

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 September 2021

Public Authority: The Tavistock and Portman NHS Foundation Trust

Address: Tavistock Centre
120 Belsize Lane
London
NW3 5BA

Decision (including any steps ordered)

1. The complainant has requested information relating to the funding that Tavistock and Portman NHS Foundation Trust (the Trust) has received from the Home Office, for the provision of care to British children returning from Syria. The Trust has relied on section 24 of the FOIA (safeguarding national security) to withhold some of the requested information.
2. The Commissioner's decision is that the Trust has correctly engaged the provisions of the section 24 exemption, and that the public interest favours maintaining the exemption and withholding the requested information.
3. However, the Commissioner has recorded a procedural breach of section 10 of the FOIA, as the Trust failed to respond to the complainant's request within the statutory time limits.
4. The Commissioner does not require the Trust to take any steps as a result of this decision notice.

Request and response

5. On 18 October 2019, the complainant wrote to the Trust to make the following request for information:

1) How much money has the Portman and Tavistock Trust received from the Home Office in relation to providing mental health and

emotional wellbeing assessments to British children returning from Syria.

2) As at the date of this e-mail could you state the total number of children that have come into contact as patients with this service for returnees from Syria? Could you provide a breakdown by age and sex.

6. The Trust responded on 2 January 2020, stating that it was withholding the information requested in part one of the request under section 24 of the FOIA on the basis that disclosure could undermine national security. The Trust refused to confirm or deny whether any information was held in relation to part two of the request by virtue of section 38(2) of the FOIA (health and safety).
7. On 31 March 2020, the complainant requested an internal review of the Trust's decision as he did not believe that, in all the circumstances, the balance of the public interest would fall in favour of maintaining the exemptions relied on by the Trust. The complainant provided the Trust with the following arguments:

"With regard to Part 1 of the request I am quite frankly at a loss to understand how such disclosure would affect National Security to the extent that you suggest and certainly not enough to engage the exemption. It is a matter of public record that the Trust has been appointed by the Home Office to undertake the work and disclosure of the amounts received in total would not reveal anything about your activities and capabilities as the public are not aware of how that total would be made up or what levels of treatment that represents. Also, to suggest such a disclosure could lead to the identification of individuals is ludicrous. I could no more identify an individual from knowing you had received (say) £1.2M from the Home Office than I could now.

In respect of Part 2, to use a NCND response is again ridiculous given that it on record that the Trust are contracted to carry out the work. Knowing that you have treated (say) ten children, their age and sex again could not lead to me or anyone identifying them. At any one time there are approximately 4.1 million children in the UK between the ages of 5 and 9 plus a further 3.8 million who are in the 10 to 14 bracket. Even if I know their ethnic background I have no chance of identifying any individual based on the fact that a child of that age and sex was treated by you. On this basis Section 38(2) cannot apply."

8. The Trust sent the complainant the outcome of its internal review on 2 July 2020 in which it maintained its original position in relation to part one of the request. With regards to part two of the request, the Trust revised its position, stating that it held information falling within the

scope of this part of the request, but was withholding it under section 38(1)(a) and section 40(2) (third party personal data) of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 17 September 2020 to complain about the way his request for information had been handled.
10. In the complainant's submission to the Commissioner, he has advised that he is happy to concede the point in respect of part two of his request, but he would like to appeal the Trust's use of section 24 for part one, as he does not believe that revealing the funding the Trust received from the Home Office would in any way endanger national security to an extent sufficient to engage the exemption.
11. The Commissioner's investigation in this case is therefore restricted to whether she considers the Trust is entitled to rely on section 24 of the FOIA to withhold the information requested in part one of the request.

Reasons for decision

Section 24 – national security

12. Section 24(1) states that:

'Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security'.

13. The FOIA does not define the term "national security". However in *Norman Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045 4 April 2007), the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords' observations as follows:

- "national security" means the security of the United Kingdom and its people;
- the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;

- the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
 - action against a foreign state may be capable indirectly of affecting the security of the UK; and,
 - reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.
14. Furthermore, in this context the Commissioner interprets "*required for the purpose of*" to mean "*reasonably necessary*". Although there has to be a real possibility that the disclosure of requested information would undermine national security, the impact does not need to be direct or immediate.
15. The Trust has clarified to the Commissioner that the funding amount includes providing treatment to parents or guardians. The Trust has explained that whilst the funding is intended to treat British children returning from Syria, it is not possible to treat children (especially young children) without also treating their parents or guardians.
16. The Trust has confirmed that because the only patients recorded on its Electronic Patient Record are children, it is not possible from the current funding model to separate funding usage for children from parents or guardians.
17. The Trust clarified that it would be misleading to describe the funding as for "providing mental health and emotional wellbeing assessments", as this implies shorter term work with a narrow scope. It stated that whilst there is an assessment element in the early stages, the service offers long term support with ongoing interventions.
18. The Trust has therefore confirmed that it does not hold funding information that precisely matches the information requested in part one of the request. The Trust stated that it has considered whether it could disclose the funding information it does hold, with an explanation of how the monies are utilised, but has determined that this information would be exempt from disclosure under section 24(1) of the FOIA.
19. The Trust stated that it liaised with the Homeland Security division of the Home Office in respect of this request and determined that disclosure of any funding information would make the UK or its citizens more vulnerable to a national security threat.

