

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 September 2014

Public Authority: Cambridgeshire and Peterborough Clinical Commissioning Group

Address: Lockton House
Clarendon Road
Cambridge
CB2 8FH

Decision (including any steps ordered)

1. The complainant has requested information relating to the provision of NHS Continuing Healthcare. The eleven part request included information about two named individuals and whether they had the necessary training to fulfil their roles in deciding which patients were eligible for Continuing Healthcare. The Clinical Commissioning Group (CCG) responded to the request but failed to do so within 20 working days. It provided information answering many elements of the request. However it initially refused to provide information on the training of two named individuals as it believed the information was exempt under section 40(2), the exemption relating to third party personal data. During the investigation the CCG informed the Commissioner that it had reconsidered its position and no longer wished to rely on section 40(2). It was now prepared to disclose the information.
2. The Commissioner's decision is that the CCG breached section 10 by failing to respond to the request within the 20 working days required. As the CCG has not yet provided the information originally withheld under section 40(2), it has breached section 1(1)(b) in respect of that element of the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Communicate the information relating to the training of the two named individuals.

4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 18 February 2014, the complainant wrote to the CCG and requested information in the following terms:

"1) Please provide evidence that when considering all requests for CHC funding the CCG is informed by and conforms to the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care (2012).

2) A copy of the CCG's policies for making (CHC) funding decisions.

3) Evidence that the 'quantity vs quality test' (also known as the Coughlan test) was applied when considering my mother's needs, noting that the judge deemed that 'Miss Coughlan needed services of a wholly different category well in excess of the minimum quantity / quality to be eligible for CHC funding to determine eligibility for funding (Judgement: Case No. QBCOF 99/0110/CMS4. 16th. July 1999).

4) Evidence that, as per the Grogan judgement (Case No: C012008/2005), that in applying the primary health need approach the elements of quality and degree (i.e. nature, complexity, intensity etc. of the need) is considered against the limits of the lawful provision of social services by the Local Authority and not in isolation.

Also:

5) How many patients within the remit of the CCG were considered for CHC funding, using the Decision Support Tool for NHS Continuing Healthcare (DST), by the CCG in 2012 and 2013?

6) What percentage (%) of the above patients, in (5) was then deemed to be eligible and granted CHC funding by the CCG?

7) How many patients were subjected to DSTs that involved the input from, or had (named individual A) as part of the Multidisciplinary Team (MDT) in 2012 and 2013?

- 8) What percentage (%) of patients, subject to DSTs from (7) was then deemed to be eligible and granted CHC funding by the CCG in 2012 and 2013?
- 9) Please advise what training individuals involved in sitting on MDTs for DSTs and involved in making decisions about CHC funding receive and who decides that these individuals require such training?
- 10) Please provide evidence that (named individual A) and (named individual B) have completed all necessary training with regards to sitting on MDTs for DSTs and in helping to make/making decisions about CHC funding eligibility and that any such training is current and up to date.
- 11) Please can you also provide a copy of the training materials used with regards helping to make/making decisions about CHC funding eligibility.”
6. The CCG responded on 14 April 2014. It provided information in response to questions 1, 2, 4, and 11. It provided answers to questions 3, 5, 6 and 9. It explained that it did not hold the information requested at points 7 and 8. In respect of question 10 the CCG advised the complainant that it was satisfied that the two named individuals had the relevant training and experience. However it withheld the actual information under section 40(2), the exemption relating to third party personal data.
7. Normally the Commissioner will not accept a complaint until the complainant has exhausted the public authority's own internal review process. However in this case it was clear there had been some confusion over the handling of the request. The complainant had already contacted the public authority on 19 March 2014 to complain about its late response and had also raised his concerns with the Commissioner. In light of this the Commissioner decided it was appropriate to accept the complaint without there being an internal review of the CCG's substantive response. The CCG agreed that in the circumstances, it was not reasonable to expect the complainant to seek an internal review of its decision to withhold the training information.

