

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 April 2025

Public Authority: Lancashire and South Cumbria NHS
Foundation Trust

Address: Sceptre Point
Sceptre Way
Walton Summit
Preston
PR5 6AW

Decision (including any steps ordered)

1. The complainant has requested information about bullying and discrimination complaints from individuals on the autistic spectrum that are also transgender. They also requested similar complaint information about race or physical disability. The Lancashire and South Cumbria NHS Foundation Trust (the Trust) provided some information but applied section 12(1) FOIA (cost of compliance) to information concerning patient diagnoses.
2. The Commissioner's decision is that the Trust has correctly cited section 12 FOIA. However, he finds that the Trust failed to provide reasonable advice and assistance and therefore did not meet its obligations under section 16(1) of FOIA. The Commissioner has also decided that section 17(5) FOIA was breached in that the Trust did not confirm its reliance on section 12 within the statutory timeframe.
3. The Commissioner does not require further steps.

Request and response

4. On 15 September 2024, the complainant wrote to the Trust and requested information in the following terms:

"I request information into how many patients on Autism spectrum & that are Transgender, raised a complaint of discrimination and bullying against your trust. I ask that you provide information from June 2018 to August 2024.

I also request information on how many autistic patients were & still are excluded from your trust for same time periods.

I ask for information on how many staff have raised complaints regarding bullying, discrimination because of autism or race, or physical disability in Lancashire and South Cumbria NHS Trust."

5. On 25 September 2025 the Trust asked for clarification regarding the third part of the request: "Please could you confirm if you mean complaints from other members of staff or patients?" The complainant responded on the same day – "I am asking how many other members of staff & patients, that have complained?"
6. On 15 October 2024 the Trust responded as follows:

Part one of the request –

"We are unable to identify the number of patients who have a diagnosis of autism, or are transgender, who have raised complaints as we do not record an individual's diagnosis or gender status against complaints."

Part two of the request – "No patients are excluded from LSCFT on the basis of being autistic."

Part three of the request – The Trust provided information in the form of a table. It would appear that the table represented staff, rather than patient complaints as the information in the table came from "grievance cases".

7. On 23 October 2024 the Trust (having been sent an email by the complainant that was also sent to the Commissioner clearly not content with the Trust's response) asked the complainant to explain their concerns.

8. The complainant responded on the same day arguing that autistic spectrum individuals were being excluded from NHS services and they faced "bigotry, abuse and bullying".
9. On 24 October 2024 the Trust provided an internal review in which it maintained its position.
10. On 28 October 2024 the complainant asked for an internal review.
11. The Trust sent its internal review again on 31 October 2024.

Scope of the case

12. The complainant contacted the Commissioner on 11 November 2024 to complain about the way their request for information had been handled.
13. On 8 April 2025 the Trust wrote again to the complainant having been asked to do so by the Commissioner. It explained that "one of the reasons we are unable to provide you with the information you request is because we do not hold it in an extractable format".
14. The Commissioner asked the complainant if they were content with this response but they confirmed that they were not and requested a decision notice.
15. The Commissioner considers that the scope of his investigation is to look at the Trust's citing of section 12 FOIA and any procedural matters that may have occurred.

Reasons for decision

Section 12 – cost of complying with a request

16. The Trust originally provided the complainant with a response that stated the following -

Regarding part one:

"We are unable to identify the number of patients who have a diagnosis of autism, or are transgender, who have raised complaints as we do not record an individual's diagnosis or gender status against complaints."

Regarding part two of the request:

"No patients are excluded from LSCFT [the Trust] on the basis of being

autistic. We provide services dedicated to autistic people and our mainstream services work with the support of the Equality Act (2010) to ensure reasonable adjustments are made for all patients with neurodiverse needs.”

Regarding part three of the request:

“We are not able to provide information dating back to 2018 because we had a different reporting system and the information is not readily available.” The Trust provided a “less than five” response to the questions about ‘physical disability’ and ‘race’ but recorded ‘0’ for ‘autism’.

