

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 August 2024

Public Authority: East Suffolk and North East Essex NHS Foundation Trust

Address: Ipswich Hospital
Heath Road
Ipswich
IP4 5PD

Decision (including any steps ordered)

1. The complainant has requested information from East Suffolk and North East Essex NHS Foundation Trust (the Trust) relating to the number of babies delivered by caesarean section under specific circumstances specified in the request. The Trust has stated that no babies were delivered under the circumstances specified in the request.
2. The Commissioner's decision is that the Trust has failed to comply with section 1 of FOIA due to it not conducting appropriate searches for information falling within the scope of the request.
3. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation:
 - Conduct further appropriate searches for any further information falling within the scope of the request and, if further information is identified, to either:
 - provide that information, or
 - issue an appropriate refusal notice.
4. The Trust must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 14 December 2023, the complainant wrote to the Trust and made the following request for information under FOIA:

“I would like information regarding the below queries:

- How many deliveries with babies born under 36 weeks gestation via caesarean section birth with forceps assistance in the last 12 months at Ipswich Hospital resulted in intraventricular haemorrhage?
- How many deliveries with babies born under 36 weeks gestation via caesarean section birth with forceps assistance in the last 12 months at Ipswich Hospital resulted in subarachnoid haemorrhage?
- How many deliveries with babies born under 36 weeks gestation via caesarean section birth with forceps assistance in the last 12 months at Ipswich Hospital resulted in Cephalohaematoma in the first week after birth?”

6. The Trust responded on 19 January 2024, stating that the answer to all three parts of the request was “0” babies.

7. The complainant wrote to the Trust on 19 January 2024 asking it to carry out an internal review of its response because they did not believe the response to be factually accurate.

8. Following an internal review the Trust wrote to the complainant on 20 February 2024, maintaining its original position.

Scope of the case

9. The complainant contacted the Commissioner on 20 February 2024 to complain about the way their request for information had been handled.

10. The complainant has provided the Commissioner with evidence that their own child was born at 32+2 weeks gestation at Ipswich Hospital via emergency caesarean section with the use of forceps and had a Grade 2 intraventricular haemorrhage, subarachnoid haemorrhage and cephalohematoma, suggesting that the answer of “zero” could not therefore be accurate.

11. The complainant is therefore concerned about the way in which the Trust is documenting information, and that documentation has not been recorded correctly.
12. With regards to the complainant's concern that they do not believe the number provided by the Trust to be correct based on their own experience, it is important to explain that FOIA does not consider the accuracy of the information held by a public authority. Instead, it is concerned solely with whether that recorded information is held and, if so, whether that information can be provided.
13. The focus of the Commissioner's investigation, therefore, is to consider whether the Trust has complied with its obligations under section 1(1) of FOIA and, in particular, whether or not the Trust has provided the complainant with the information it held at the time of receiving the request for information.

Reasons for decision

Section 1 – Information not held

14. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled to:
 - a) to be told if the authority holds the information and,
 - b) to have the information communicated to them if it is held and is not exempt information.
15. Where there is some dispute between the amount of information located 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 (Information Rights) decisions, applies the civil standard of "the balance of probabilities" when deciding whether the public authority holds more information or not.
16. In other words, in order to determine such complaints, the Commissioner must decide whether it is more likely than not that the public authority holds any information which falls within the scope of the request (or held it at the time of the request).

The Trust's position

17. In its submission to the Commissioner, the Trust has stated that it searched the electronic patient administration system (Lorenzo) at

Ipswich hospital and the Trust's neonatal system (Badgernet), which determined that the response to all three parts of the request was zero.

18. The Trust has explained that all patient care episodes are assigned a code, which is held in the patient administration system. The Trust confirmed that it carried out searches for the following codes:
 - P120 Cephalhaematoma due to birth injury
 - P520 Intraventricular (nontraumatic) haemorrhage, grade 1, of fetus and newborn
 - P521 Intraventricular (nontraumatic) haemorrhage, grade 2, of fetus and newborn
 - P103 Subarachnoid haemorrhage due to birth injury
19. It stated that the records for any babies coded with the above diagnoses were then checked to establish if they were born at less than 36 weeks' gestation and were delivered by forceps. Any positive results would have been disclosed in response to the request for information.
20. The Trust explained that when dealing with the original request for information, it used the following data source:

Lorenzo > Maternity > Intrapartum > Caesarean Section > Forceps used for fetal head = Yes
21. This resulted in six deliveries under 36 weeks via caesarean birth with forceps assistance between 01/12/2022 and 30/11/2023. These six records were checked against the coded inpatient data and Badgernet data. The Trust stated that none of the babies from this search had a subsequent coded diagnosis of intraventricular haemorrhage, subarachnoid haemorrhage, or Cephalohaematoma. Therefore, the Trust's answer was zero for all three parts of the request.
22. The Trust explained that when it conducted its internal review of the request, it re-checked for all babies born between 01/12/2022 and 30/11/2023. This resulted in three babies delivered by caesarean section, at less than 36 weeks gestation, who had a subsequent diagnosis of intraventricular haemorrhage, subarachnoid haemorrhage, or Cephalohaematoma. However, the Trust stated that none of these cases were recorded on Badgernet as having forceps used for fetal head. The Trust therefore upheld its response of zero for all three parts of the request.
23. The Trust stated that upon receipt of the Commissioner's investigation letter, it carried out another search on coded episodes of babies born

since 01/12/2022 and 30/11/2023, of any gestation, who were subsequently diagnosed with:

- a) Intraventricular haemorrhage
 - b) Subarachnoid haemorrhage
 - c) Cephalohaematoma
24. The Trust stated that this search returned 11 results, of which four of the babies were delivered under 36 weeks gestation, but none of the four were recorded/coded as being born by forceps. Therefore, the Trust's response remains zero to all three parts of the original request for information.
 25. The Trust confirmed that the requested information would be held electronically on the patient administration system, Lorenzo, and Badgernet. It confirmed that no data is held on local or personal computers.
 26. The Trust clarified that patient notes are also held electronically. However, the Trust stated that it would not search patient notes for data for FOIA requests because they are applicant blind.
 27. In response to the complainant's evidence that their child's birth would fall within the scope of the request, the Trust explained that although the FOIA process is applicant blind, its Obstetrics and Gynaecology team has reviewed the medical records of the complainant. The team has stated that the delivery notes do not indicate that forceps extraction was used in their delivery. Therefore, the Trust's position is that the coding of their delivery is correct, and its response to the request remains zero for all three parts of the request.
 28. The Commissioner further clarified with the Trust why it appears that the complainant's child's Neonatal Discharge Summary was not included in the results of their searches.
 29. The Trust reiterated that it had conducted searches of all relevant systems - Lorenzo, the patient administration system, Badgernet, the neonatal system. It stated that these searches confirm that the answer to all three parts of the request is zero.
 30. The Trust confirmed that it cannot search for individual free text in discharge summaries, so these would not be included in the scope of a request.

31. The Trust stated that having reviewed the medical records of the complainant's delivery, it considers that the coding is accurate, and therefore its response to this request for information is correct.
32. The Trust has stated that there are no further searches and no other systems where searches can be carried out to see if it could retrieve any further relevant information falling within the scope of the request.

The Commissioner's decision

33. In this case, it would appear that the Trust does not specifically hold the information that the complainant has requested (i.e. it does not hold a single document or file that contains the number of babies born with the specific criteria in the complainant's request).
34. However, it appears likely that the Trust does still hold this information for the purposes of FOIA. This is because it holds other information from which the requested information could be compiled or extracted. As stated in the Commissioner's guidance on determining whether information is held¹, if a public authority holds the "building blocks" necessary to produce the information that has been requested, it is likely to hold the requested information unless it would require particular skill or expertise to put those building blocks together.
35. In this case, the information requested by the complainant would require the identification of documents or electronic records that show a baby having been born in accordance with the criteria set out in the complainant's request, and then the counting of these records. The Commissioner does not consider this to require particular skills or expertise and is therefore satisfied that the building blocks of the requested information are held by the Trust.
36. The Commissioner has therefore gone on to consider whether the figure provided by the Trust is reflective of the building blocks that the Trust is likely to hold and, in particular, whether it appears that the Trust has performed adequate searches for those building blocks.
37. Whilst the Commissioner notes that the Trust has carried out searches of all its systems, he is concerned that the Trust's submissions, along with evidence provided by the complainant, indicate that it may have failed to conduct proper searches of those systems.

¹ [Determining whether we hold information | ICO](#)

38. The complainant has provided the Commissioner with a copy of their child's Neonatal Discharge Summary. This document specifically states:
- "Head was delivered with forceps and was a difficult extraction".
 - "SAH following difficult extraction of head with forceps".
 - That the complainant's child was born by "emergency caesarean" at "32+2 weeks".
 - That the complainant's child had a "Small intraventricular haemorrhage (IVH Grade 2), Subarachnoid haemorrhage (due to birth injury)" and "CT head performed on Day 4 of life due to significant cephalohaematoma and right sided G2 IVH.
39. Therefore, there does appear to be a discrepancy between the figure of zero provided by the Trust, and the evidence provided by the complainant. If the Trust holds the Neonatal Discharge Summary (which the Commissioner assumes to be the case), the number provided in response to the complainant's request should be at least one, as the information in the Neonatal Discharge Summary meets the criteria set out in the request.
40. The Commissioner notes that in its submission, the Trust states that it has carried out searches of the coding used for the diagnoses described in the request for information. The Trust stated that because of the coding used in relation to the complainant's child's delivery, this has resulted in their record not being included in the results.
41. However, it is clear from the evidence provided by the complainant that their child's delivery would fall within the scope of the request.
42. Furthermore, the Trust stated that it cannot search for individual free text in discharge summaries. Although it is unclear from the Trust's submission, the Commissioner takes this to mean that it cannot electronically search the free text in discharge summaries. However, the Commissioner considers that the Trust could carry out a manual search of free text in discharge summaries (i.e. a member of staff could read the information on each discharge summary to determine if it meets the criteria set out in the request).
43. The Commissioner also notes that the Trust has stated that it "...would not search patient notes for data for FOIA requests because they are applicant blind". However patient notes still constitute information held by the Trust. Any patient notes held by the Trust that could contain information relevant to the request are therefore potentially "building blocks" that could affect the figure that the Trust has been asked to provide. The Commissioner would therefore have expected patient notes

to have been included in the searches conducted by the Trust if they would contain information about births relevant to the request.

44. The Commissioner emphasises that section 1 of FOIA requires the Trust to conduct thorough searches for information which falls within the parameters of the request.
45. In this case, for the reasons explained above, the Commissioner cannot reasonably conclude that the Trust has conducted proper searches. The Commissioner's conclusion is, therefore, that the Trust has failed to comply with section 1 of FOIA.

Procedural matters

Section 10 – time for compliance

46. Section 10(1) of the FOIA states that a public authority shall respond to information requests promptly and, in any event, by no later than 20 working days from receipt.
47. The Commissioner notes that the time taken for the Trust to respond to the request for information exceeded 20 working days. The Commissioner has therefore recorded a breach of section 10 of FOIA against the Trust as a result.

Right of appeal

48. 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

49. 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.
50. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF