

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 October 2024

Public Authority: Mid Yorkshire Teaching NHS Trust
Address: Pinderfields Hospital
Aberford Road
Wakefield
WF1 4DG

Decision (including any steps ordered)

1. The complainant has requested statistics about errors in patient referrals. The above public authority ("the public authority") relied on section 12 of FOIA (costs) to refuse the request.
2. The Commissioner's decision is that the public authority was entitled to rely on section 12 of FOIA to refuse the request.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On a date prior to 15 February 2024, the complainant wrote to the public authority as part of a wider grievance he was having. In his correspondence, he also requested information in the following terms:

"In the meantime, I make a data access request under the Freedom of Information Act. This is for information showing the number of referrals the trust has failed to record an [sic] act appropriately on within the last three years and the number of occasions, this has been blamed on a GP surgery."
5. The public authority responded to the FOI element of the letter on 15 February 2024. It appears to have provided some information, but

refused the remainder of the request, relying on section 12 of FOIA in order to do so.

6. Following an internal review the public authority wrote to the complainant on 17 June 2024. It maintained its original position.

Reasons for decision

7. Section 12 of FOIA allows a public authority to refuse a request if the combined cost of identifying the information and then retrieving, extracting or locating it, would exceed a particular limit known as the "appropriate limit".
8. For this particular public authority, that limit is £450 and is the equivalent of 18 hours of staff time.

The public authority's position

9. The Commissioner considers that the public authority has set out clearly, in its internal review why it believes complying with the request would exceed the appropriate limit. As such the Commissioner did not consider it necessary to seek a further submission.
10. In its internal review, the public authority explained that it could not easily identify the information within the scope of the request because:

"Our records show that there were 137,925 eConsultations for 21/22, 22/23 & 23/24, which would need to be looked at individually as the system does not allow us to extract this data in any other way due to the nature in which the error is generated. We have estimated that it would take 5 mins to check each eConsultation, which equates to 689,625 minutes, which is 11,493 and 3 quarter hours in total. Calculated at £25 per hour as outlined in section 12 (see annex below)) and to locate and check each individual eConsultation based on these calculations would cost in total £287,343

The complainant's position

11. The complainant argued that the information was "readily available by other means." He hypothesised that:

"The failure to record a referral from a GP means a patient does not receive treatment in a timely manner or at all. When this happens he matter would be chased by the patient and the GP as well as by the patient with the hospital. This would create a record outside of the eConsultations claimed to be the only source of this data.

“Additionally the Trust would need to know itself how many referrals it had missed altogether other than for the purpose of patient care records. It is a source of actual harm to patients as it lengthens the time they are forced to wait for treatment when the Trust fails to record a referral: some patients will die believing they have been referred for treatment but with the Trust making this error with their data. As such it is source of measurable harm caused by breach of duty of care and it is therefore inconceivable that the Trust would not maintain a specific record of their failures to action referrals from GP's. A record would need to be maintained of such errors in any event for the purpose of defence into legal proceedings; but mostly because the effect on patients is to cause measurable harms leading to poor health outcomes.”

The Commissioner's view

12. In the Commissioner's view, the public authority has demonstrated that complying with the request would exceed the appropriate limit.
13. The complainant clearly believes that the public authority **ought** to be able to access this information easily. He may well be right that there would be a public value to such information being available.
14. However the Commissioner is required to make a decision based on how the public authority's records **are** held, not how they ought to be held. No compelling evidence has been put before the Commissioner that persuades him that the public authority would not be required to search its eConsultation records to ensure it has located all relevant information.
15. The complainant may be correct that **some** relevant information may be held outside of this system, but that does not mean that it **all** will be. There are a number of reasons why information held outside of eConsultations would not cover all the information the public authority may hold. For example:
 - There is no evidence to suggest that GPs or patients cannot chase a referral via the eConsultation system. If there is no need to chase via other means (such as via sending an email), no record would exist outside the eConsultation system.
 - Furthermore, even if some or all chasers are sent outside of the eConsultation system, that does not mean that this information is not then transferred into that system as means of managing that information. It is common practice for organisations to store emails within a document management system, even if they originated in Outlook (or another email client).

16. Even if the complainant were correct and all this information is duplicated outside of eConsultation, that does not mean it could be easily collated.
17. If chasers occur by ordinary email, it is highly unlikely that every GP will use the same standard wording that would allow for such emails to be easily identified. Identifying all such emails is likely to involve multiple keyword searches and will throw up a large amount of unrelated information.
18. It is equally unlikely that there will be a single point of contact, within the public authority, for such emails. The most likely route would be for the GP to contact the relevant department, within the relevant hospital, directly – meaning that the information (and therefore the search needed to identify it) will be spread across the three hospitals the public authority runs and all the departments each one has.
19. The Commissioner is not persuaded that such a search is likely to be achievable without exceeding the cost limit. Even if it were, he does not consider that it would identify all the information that was requested.
20. The Commissioner is therefore satisfied that the request could not be complied with without exceeding the appropriate limit. Consequently, section 12 is engaged.

Other matters

21. The Commissioner would like to note that, as an evidence-based regulator, he requires an appropriate level of evidence to substantiate a complaint.
22. It is the responsibility of the person making the complaint to provide that evidence when making their complaint. There is [guidance available](#) setting out the evidence required. The Commissioner will not seek such information from a public authority except in exceptional circumstances.
23. The complainant was asked on numerous occasions to provide a copy of the public authority's initial response, but he refused to do so. He also provided edited copies of email correspondence, rather than the original emails.
24. That failure to co-operate has meant, for example, that the Commissioner has been unable to assess whether the public authority discharged its duty to provide reasonable advice and assistance when refusing the request.

25. The Commissioner has also been unable to assess whether the request was responded to in time. No original copy of the request was provided. An edited version was pasted into a document. The document stated that the email was sent on "5.1.23", but the content of the email referred to previous correspondence dated November 2023. One of those dates seems likely to be a typo but, as he can't establish an exact date, the Commissioner has decided not to determine whether the public authority breached section 17 of FOIA.
26. The Commissioner expects adequate evidence to be provided in a timely manner on any future complaints the complainant may submit.

Right of appeal

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

Website: 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.

Signed

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF