

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 17 January 2020

**Public Authority:** Chesterfield Royal Hospital NHS Foundation Trust

**Address:** Calow  
Chesterfield  
S44 5BL

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from Chesterfield Royal Hospital NHS Foundation Trust ("the Trust"), about the criteria to receive bypass surgery for lower limb revascularisation and the Trust's roles and responsibilities within the network.
2. The Commissioner's decision is that on the balance of probabilities, the Trust has provided all the information it holds in relation to the scope of the requests.
3. However, the Commissioner found a breach of section 10(1) of the FOIA (time for compliance).
4. The Commissioner does not require the Trust to take any further steps as a result of this notice.

## Request and response

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5. On 4 February 2019, the complainant wrote to the Trust and requested information in the following terms:

*"I am writing to you under the Freedom of Information Act 2000 to request the following information:*

*1. In order for a patient to receive bypass surgery for revascularization of a lower limb due to chronic (not critical) ischemia that requires both a groin and abdominal incision such as an iliofemoral bypass, what are the clinical guidelines, policies, procedures, standard practices at your hospital that should be adhered to, and what symptoms and/or lifestyle limiting factors should the patient exhibit?*

*The type of response / level of detail that I request may produce a reply such as*

*General preoperative evaluations such a blood tests, kidney function tests, lung function tests, anaesthesia etc tests must be satisfactory in order to proceed.*

*Consensus at a multidisciplinary team meeting would need to be gained in order to give or withhold surgery.*

*Sections of a guideline such as [The document title] produced by [The organisation name] would need to be followed/adhered to where/when possible to do so.*

*A Quality of adjusted life years calculation would be made to assess the cost effectiveness of the treatment due to hospital operating budgets.*

*Sections of our internal policy/document entitled [The policy name] would need to be adhered to.*

*The patient must complete a quality of life questionnaire that satisfies requirements to move forward with surgical intervention.*

*The patients limb must be salvageable and/or worth salvaging and/or free from certain diseases.*

*The patient must have a certain type of arterial disease and/or a total occlusion of the artery and/or rest pain and/or gangrene and/or be fit enough for the surgery*

*The patient must not be able to perform "X" functions that people who do not require revascularization can do*

*The patient must not of shown a measured improvement using the measurement system of [Name of measured process] over a period of [Measured time period] of more than a value of [Measurement value] whilst waiting to receive surgery/in "X" period of time.*

*The patient must have a body mass index within a healthy range*

*The patient must have an estimated life expectancy of "X" number of months/years.*

*The patient must be a non-smoker.*

*The patient must have an Ankle Brachial Index reading of less than 0.5*

*2. I am sure you have a process or processes regarding question 1 that are followed, what are your terms for these so I can better communicate with you if necessary?*

*3. What procedures do you have in place to ensure that decisions/checks for the type of surgery as of question 1 are accurate and fair i.e. if two similar patients with similar symptoms/diseases were assessed by different consultants, and one received surgery and the other did not, would your processes allow you to accurately identify why one patient received surgery and why the other patient did not?"*

6. The Trust responded to the complainant on 4 March 2019 and advised the following:

*"This is a vascular procedure that is not carried out at Chesterfield. Chesterfield is part of the Derbyshire Vascular Network and procedures of this nature are carried out at Derby who should be contacted for information: <https://www.uhdb.nhs.uk/freedom-of-information-foi>"*

7. The complainant wrote to the Trust on 5 March 2019, and advised the following:

*"Thank you for your response informing me that certain elective surgical procedures such as an iliofemoral bypass are only performed at Derby.*

*However, my questions have not asked about the whereabouts or details of an actual surgical procedure, I have only requested information about the policies, practices and criteria used in order for a patient to receive this type of surgery. It is my understanding that being a part of this Networked Vascular Services, that the Chesterfield Royal Hospital NHS Trust provides/offers both **pre-operative** and*

*post-operative appointments/consultations/support and care for patients at Chesterfield.*

