assessment report template in order to comply with an Advertising Standards Agency (ASA) finding.

13. In their complaint to the Commissioner, the complainant said that they dispute that the ASA finding concerned private assessments only and so was beyond the Trust's control. They provided evidence which they said supported this – this included the ASA Complaint Notification about Psicon Ltd, a screenshot from the ASA website showing one complaint had been made about Psicon Ltd and screenshots from Psicon Ltd's website.
14. In further correspondence they sent to the Commissioner dated 21 February 2024, the complainant detailed at length what they consider to be 'Outstanding Items' associated with the complaints they've submitted to the Commissioner about the Trust's handling of their requests. In relation to the current request, the complainant again disputed that the Trust doesn't hold "any changes to Psicon's autism report template in response to the recent ASA ruling against them." They also disputed that the ASA finding concerned private assessments only because there's nothing to suggest that's the case from the ASA Complaint Notification, from information published on the ASA's website or for another reason the complainant has given but which the Commissioner isn't going to reproduce in this notice. The complainant also made allegations about the Trust and Psicon Ltd.
15. The complainant sent the Commissioner a second piece of correspondence on 21 February 2024 that outlines their 'General Concerns'. The Commissioner has been unable to identify any matters relevant to this complaint in that correspondence.
16. In its submission to the Commissioner, the Trust has confirmed that it did hold a copy of the Psicon Ltd template in use on 11 April 2023, which had been updated in June 2023. It's confirmed, however, that it doesn't hold information related to any changes made since 22 August 2023. The significance of this date isn't clear to the Commissioner, although he notes that the Trust carried out an internal review on that date in the separate case IC-283032-N4V5.
17. The Trust says it remains Psicon Ltd's position that any discussions concerning the ASA weren't related to an NHS assessment and the information detailed in the ASA Complaint Notification doesn't make reference to NHS services.
18. The Trust considers that it's conducted sufficient searches in relation to the complainant's request, including reviewing the ASA's website. That website confirms that one complaint has been raised against Psicon Ltd

which was informally resolved. However, as recorded on the ASA's website, Psicon Ltd has no formal "rulings" against it<sup>1</sup>.

19. The Trust has confirmed to the Commissioner that it holds no information relating to this request for information.
20. FOIA concerns recorded information a public authority holds at the time it receives a request for it. The Commissioner's considered whether the Trust holds recorded information detailing changes that were made to a certain template at a certain point, after an ASA finding. This is very specific information that the Commissioner considers the Trust would be unlikely to hold.
21. Addressing an argument the complainant made in their request for a review, it's true that in certain circumstances if another person holds information on behalf of a public authority, then the public authority can be said to hold the information under FOIA. Psicon Ltd has confirmed that the assessment associated with the ASA finding concerned private assessments not NHS assessments. If Psicon Ltd therefore held the requested information at all, and the Commissioner considers that to be unlikely, then the Commissioner doesn't consider it would hold the information on the Trust's behalf. As such, the Trust wouldn't hold it in those circumstances. As it is, Psicon Ltd did provide the Trust with some detail about the template, voluntarily and in response to contact from the Trust.
22. The Commissioner has also considered the separate request considered under IC-283032-N4V5 and the Trust's response to it. That request of 5 July 2023 was for the template in use on 11 April 2023. The Trust withheld the template but explained changes Psicon Ltd had made to it in June 2023.
23. It's therefore established that the Trust holds a version of the template. However, that isn't what's been requested in this case. As noted, the Commissioner is considering whether, at the time of the current request, the Trust held recorded information about changes made to the template in question at a certain point, after an ASA finding.
24. The Commissioner is satisfied that as a result of its correspondence with the complainant, culminating in the comprehensive internal review of 5 December 2023, and as a result of the complaint to the Commissioner

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<sup>1</sup> <https://www.asa.org.uk/codes-and-rulings/rulings.html?q=A23-1201817#informally-resolved>

the Trust has thoroughly considered whether it holds information that's relevant to the request; that is, recorded information about changes made to a template.

25. The Trust has described to the complainant earlier changes that Psicon Ltd made to the template. It didn't hold this information but had sought out the information from Psicon Ltd and passed it to the complainant in response to the earlier request and in its internal review of the current request. FOIA doesn't oblige a public authority to seek out from elsewhere information it doesn't hold itself in order to comply with a request, but the Trust did so in this case in order to be helpful.
26. However, having considered all the circumstances, the Commissioner accepts that, on the balance of probabilities, the Trust complied with section 1(1) of FOIA as, in relation to the current request, it didn't hold the requested information about changes to template after an ASA finding.

## **Right of appeal**

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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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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.

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**