20. Whilst the Trust acknowledges that revealing the financial data on its own may not give rise to a national security threat, it has stated that when this data is combined with other data that may be released under the FOIA or otherwise made publicly available (for example, budget information about other government projects), disclosure could then present a threat.
21. The Trust has explained that the funding is paid from Home Office Counter Terrorism (CT) budgets, due to concerns about children's vulnerability to radicalisation in future. CT spending is aligned to threat. The Trust stated that the Home Office has released total budgets for CT and the "Prevent" programme in the past. Therefore, if data was released on individual CT projects, it would be possible over a period of time to discern the Home Office's assessment of CT threat and CT resources allocated. This information could be exploited by terrorists to the detriment of national security. It is therefore important to maintain a consistent approach across the CT system to prevent this possibility.
22. The Trust stated that support provided under the programme is on a purely voluntary basis and provides support to vulnerable British children who have returned with their families from Syria. It explained that parental or guardian consent for this support is vital to the programme. The Trust argued that if the Home Office (or one of its providers) was to release the budgets allocated for a CT project, this could be used maliciously to undermine the programme, reducing the likelihood of gaining consent for the interventions and creating potential national security risks in the future if children's vulnerabilities are left unaddressed.
23. The Commissioner has carefully considered the Trust's arguments. In view of the compelling arguments as to how the disputed information could be used by those who wish to target the security of the UK, the Commissioner accepts that, under those circumstances, the exemption is reasonably necessary in this case to safeguard national security.
24. The Commissioner can understand why the complainant considers the disputed information is itself insignificant in the context of national security. However, it is the potential value of the disputed information in the hands of those who constitute a threat to national security that must be considered. There is no requirement for the Trust to demonstrate that there is a specific and imminent threat from disclosure; it is sufficient that the Trust has been able to demonstrate that the disputed information, in the wrong hands, could indirectly create a real possibility of harm to national security.

Public interest test

25. Section 24 is subject to a public interest test. This means that even when the exemption is engaged, the information may only be withheld if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
26. The Trust provided the Commissioner with a summary of the arguments it considered jointly with the Home Office.

Public interest arguments in favour of disclosing the information

27. The Trust acknowledged that there is a general public interest in disclosure and the fact that openness in government increases public trust in, and engagement with, the government.
28. The Trust stated that sharing information on Prevent interventions, and the level of funding they each receive, could enhance the openness of government and help the public understand in greater depth how the resources are used to safeguard vulnerable individuals most efficiently from being radicalised.

Public interest arguments in favour of maintaining the exemption

29. The Trust argued that Prevent funding is matched to the threat of radicalisation and terrorism. Disclosing Prevent funding into the public domain could put national security at risk by jeopardising or negating the Government's efforts to prevent acts of terrorism. Such a disclosure could allow an individual to develop an understanding of the Government's assessment of threat, and the CT response, and seek to exploit this information by targeting areas with a lower budget for CT response. This could increase the risk of individuals being drawn into terrorism, undermining the national security of the UK.
30. The Trust has argued that because safeguarding national security is of paramount importance, it has concluded that the balance of public interest lies in favour of maintaining the exemption.

Balance of the public interest arguments

31. The Commissioner considers there is always a public interest in ensuring accountability for public expenditure. There is also a significant public interest in ensuring national security is not used inappropriately as a shield to prevent the transparency and accountability of expenditure in this area. The Commissioner agrees that disclosure would enhance the openness of government and help the public understand how the

resources are used to safeguard vulnerable individuals most efficiently from being radicalised.

32. Nevertheless, there is also a significant public interest in ensuring that the security of the UK is not put at risk by the disclosure of the disputed information. There is a significant public interest in preventing the disclosure of information which could potentially assist individuals or groups intent on damaging national security.
33. The Commissioner therefore finds that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure. Whilst the disclosure of the information requested would provide relatively limited insight into national security matters in itself, the Commissioner accepts that the effect of disclosure could be to undermine aspects of the Trust's Prevent programme and those, including the public, who are served by it.

Procedural matters

Section 10 – time for compliance

34. Section 10(1) of the FOIA says that a public authority should comply with section 1(1) promptly and no later than the twentieth working day following the date of receipt of a request for information.
35. In this case, the total time taken by the Trust to respond to the request for information exceeded 20 working days. The Commissioner therefore considers the Trust to have breached section 10(1) of the FOIA in this case.

Other matters

36. The Commissioner notes that the Trust's response to the internal review exceeded 40 working days. Although there is no statutory time set out in the FOIA within which public authorities must complete a review, the Commissioner takes the view that a reasonable time for completing an internal review is 20 working days from the date of the request for review, and in no case should the total time taken exceed 40 working

days. The Commissioner therefore recommends that the Trust review the Section 45 code of practice.¹

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

37. 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

38. 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.
39. 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
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