

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

### **Decision notice**

**Date:** 22 June 2017

**Public Authority:** South West Partnership NHS Foundation Trust  
**Address:** Fieldhead  
Ouchthorpe Lane  
Wakefield  
WF1 3SP

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

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1. In four requests, the complainant has requested information concerning the closure of an art psychotherapy service waiting list. South West Partnership NHS Foundation Trust ('the Trust') said that the information requested in requests 1 and 4 is not held and that information it holds falling within the scope of requests 2 and 3 was the personal data of third persons and exempt under section 40(2) of the FOIA. The Trust subsequently withdrew its reliance on section 40(2) and released a small amount of information it holds that is relevant to requests 2 and 3.
2. The Commissioner's decision is that, on the balance of probabilities, the Trust: does not hold information relevant to requests 1 and 4; holds no further information relevant to requests 2 and 3; and has now fully complied with section 1(1) of the FOIA.
3. The Commissioner has also decided that the Trust breached section 10(1) with regard to requests 2 and 3 because it did not communicate the relevant information it holds to the complainant within 20 working days.
4. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

## Request and response

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5. On 20 April 2016, the complainant wrote to the Trust and requested information in the following terms:

*"1. The number of individuals, across Calderdale and Kirklees, referred to the Art Psychotherapy Service, after the waiting list was closed*

*2. Any documents, including; letters, memos, internal correspondence, emails and minutes relating to the closure of the waiting list for this service.*

*3. Any documents, including, letters, memos, internal correspondence, emails and minutes, through which SWYPFT has informed professionals who are in a position to make referrals to the Art Psychotherapy Service, of the closure of the waiting list.*

*4. Any documents, including; letters, memos, internal correspondence, emails and minutes, relating to SWYPFT offering alternative services to those individuals who requested referral to the Art Psychotherapy Service after the waiting list was closed."*

6. The Trust responded on 10 May 2016. It provided a narrative response to request 1; advising the complainant that Kirklees does not have an art therapy service and, within Calderdale, all referrals are triaged through a single point of access (SPA). With regards to requests 2, 3 and 4, the Trust said that there is no correspondence other than that contained in individual staff supervision records.
7. In further correspondence to the complainant on 1 June 2016, the Trust advised that no individuals were referred to art therapy services specifically, with regard to request 1. The Trust confirmed that, with regard to the remaining three requests, there are no minutes, letters or internal correspondence other than that contained in individual staff records.
8. The Trust provided a formal internal review on 6 July 2016. It provided a response to request 1 (the figure '0'). With regard to requests 2, 3 and 4, the Trust maintained its position that it holds no correspondence other than that contained in individual staff supervision records and that this is exempt from disclosure under section 40 of the FOIA because it is personal data.

## Scope of the case

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9. The complainant contacted the Commissioner on 6 December 2016 to complain about the way her request for information had been handled.
10. During the Commissioner's investigation, and following discussion with the Commissioner, the Trust reconsidered its position with regards to requests 2 and 3. The Commissioner reminded the Trust that the FOIA entitles people to receive 'information' and not copies of documents that may hold the information. (It is also not necessary for a public authority to tell an applicant from which document particular information has been extracted.)
11. The Trust accepted that it would be able to release the small amount of information that it holds that is specifically relevant to the complainant's two requests (regarding the closure of an art therapy waiting list), without disclosing anyone's personal data. The Trust communicated this information to the complainant on 20 June 2017.
12. The Trust also reconsidered its position regarding request 4 and now says it does not hold any information falling within the scope of this request.
13. The Commissioner's investigation has therefore focussed on whether the Trust holds any further information within the scope of the four requests that it has not released. She has also considered whether it complied with its obligation under section 10(1).

## Reasons for decision

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### **Section 1 – access to information held by a public authority**

14. Section 1(1) of the FOIA says that anyone who requests information from a public authority is entitled a) to be told if the authority holds the information and b) to have the information communicated to him or her if it is held.
15. In this case, on 1 June 2016 the Trust released information with regard to request 1- the figure '0'. It had explained to the complainant in earlier correspondence why this was the case; namely, that Kirklees does not have an art therapy service and, within Calderdale, all referrals are triaged through the SPA.
16. In its communications with the Commissioner, the Trust further explained that no individuals would be directly referred to art therapy

services. This is because, for example, a GP will refer a patient to the SPA as someone who would benefit from a therapy, but the specific therapy is not identified at that stage. The referral will be triaged and a clinician will then consider the referral and make a decision at that point as to what therapy would be of most benefit to the individual. Sometimes this would have been the art therapy service. The Trust also confirmed that individuals would not have been able to refer themselves for art therapy services.

17. The Commissioner has noted the Trust's submission to her in which it has confirmed that, with regard to request 1, the Trust's response to the complainant had been confirmed by both the Calderdale and Kirklees Business Delivery Unit District Director and Deputy Director. Potential information owners had undertaken electronic and manual searches for relevant information- including in email and paper documents - and the Trust's customer services team had sought assurance that a thorough search for information had been completed. The Trust confirmed that it is not aware that any relevant information had been deleted or destroyed.
18. The Commissioner is prepared to accept that the information that the Trust has released in response to request 1 - as it has been phrased - is all the relevant information it holds; that is, that there were no referrals directly to the art therapy service, after the waiting list was closed (nor, presumably, before it was closed). In addition, it seems to the Commissioner that at the triage point, the clinician(s) would be aware that the art therapy waiting list had been closed and they would therefore not have identified this service for any individuals.
19. The Trust's response to request 1 is relevant to request 4 which was for documents relating to the Trust offering alternative services to individuals who had requested art therapy services, after this waiting list was closed.
20. In its submission to the Commissioner, the Trust's position altered with regard to request 4. It no longer sought to rely on section 40(2) with regard to this request but stated that there are no art therapy referrals received from individuals. The Trust confirmed that, as above, individuals cannot request a specific therapy, such as art therapy - themselves. As above, a body, such as a GP, will refer an individual for a therapy; the referrals are triaged and a clinician then makes a decision as to the most beneficial therapy for a particular individual. The Trust confirmed that, as with request 1, it therefore does not hold the information as it has been requested in request 4.
21. In her submissions to the Commissioner, the complainant has provided information - particular email correspondence from 2015 - that she

considers demonstrates that at least one referral had been made to the art therapy service and that the Trust's position is therefore not correct. The email correspondence provided appears to be referral correspondence from the complainant's GP to the Lower Valley Calderdale Mental Health Team, and email correspondence between the complainant and a particular charity regarding referral to art therapy services.

22. In the Commissioner's view, the elements of this information that are relevant to the requests, appear to support the Trust's position; that a GP cannot refer a patient directly to art services (though he or she may suggest in their referral that this therapy might be beneficial), but must refer a patient to the SPA, with a clinician then considering what would be the best therapy for that individual depending on the circumstances. As such, the Commissioner is prepared to accept that the Trust does not hold information relevant to the two requests as they have been phrased, because there have been no referrals directly to art therapy services.
23. On balance, the Commissioner is prepared to accept the Trust's position regarding requests 1 and 4; namely that it does not hold information within the scope of these specific requests.
24. With regards to requests 2 and 3, the Trust has now released to the complainant the small amount of information it holds that is relevant to these requests and has confirmed that it holds no further information.
25. In its submission to the Commissioner, the Trust referred to the supervision records of two members of staff providing the art therapy component of psychological therapy services in Calderdale, which may (or may not) contain other information relevant to the complainant's two requests. However, the Trust has confirmed that it does not hold these particular records. They belong to, and are held by another person, namely Westpark Practice Ltd – a private company - entirely for its own purposes and not on the Trust's behalf to any extent. The Trust has confirmed to the Commissioner that it has no access to these records at all. As such, the Commissioner considers that the Trust cannot be said to hold these records or any information within the scope of the two requests that they may contain.
26. In her submissions to the Commissioner, the complainant has referred to a particular report: '*Independent review of Art Therapy in Calderdale (Nov 16)*', specifically the 'Context' section of this report. This section includes references to art therapists being asked, in 2013, to produce proposals for delivering Art Therapy, and the art therapists' views on proposals to change practice with regard to this Therapy. The

complainant considers that, in view of this report, the Trust would hold further information within the scope of her requests.

27. The Trust has confirmed to the Commissioner that it does not hold any information within the scope of requests 2 and 3 that it has not released. It says it had discussions about any information it might hold as part of the internal review process and that the therapists concerned directly confirmed that no other information exists. The Commissioner notes that the consultation with therapists referred to in the report occurred in 2013, some three years before the complainant submitted her request. It is credible that any information, if held originally, could have been destroyed as part of the Trust's routine records management processes in the interim period.
28. Having considered the submissions received from the Trust and the complainant, the Commissioner is prepared to accept that the Trust has released to the complainant all the relevant information she has requested in requests 2 and 3 and that it holds no further information within the scope of these requests.

### **Section 10 – time for compliance**

29. Section 10(1) says that a public authority must comply with section 1(1) as soon as possible and within 20 working days.
30. The Trust acknowledged that it could release to the complainant a small amount of information falling within the scope of requests 2 and 3, and the Commissioner understands this has now been released. The Trust has breached section 10(1) with regards to this information, however, because it did not communicate it to the complainant within 20 working days of the request.

## Right of appeal

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31. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

32. 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.
33. 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 .....**

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