17. Therefore the Commissioner began his investigation by asking the Trust certain questions to try and establish whether it held further information. His intention (at that time) was to make a decision based on the balance of probabilities.
18. The Trust confirmed at that point that no information had been deleted or destroyed. It explained that there was no business purpose to record the requested information concerning patient diagnosis in complaint records. The Trust explained that, “There is a statutory requirement that complaints records are not held within patient clinical records”. This meant that a search would not reveal the requested information because patient diagnoses are recorded in electronic patient records, not complaint records. Therefore no further searches had been carried out.
19. During the Commissioner’s investigation it became clear from the Trust’s submission that it was citing section 12 FOIA in relation to information that required accessing patient diagnoses in order to respond accurately. Therefore the Commissioner asked the Trust to inform the complainant which it subsequently did. This also meant that the Commissioner altered the focus of his decision to the Trust’s citing of section 12.
20. When a public authority cites section 12 FOIA (the cost of complying with the request would exceed the cost limit) this means that if just one part of the request engages section 12 it does not need to provide responses to any part of the request. However, the Trust did provide a response to part two (stating that autistic patients were not excluded) and part three (based on grievance cases dating back to 2019). It stated that it had been unable to identify the information for part one of the request but did not mention the cost limit. The Trust later confirmed to the complainant that, “We do not align diagnoses or protected characteristics to complainants in a way which would ensure that this was easily extractable”.

21. Section 12 of FOIA concerns the cost of complying with a request. More detail about FOIA section 12 can be found in the Commissioner's [Decision notice support materials | ICO](#). In the case of the Trust the cost limit is 18 hours or £450.
22. The Trust explained to the Commissioner that suitability to access services has to meet the criteria at a particular time. In order to provide a response the Trust explained that, as it does not record the diagnoses of patients on these records but on patient records, it would have needed to "access all the clinical records of all patients who had complained to identify their diagnoses or any other protected characteristics to cross match against a complaint and where it directly related to the concern they had raised".
23. The Trust further explained how information is held and why it is unable to provide the requested information within the cost limit. Complaint records are kept in the Ulysses systems as are all emails relating to those complaint cases. As outlined earlier, it is not possible for the Trust to search in a meaningful way as patient diagnoses are recorded elsewhere:

"The alternative would have been to access all the clinical records of all patients who had complained to identify their diagnoses or any other protected characteristics to cross match against a complaint and where it directly related to the concern they had raised."
24. As the information "is not readily available or accessible" the Trust would have had to undertake work to create the data in the complaints system. It estimated that each search would take 15 minutes. The Trust receives 500-750 complaints per year which would mean 125-187.5 hours for each year requested. It also explained that in order to run such a search it would be accessing and recording patients' confidential records for information that had not been shared for that purpose.
25. The complainant does not accept that the Trust cannot provide the information they requested.

The Commissioner's view

26. The Trust's estimate of the time required is possibly too high. The Commissioner would normally expect a sample to have been conducted in order to provide a certain level of accuracy. However, in this instance he is aware that the Trust would be accessing special category data which had been kept separate from complaint records for statutory reasons.

27. The Commissioner has concluded that even if this estimate was reduced to five minutes and the lower number of complaints for one year only it would still exceed the cost limit. As such, section 12(1) of FOIA is engaged.

Section 16 – advice and assistance

28. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request, where it would be reasonable to expect it to do so. Where a request is being refused on costs grounds, the Commissioner expects a public authority to provide the applicant with advice and assistance to help them reframe the request in a way that would bring it within the appropriate limit, though he appreciates that it is not always possible to refine a request.
29. The Trust did not cite the cost limit until the Commissioner's investigation so it did not provide advice and assistance in its refusal notice apart from explaining that it did not hold patient diagnoses/gender status against complaints. When it later explained that the request would exceed the cost limit no advice and assistance was offered. Nor did the Trust explain that there wasn't any advice or assistance that it could offer. Therefore the Trust did not comply with section 16(1) FOIA.
30. However, the complainant does not accept that this information could not be provided and therefore the Commissioner does not consider that advice and assistance limiting the timeframe would necessarily be helpful. Limiting the timeframe might still bring the request over the cost limit and, even if it could be provided, it would be unlikely to meet the needs of the complainant. In the circumstances, though the Trust did not offer advice and assistance when citing section 12 or explain that it would not be possible to do so, it would serve no useful purpose for the Commissioner to order a remedial step.

Procedural matters

31. Section 17(5) FOIA states that -

“a public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact”.

32. In this instance, the Trust did not confirm that it was relying on section 12 FOIA until after the statutory time for compliance and consequently breached section 17(5) FOIA.

Right of appeal

33. 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

34. 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.
35. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Janine Gregory
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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