*I assumed both network members share the same set of guidelines/practices regarding the requested FOI subject "**criteria to receive bypass surgery for lower limb revascularization**" that my questions make reference to, and in this instance, it made no difference to which network member the FOI was sent to as both network members provide patient assessments/pre-operative appointments/consultations etc. If this is not the case then I do apologise for my incorrect assumption and for your time in answering a request sent to the wrong authority/network member.*

*In case it is/was just a matter of wording that may of caused some confusion I have replaced the use of "**your hospital**" with "**Derbyshire Vascular Network / consulting hospital**" appearing in question one to avoid any further confusion, my other questions remain unaltered.*

*Question 1 now appears as:*

*1. In order for a patient to receive bypass surgery for revascularization of a lower limb due to chronic (not critical) ischemia that requires both a groin and abdominal incision such as an iliofemoral bypass, what are the clinical guidelines, policies, procedures, standard practices followed by the **Derbyshire Vascular Network / consulting hospital** that should be adhered to, and what symptoms and/or lifestyle limiting factors should the patient exhibit?*

*I would be grateful if you could promptly confirm whether or not you hold this data / can or cannot process my request before I potentially make an unnecessary request to the University Hospitals of Derby and Burton NHS Foundation Trust as currently advised?"*

8. The complainant sent the Trust further emails on 12 March 2019, 19 March 2019 and 20 March 2019, as he had not received a response to the request, which he had clarified on 5 March 2019 ("Request 1").
9. On 25 March 2019, the Trust responded, advising that, after liaising with the vascular service, it could confirm that it did not hold the specific detail requested. It provided an explanation from a vascular consultant, who confirmed that the guidance used is not used as a clinical textbook, and that any patients who are considered for the procedure are discussed at the weekly vascular multi-disciplinary team meeting.
10. The Trust sent a further response on 25 March 2019, providing further explanations. It advised again that the information requested was not held in recorded form and that patients are individually managed

through a multi-disciplinary team process, rather than in accordance with a specific policy.

11. The complainant contacted the Trust on the same date and advised the following:

*"Thank you for your response but are you sure you have read my request as you and an email before yours mentioned NICE guidance something that I have not asked about?"*

*My question is about all of the general procedures, guidelines and standard practices that you follow and that should be adhered to in order for a patient to receive bypass surgery for lower limb revascularization and gave examples of the type of information / level of detail that I was looking for.*

*The question is about patient assessment something that is done at Chesterfield, it is almost inconceivable, probably impossible that you have no procedures or standard practices that are followed, in fact if that was the case I would be raising alarms with the clinical commissioning group as I am sure you would also do.*

*Even without knowing your procedures I would hazard a guess that there would be a policy / procedure that says that you should calculate a patients IHD risk score , take a patients weight, perform certain pre-operative tests, other policies about getting a patients consent etc. etc. really do you have no procedures or policies at Chesterfield?*

*I ask one last time, please re-read my request and then either confirm that you can comply with the request or reconfirm that despite assessing patients for major surgical procedures at Chesterfield that you do not hold any policies or procedures that staff should follow in relation to this assessment."*

12. Following a further exchange of emails, the Trust offered to arrange a telephone call/meeting between a vascular surgeon and the complainant. The Trust then provided the full outcome of its internal review on 24 April 2019. It denied holding the information in relation to clinical guidelines, policies and procedures specific to by-pass surgery. However, it did provide evidence of pre-operative assessment policies being held on its intranet system and it offered to print these out.
13. Prior to receiving this response, the complainant had made a further request to the Trust on 1 April 2019 ("Request 2"), stating the following:

*"I am writing to you under the Freedom of Information Act 2000 to request the following information.*

*With regards to the "Derbyshire Vascular Services Network"*

- 1. Please could you provide links to and/or digital copies of the documentation that contains both general information about your role and responsibilities within this network as well as to any specific requirements regarding patient admissions, assessments, treatments etc etc that may be in addition to the requirements contained within standard NHS/CCG service contracts."*
14. The Trust responded to Request 2 on 11 July 2019, advising that it did not hold the information, as a service level agreement between the Trust, University Hospitals Derby and Burton NHS Foundation Trust, was under negotiation and as such, the requested information was being withheld under section 22 of the FOIA – Information intended for future publication or research.

## **Scope of the case**

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15. The complainant contacted the Commissioner on 3 June 2019, to complain about the way his requests for information had been handled. At this stage, he was awaiting a response to Request 2.
16. During the Commissioner's investigation, the Trust reconsidered its position with regard to Request 2. Since the service level agreement did not yet exist, its position was that the requested information was not held.
17. The Commissioner considers that the scope of this case to be to determine if the Trust holds any further information within the scope of the requests. She will also consider the timeliness with which the Trust handled the second request for information.

## **Reasons for decision**

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### **Section 1 - Information held/not held**

18. Section 1 of the FOIA states that:

*"Any person making a request for information to a public authority is entitled –  
(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and  
(b) if that is the case, to have that information communicated to him."*

19. In this case, the Trust asserted that it does not hold further information in relation to the complainant's requests.
20. The Commissioner has sought to determine whether the Trust holds the information which the complainant has asked for in his requests. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
21. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

### **The complainant's position**

22. The complainant has advised that he believes the Trust should hold further information. He explained that, after making a further FOIA request to another public authority, he was informed that providers of Specialised Vascular Services are required to have documentation about the network and care/patient pathways, so that there is clarity on who does what and where.
23. Additionally, the complainant advised that the Specialised Vascular Services specification states that various documents are required and the last completed self-assessment submitted by the network hub had declared that the network passed the various checks.

### **The Trust's position**

24. The Commissioner has investigated whether the Trust holds recorded information relevant to the complainant's requests by asking the Trust questions about the searches it has made to locate the information which the complainant seeks and questions about the possible deletion or destruction of information which might be relevant to the requests.
25. The Commissioner also asked the Trust to explain why it appears from the documentation provided by the other public authority, that it holds information which would be relevant to the complainant's requests.



26. The Trust explained to the Commissioner that it had completed searches for key words from the complainant's requests, and did not locate any information falling within their scope.
27. The Trust has also confirmed to the Commissioner that it acknowledges a Service Specification advises that it should hold further information and that this will be handled internally. It also advised that the Trust does not hold any further information than already provided, in relation to the scope of the requests.

### **The Commissioner's conclusion**

28. The Commissioner recognises that, from the correspondence between the parties, that the complainant understandably believed that the Trust would hold further information falling within the scope of his requests.
29. While the Commissioner appreciates the complainant's frustration that the Trust has determined that, regardless of whether it *should*, it did not actually hold further information within the scope of the requests, the Commissioner can only make a judgement on the balance of probabilities.
30. From the evidence provided to the Commissioner, she is satisfied that the searches that were conducted by the Trust were adequate and appropriately-targeted, and would have been likely to retrieve the information.
31. Having considered the Trust's response, and on the basis of the evidence provided to her, the Commissioner is satisfied that, at the time of the requests and on the civil standard of the balance of probabilities, the Trust did not hold any further recorded information that falls within the scope of the requests.
32. The Commissioner therefore considers that the Trust has complied with its obligations under section 1(1) of the FOIA.

### **Section 10 – Time for compliance**

33. As set out previously, section 1(1) of the FOIA states that upon receipt of a request a public authority must inform the requester whether information is held, and if that information is held it must be communicated to the requester.
34. Section 10(1) of the FOIA states that public authorities must comply with section 1(1) within 20 working days of receipt of the request.
35. The complainant submitted Request 2 on 1 April 2019. The Trust did not respond to this request until 29 May 2019.



36. By failing to provide the response to Request 2 within the statutory time for compliance, the Commissioner's decision is that Trust breached section 10(1) of the FOIA.
37. The Commissioner does not require the Trust to take any steps in respect of this.

## Right of appeal

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38. 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: 0300 1234504

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

39. 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.
40. 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 .....**

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