Scope of the case

8. The complainant originally contacted the Commissioner 27 May 2014. During an exchange of correspondence, the complainant raised concerns

over the CCG's late response to his request, its internal review procedures and its refusal to provide information about the training undertaken by two named individuals. The complainant also informed the Commissioner that he had found out that named individual A was not in fact an employee of the CCG. He therefore questioned whether the CCG was in a position to confirm that the individual had the necessary training and experience. He argued that the CCG had provided a misleading response to question 10 in respect of this individual.

9. The Commissioner has investigated these matters. The Commissioner considers that the first matter to be decided is whether the CCG breached section 10 by failing to respond to the request within 20 working days.
10. The second issue is the CCG's response to question 10. At the time the complainant raised his concerns as outlined above, the CCG had in effect confirmed it held information on the training undertaken by the two named individuals, but had withheld that information under section 40(2). However during the Commissioner's investigation the CCG withdrew its application of the exemption. It has not yet released the information and therefore the outstanding issue in respect of question 10 is the whether the CCH has complied with its obligations to communicate this information under section 1(1)(b) of the Act.
11. Finally the complainant has raised concerns about the CCG's internal review procedures. As there is no statutory obligation to provide an internal review the Commissioner's consideration of this point is reserved for the section on 'Other matters'. This does not form part of the formal decision notice.

Reasons for decision

Section 10 – the statutory time for compliance

12. Section 10 of FOIA states that a public authority must comply with its obligation to confirm whether it holds the requested information, and if so, to communicate that information, within 10 working days following receipt of the request.
13. The request was received on the 18 February 2014. The CCG did not provide a substantive response to that request until 11 April 2014. Unfortunately that response was sent out under the wrong covering letter and so it was not until the response was resent on 14 April that the complainant received full confirmation of what information was held as well the grounds which the CCG was relying on, at that, to withhold

the information requested in question 10. This was 39 working days after the request was received.

14. The CCG has acknowledged to the Commissioner that in this case its normal procedures for handling requests were not followed. It has apologised to the complainant for the delay in responding that this caused. The CCG has said that it considers this to be an isolated incident. Nevertheless this is a clear breach of section 10. The Commissioner records failures to comply with requests within the statutory time limit. If a pattern of late compliance emerges the Commissioner will consider whether further action is required to ensure future requests are dealt with in a timely manner.
15. The outstanding issue of the information originally withheld under section 40(2) will be dealt with under the Commissioner's consideration of section 1.

Section 1(1)(b) the obligation to communicate information.

16. Section 1 (1) (b) requires a public authority which holds the requested information to communicate that information to the applicant, subject, of course, to the application of any exemptions.
17. The CCG originally withheld information relating to the training undertaken by the two individuals named in the request. Although the CCG has now withdrawn its application of section 40(2) it has not yet provided the information it does hold. In the absence of any other grounds for refusing this element of the request the CCG is obliged to communicate the information it has identified as being relevant to question 10.
18. The CCG has provided the Commissioner with a copy of that information. In his role as regulator of the Data Protection Act 1998 (DPA) the Commissioner was interested in seeing this information since he would not wish a public authority to disclose information in breach the DPA. The DPA sets out a number of data protection principles which govern the ways in which personal data can be processed. The first of those data protection principles states that personal data shall not be processed (which includes its release) unless it would be fair and lawful to do so. In many cases there would be concerns that disclosing information relating to the training of named individuals would breach that principle.
19. However in this case the CCG has obtained the consent of the two named individuals for the information to be released. The CCG has advised the Commissioner that in providing their consent the two

individuals were fully aware that a disclosure under FOIA is regarded as being a disclosure to the wider public rather than simply to the applicant.

