

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)

1. The Commissioner's decision is that Kent Community Health NHS Foundation Trust ('the Trust') doesn't hold the requested information about autism assessment outcomes but that it didn't comply with section 1(1)(a) and 10(1) of FOIA. This is because the Trust didn't confirm it doesn't hold the information within the statutory timeframe.
2. It's not necessary for the Trust to take any corrective steps.

Request and response

3. The complainant submitted the following information request to the Trust on 28 September 2023:

"In the diagnosis tables provided Psicon have outcomes of 'inconclusive', 'diagnosed autism', and 'not diagnosed autism', whereas Sinclair-Strong have outcomes of 'ASD [Autism Spectrum Disorder] diagnosis confirmed' and 'ASD diagnosis not confirmed'. Please can you provide Psicon's and Sinclair-Strong's policies regarding such outcome options so as to explain how it is the two companies can differ from each other and what these terms actually indicate."

4. The Trust responded on 12 October 2023 – its reference FOI 235. It provided definitions of the terms referred to in the request. The Trust appears to have sought the definitions from the two organisations referred to in the request as a result of the request.
5. The complainant requested an internal review on 13 November 2023. They discussed concerns they had about the two organisations' definitions as these suggested to them that the organisations' aim was "to conceal their failure to carry out comprehensive assessments to resolve confounding issues."
6. The Trust provided an internal review on 5 December 2023. It acknowledged that it had failed to advise that the requested information wasn't held in policy documents and therefore it hadn't provided policy documents. The Trust explained that it had sought further clarity from Psicon Ltd and Sinclair Strong Consultants. Sinclair-Strong Consultants confirmed that its original definition applied; Psicon Ltd had provided further explanation which the Trust passed to the complainant. The Trust confirmed that it considered that this request was now closed.
7. In their original complaint to the Commissioner on 18 January 2024, the complainant made certain allegations about Psicon Ltd and Sinclair-Strong Consultants. Of some relevance to this complaint the complainant disputed that policy documents didn't hold information relevant to their request. They said that they happened to have a copy of "Psicon's 'How to make the most' admin doc" which they said contains relevant information and which they'd forwarded to the Trust.
8. In two further items of correspondence that they sent to the Commissioner dated 21 February 2024, the complainant detailed at length what they consider to be 'Outstanding Items' and 'General Concerns' associated with the complaints they've submitted to the Commissioner about the Trust's handling of their requests, of which there are a number. The Commissioner has taken account of the complainant's reference to the current request in the 'Outstanding Items' document.

Reasons for decision

9. The reasoning focusses solely on whether the Trust has met its obligations under section 1(1) and 10(1) of FOIA.
10. FOIA concerns recorded information only. It doesn't oblige a public authority to give explanations or opinions or to create or seek out from elsewhere information it doesn't hold itself in order to comply with a

request. Nor is FOIA concerned with the accuracy or otherwise that a public authority discloses.

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. Section 10(1) of FOIA obliges a public authority to comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
13. In its submission to the Commissioner, the Trust has acknowledged that it had failed to confirm or deny whether or not it held policy documentation relevant to the request. In its submission, the Trust has confirmed that it holds no "further" information relating to this request.
14. Any relevant policies that Psicon Ltd and Sinclair-Strong Consultants may hold that contain information about the outcome options the complainant has referenced would be held for their own purposes and not for any of the Trust's purposes. As such the Commissioner accepts that the Trust doesn't hold such information. He notes that it had sought out relevant information from those two organisations in order to provide some information to the complainant and to be helpful; it didn't hold this information itself. As noted, FOIA didn't require the Trust to do this.
15. Section 1(1)(a) of FOIA requires a public authority to confirm whether or not it holds information that's relevant to a request. The Trust didn't do that on this occasion. With the benefit of hindsight, when it initially responded to the request the Trust might have clearly confirmed that it didn't hold the requested information. It could then have advised that, in order to help the complainant, it was passing on some relevant information that it had sought out from Psicon Ltd and Sinclair-Strong.
16. The Commissioner is satisfied that the Trust doesn't hold the requested information but finds that the Trust didn't comply with section 1(1)(a) and 10(1) of FOIA on this occasion. That's because the Trust didn't confirm it doesn't hold the information within the statutory timeframe.

Right of appeal

17. 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

18. 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.
19. 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