

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 October 2024

Public Authority: Leicester, Leicestershire and Rutland
Integrated Care Board

Address: Pen Lloyd Building
County Hall
Glenfield
Leicester
LE3 8TB

Decision (including any steps ordered)

1. The complainant has requested information about specific processes. The above public authority ("the public authority") provided some information.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority does not hold further information within the scope of the request. The Commissioner finds no breach of section 17(7) of FOIA as the public authority was not obliged to comply with that section.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 14 August 2024, the complainant wrote to the public authority and, referring to a commissioned service provided by a third party, requested information in the following terms:
 - "1. The types of personal health data that are collected from patients:
 - How this data is being collected
 - How it is being used
 - How it is being processed

2. The onboarding process
 - What factors are considered when determining whether a patient is eligible for treatment
 - The steps that a patient needs to take to access the service
 - Considerations made by management regarding barriers to the service
 - Justification behind the 1-hour long questionnaires for the initial assessment
3. The discharge process
 - What factors are considered when determining whether a patient is ready to be discharged
 - The support provided to patients after they leave the service
4. The Caldicott Principles
 - How they are being applied to justify the collection of patient information
 - How these principles are being adhered to in the collection, storage, and use of the information gathered through the questionnaires.”
5. The public authority responded on 7 September 2023. It provided some information.
6. On 9 October 2023, the complainant contacted the public authority again, asking it to “provide clarification” as some of the public authority’s responses hadn’t been consistent with his own experience of the service. The public authority responded to these concerns on 13 November 2023.
7. A further response from the public authority, labelled as an internal review, was issued on 16 June 2024. This response did not deal with the substance of previous responses, but did address some of the complainant’s concerns about the procedural handling of those responses.

Scope of the case

8. The complainant contacted the Commissioner on 21 June 2024 to complain about the way his request for information had been handled. His grounds of complaint were that the public authority had not stated that it didn’t hold some information; that its communications were

“inconsistent”; that it had breached section 17(7) of FOIA and that it was outsourcing its FOIA obligations to others.

Reasons for decision

9. Section 1 of FOIA requires a public authority to tell a requester whether the information they have requested is held and, if it is, to communicate that information – unless it an exemption applies.
10. Where there is a dispute over the extent to which information is held, the Commissioner is required to determine whether the public authority is more likely than not to hold further information.
11. In its initial response, the public authority provided some information that had been supplied by a third party. When the complainant sought an internal review, it provided some further clarity about the information previously provided.
12. In one part of his grounds of complaint, the complainant indicated that he felt the public authority held more information. In another, he argued that the public authority did not hold any information – as that which was provided had been provided by a third party.
13. No evidence has been put forward to indicate what information the public authority holds that has not been provided.
14. The complainant’s dissatisfaction with the initial response appears to have stemmed from the fact that some of the information provided did not appear to fit with his own experience of various procedures. Whether or not that was the case (the Commissioner offers no opinion either way), it does not mean that further recorded information is held.
15. In dealing briefly with the complainant’s other point, the Commissioner notes that FOIA not only covers information that a public authority holds itself. It will also cover information held by third parties on behalf of the public authority.
16. The information in question was supplied by a third party that the public authority commissions to provide services. The information relates to the provision of those services.
17. The Commissioner considers it likely that this information was also held, by the third party, on behalf of the public authority. Therefore there would have been no need for the public authority to have denied holding the information. However he does not need to make a decision on this

point as, if the information were not covered by FOIA, the public authority would have been under no obligation to supply it.

18. On the balance of probabilities, the Commissioner is satisfied that the public authority has provided all the information it holds (or is held on its behalf) within the scope of the request.

Procedural matters

19. The complainant argued that the public authority breached section 17(7) of FOIA when responding to him as it failed to include details of its internal review process.
20. Section 17(7) requires a public authority to include, in any refusal notice it provides, details of any internal review process it operates and of the right to complain to the Commissioner.
21. Section 17 only requires a public authority to issue a refusal notice if it is: refusing to confirm or deny that any information is held; refusing to communicate any information that it holds; or refusing a request in part or in full.
22. In this case, the public authority was actually complying with the request by communicating the information that it held. It did not refuse any aspect of the request and it therefore was not obliged to issue a refusal notice.
23. Whilst the Commissioner considers it good practice to provide information about the internal review process in **any** FOIA or EIR response (and he will comment more on the wording the public authority used below), the law only requires this wording to be provided in a refusal notice. As the public authority was under no obligation to provide a refusal notice, it follows that no breach could have occurred.

Other matters

Internal review wording

24. As noted above, the Commissioner considers that it is good practice to provide details of an internal review process in any response issued under FOIA.
25. He also notes that the public authority did provide details and, had the public authority's response been a refusal notice, he would not have found a statutory breach of section 17(7).

26. However, the Commissioner would wish to draw attention to the wording of the public authority's response as this may have caused some confusion.
27. The public authority stated that:

"If you are unhappy with **the service you have received** in relation to your request, please contact the Head of Corporate Governance in writing at the following address: [Address]

"If you are still not satisfied following this, you can make an appeal to the Information Commissioner (ICO) who is the statutory regulator. Generally, the ICO cannot make a decision unless you have exhausted LLR ICB's **Complaints Procedure.**" [emphasis added]
28. The Commissioner considers that the public authority was referring here to its internal review process. Although the process is described using two different phrases (see emboldened words), neither of which is "internal review", many people, particularly experienced users of the Act, would have recognised what the public authority was trying to communicate.
29. However, he also recognises that less experienced users – and particularly those with a neurodivergence – may have read this section as referring to two different process, neither of which being an internal review.
30. The Commissioner would recommend that the public authority modify its templates and try to use language consistent with the law, so that requesters are clear about their rights to seek an internal review.

"Outsourcing" of FOIA responses

31. There is nothing to prevent a public authority from outsourcing the compiling of information, or the task of responding to information requests, to another organisation. There is often an advantage to doing so if the other organisation has better access to the information or a deeper pool of FOIA experience from which to draw.
32. However, the obligation to respond always rests with the public authority that has received the request, not any organisation it may have asked for help.
33. The Commissioner notes that, on the basis of the available evidence, the public authority's handling of the request did not breach any of its FOIA obligations.

Right of appeal

34. 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

35. 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.
36. 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
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Wilmslow
Cheshire
SK9 5AF