20. The Commissioner has also had regard for the actual information requested. In respect of individual A, who is not an employee of the CCG, the information simply comprises of one form recording their attendance on a continuing care referrals training course. The information relating to individual B is more detailed. It records their completion of a relevant induction programme. Importantly, both these pieces of information simply show that the individuals have received training appropriate to their roles in making decisions about Continuing Healthcare. This is training that social workers and nurses would be expected to have undergone. The CCG does not therefore consider disclosing this information would be intrusive to the individuals concerned. It does not reveal anything about the individuals' performance on those courses or in their respective roles.
21. Even so the Commissioner would normally take into account the fact that the request itself targeted the two named individuals. This may be indicative that the individuals are the subject of another party's dissatisfaction or that a complaint regarding the level of service offered has become personalised. Disclosing information in such circumstances would in very many cases be unfair.
22. However in light of the fact that the individuals are content for the information to be released, and that the information itself simply confirms the individuals have received the level of training one would expect them to have received, the Commissioner has no grounds for objecting to the disclosure of this particular information, in this particular case. The Commissioner is keen to point out that this does not mean it is appropriate to disclose information about the training undertaken by individual members of staff on a routine basis. It will be the exception rather than the rule where such information could be disclosed without it breaching the first data protection principle. Certainly the Commissioner would not expect more detailed information to be released without very good cause.
23. Since the Commissioner has no grounds for objecting to the disclosure of this information and the CCG no longer wishes to apply any exemptions, the Commissioner finds that the CCG is obliged to communicate that information to the complainant. As the CCG has not done so it is in breach of section 1(1)(b). The Commissioner requires the CCG to now disclose this information.
24. Finally the Commissioner would like to comment on the complainant's contention that the CCG provided a misleading response when

responding to question 10 in respect of named individual A, ie the individual not employed by the CCG itself. This appears to be on the basis that if individual A is not employed by the CCG, it would not hold information on which to base its assertion that he had the necessary training and experience. The Commissioner role is to consider whether the CCG complied with its obligations under FOIA. In this case it has been established that the CCG does hold information relevant to question 10. This was originally withheld under section 40(2). Under section 1(1)(a) a public authority is simply required to confirm whether it holds any information described by the request. If it does hold relevant information it is required to release that information under section 1(1)(b), subject to any exemptions. The Commissioner is satisfied that once the information relating to individual A has been released the CCG will have complied with its responsibilities under the Act.

Other matters

25. Although not forming part of the formal decision notice the Commissioner wishes to comment on the following aspect of the handling of the complainant's request. The complainant has raised concerns about what he believes to be the CCG's failure to provide an internal review in respect of its late response to the request. This stems from an email which the complainant sent to the public authority on 19 March 2014. This was the twenty-first working day after the complainant had submitted his request. It is clear from the email that the complainant wishes to make a formal complaint about the CCG's failure to respond to his request within the statutory time limit. It is understood that this email was sent to the same clinical staff to which the request had originally been sent. It appears that this is what alerted those staff to the fact that the original request had not been passed to the CCG's Freedom of Information Office in line with established procedures.
26. It is unfortunate that the CCG failed to follow its established procedures for handling requests and this delay has resulted in the Commissioner finding a breach of section 10.
27. However following receipt of the complainant's email of the 19 March 2014 the request was forwarded to the correct team together with the complaint regarding the late response. The Freedom of Information Office acknowledged that the response to his request was overdue and explained that a mistake had been made which resulted in the request not being forwarded to them earlier. It then set about dealing with the

request itself and provided a response within 18 working days. Although this does not overcome the fact that its final response was late, it appears to the Commissioner that the CCG did to all intents and purposes take appropriate steps deal with the complaint in the circumstances.

28. The purpose of an internal review is to reconsider how a particular request was handled and to attempt to remedy any failings in how that request was handled. The Commissioner considers that in a very practical way the CCG did carry out a review of how it handled the complainant's request of 18 February 2014. It is apparent that the clinical staff who originally received the request were aware of the need to forward the request to a Freedom of Information Officer and had intended to do so. This is evidenced by an email to the complainant sent on the 18 February 2014 in acknowledgement of his request. The email clearly states that the request is to be passed to the appropriate freedom of information officer. However through some error this did not happen. It has been suggested that this may have been because of IT problems experienced by one member of staff but this is not clear. In any event the CCG has advised the Commissioner that the team who received the request has been reminded of their obligations under the FOIA.

Right of appeal

29. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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

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