

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 November 2017

**Public Authority:** The Care Quality Commission  
**Address:** Citygate  
Gallowgate  
Newcastle upon Tyne  
NE1 4PA

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to the Care Quality Commission's (the CQC) findings and enquiries relating to the security and availability of drugs at Queen's Hospital, Romford. The CQC has provided some of the information requested, but has explained that it does not hold other information falling within the scope of the request. However, the complainant considers that more information must be held.
2. The Commissioner's decision is that the CQC does not hold any further information.
3. The Commissioner does not require the CQC to take any steps.

#### Request and response

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4. On 9 April 2017, the complainant wrote to the CQC and requested information of the following description:

*"The information requested is for all details about the CQC findings and enquiries so far relating to Queen's Hospital, Romford of security and availability of drugs."*

With the request, the complainant enclosed the following:

*"List of specific details required but entire reports and enquiries are requested Relating to CQC findings and enquiries so far relating to Queen's Hospital, Romford of security and availability of drugs and non-*

*compliance with the safe locking away of drugs*

*All details about the CQC findings and enquiries so far relating to Queen's Hospital, Romford of security and availability of drugs, including:*

- a. Details relating to death on Mandarin B ward related to open PODs prior to August 2013. Details of any other deaths specifically related to drug access by patients/free access to drugs either before or after August 2013.*
  - b. Reports and details of whether or not the CQC found any clinical concern/health and safety risk in relation to trolleys being left unlocked, key access/uncontrolled drug key availability/POD access/administration of drugs by nurses (August 2013 to date), including all the papers on which the reports were based.*
  - c. Details of the Guardian appointed for Queen's hospital for whistle blowing – when was this appointment made/when was the system first operational at Queen's Hospital – name of first guardian appointed and any details (2013 to date).*
  - d. Details of how many cases the Guardian dealt with during 2013, 2014, 2015.*
  - e. Details of findings/improvements needed/made at Queen's Hospital while in special measures in relation to trolleys being left unlocked, key access/uncontrolled drug key availability/POD access/administration of drugs by nurses (August 2013 to date).*
  - f. Details of all reasons found for unlocked trolleys/PODS (2013 to date)*
  - g. Any details relating to [redacted name 1] in relation to her whistle blowing, and CQC investigation (August 2013 to date).*
  - h. Details of [redacted name 2, Deputy Chief Nurse/[redacted name 3]/and or CQC concerns/reports/discussions/other in relation to key availability/drug access on Mandarin B and throughout the hospital (August 2013-August 2014).*
  - i. Any consultations with the Trust regarding the formulation of a Trust policy for drug key access for nurses (August 2013 to date).*
5. The CQC responded on 4 May 2017 to each part of the request as follows:
- a. It denied holding the information requested under this item.
  - b. It confirmed that it held some recorded information in relation to trolleys and resuscitation training. It advised that this information is available in the inspection report published in March 2017. It provided the complainant with a link to the report and enclosed a copy with its response.
  - c. It provided the complainant with some information about "The Guardian Service" and links to publicly available information.
  - d. It referred the complainant to its response to item c).

- e. It referred the complainant to its response to item b).
  - f. It denied holding the information requested under this item.
  - g. It advised that the CQC would respond to this subject access request under separate cover.
  - h. It denied holding the information requested under this item.
  - i. It denied holding the information requested under this item.
6. The complainant requested an internal review on 6 May 2017 in which she explained that the CQC had provided her with a copy of the latest CQC report of Queen's Hospital for October 2016 but she had specifically requested information dating back to 2013 and earlier. The complainant went on to explain that she had requested details of the findings when the problem was brought to light under item b). The complainant also explained that the 2016 published report does not detail the trolley key and POD key issues or the death on the ward as she had requested. The complainant stated that the CQC did not respond to her request for information relating to the Guardian Scheme but provided information about the Guardian Service, which is a commercial company and not the scheme set up by the Government.
7. Following an internal review, the CQC wrote to the complainant on 15 May 2017. It explained that the CQC would not always hold the background information to its report. It confirmed that its retention period for information used to support the inspection is 6 months after the final report is published or enforcement is complete. Therefore much of the information that the complainant has requested going back to 2013 or earlier would not be held by the CQC. The CQC maintained its positions that it did not hold the information the complainant requested in items a), b), e), f), h), and i) of her request. With regards to the complainant's request for information relating to the Guardian Scheme, the CQC took this to mean the National Guardian's Office (NGO) hosted by the CQC. It clarified that the complainant's original request was interpreted to relate to the Guardian appointed for Queen's Hospital for whistle blowing which it said was a different NGO. The CQC explained that colleagues in the NGO have written to the complainant to explain the role of their office and how that links in with the local Freedom to Speak up guardian. The CQC considered this to be reasonable advice and assistance under the FOIA.

## Scope of the case

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8. The complainant contacted the Commissioner on the 22 May 2017 to complain about the way her request for information had been handled.

9. The Commissioner considers the scope of this case is to determine whether the CQC holds any additional recorded information relevant to the request of 9 April 2017 (other than that which it has already provided to date).

## Reasons for decision

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### Section 1 – general right of access

10. Section 1(1) of FOIA says that an individual who asks for information from a public authority is entitled to (a) be informed whether the authority holds the information and (b) if the information is held, to have that information communicated to them.
11. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – in accordance with a number of First-Tier Tribunal decisions – applies the civil standard of the balance of probabilities.
12. In its submission to the Commissioner, the CQC confirmed that it revisited the request and maintains its original position that no further information covered by the request was held by the CQC.
13. In particular, the CQC carried out the following searches for information falling within the scope of the request:
  - Enquiries and safeguarding records within the CQC's Customer Relation Management (CRM) system,
  - Its Y Drive folders (these are where any business information not on CRM is held),
  - Its mailboxes and email accounts used for CQC business,
  - Hard copy documents such as inspection notes and evidence.
14. The CQC explain that these searches included any electronic data held locally on individual computers and on networked resources and emails. They also involved checking for any hard copy inspection notes that may have been retained.
15. The CQC considers that the information being sought would have been recorded within:
  - Material recorded during its inspections (Inspection Notes)
  - Correspondence received from members of the public (CRM Records)

- Correspondence received from the Trust (CRM Records, Mailboxes of Inspection Teams)
  - Engagement meetings with the Trust (CRM Records, Mailboxes of Inspection Teams)
16. The CQC stated that these searches covered records relating to the most recent inspection of Queen's Hospital (carried out on 7-8 September 2016 and 11-12 October 2016, and published on 7 March 2017) but also would have identified any relevant documents relating to previous inspections if these were still held by the CQC.
17. The CQC has explained that when searching for records, its Inspection Team used their expertise and knowledge of the Trust, the background of the issues and the CQC systems to locate and identify potentially relevant records.
18. The CQC stated that this was then backed up by a search conducted by colleagues from its National Customer Service Centre who are experienced at using and locating information on the CQC's systems. They searched for appropriate terms identified from the request within metadata relating to individual enquiries and documents held on its systems. The keywords used to search its electronic records were:
- Drugs
  - Medicine
  - Mandarin
  - POD
  - Patient Own Drug
  - Uncontrolled drug key
  - Drug Trolley
  - [Redacted name 2]
  - [Redacted name 3]
19. The CQC has confirmed that its retention policy states that such information should be retained for six months after the completion of the inspection, or after the completion of any related enforcement or legal action (if this is later).
20. The CQC has explained that it would be very difficult to determine if there was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed. The CQC has gone onto explain that the complainant's request was specific, in that it related (in part) to a specific ward and to issues relating to the security of drugs. The CQC has stated that whilst it would have held the supporting information from its previous inspections, only the final published reports now exist.

21. The CQC has clarified that the 2015 report does identify that it found cases where Trust policy was not being followed when administering intravenous drugs, (i.e. without two nurses involved in the checking process) and the 2013 report does identify that some medicines were not being stored in locked cupboards.
22. The CQC has gone on to clarify that the report of the 2016 inspection says that it checked records showing that the drug administration issue had improved. However, the CQC has stated that it is likely that these would have been issues that would have been identified by inspectors making observations and looking at records whilst on inspection, rather than by taking and holding copies of documents and records.
23. The CQC has stated that it does not hold the date of destruction for records relating to the previous inspections. In accordance with its retention policy and schedule, inspection notes would have been destroyed six months after publication of the reports.
24. The CQC has stated that for information relating to an inspection, there is no longer a business purpose to keep requested information after a report has been published and the window for any legal challenge has closed. This information should therefore have been destroyed six months after publication of the report.
25. The CQC has confirmed that there are no statutory requirements which require it to retain any of the information requested.
26. In conclusion, the CQC considers that it has conducted proportionate searches of its records in response to the request and provided the information requested where this is held by the CQC. The CQC also considers that documents relating to monitoring and inspections prior to 2016 may have held further information within the scope of the request, but such information has not been located in its searches and the inspection notes and evidence from these inspections have been destroyed in accordance with the CQC's retention policy and schedule.
27. The CQC has clarified the position regarding the 'Guardian's Office' as follows:

*"The National Guardian's Office (NGO) was set up in accordance with the recommendation made in the Freedom to Speak Up (FTSU) review of Sir Robert Francis QC, published in February 2015. The NGO is hosted by, but acts independently of, CQC.*

*The role of the NGO is to support local Freedom to Speak Up (FTSU) Guardians and NHS trust employees who have raised a concern that has then not been effectively dealt with by the employer.*

*The NGO began in set up phase in January 2016. The current National Guardian for Freedom To Speak Up, Dr Henrietta Hughes, was appointed in July 2016 and took up post in October 2016.*

*The NHS standard contract for 2016/2017 required those organisations bound by the contract including trusts and foundation trusts, to appoint a Freedom To Speak Up Guardian by October 2016. However, we are aware that some trusts, on reading the report of Sir Robert Francis QC, decided to take action immediately to review their whistleblowing arrangements.*

*It was and remains the responsibility of each individual trust to appoint, elect, nominate, recruit or otherwise select their own Freedom To Speak Up Guardian.*

*The Guardian Service is a private company and completely separate from the NGO and CQC, which some trusts, including Barking, Havering and Redbridge University Hospitals NHS Trust ("BHRT") [of which Queen's Hospital, Romford is a part] have contracted to fulfil the role of Freedom To Speak Up Guardian."*

28. The CQC has confirmed that it does not hold a copy of the contract between the Trust and The Guardian Service and it cannot confirm when The Guardian Service started working for the Trust or what arrangements were in place previously at the Trust. The only thing the CQC can confirm is the date on which the Trust advised it of their arrangements, which was in September 2016.
29. The CQC has explained that in its initial response to the complainant, it provided links to publicly available information regarding 'The Guardian Service'. The CQC did not hold further information within the scope of the request.
30. The CQC went onto explain that at internal review stage, the complainant specified that she required information regarding cases at the Trust held by the NGO. The CQC confirmed that it responded by advising that the NGO was set up in 2016 so would not hold records of dealing with cases in 2013, 2014 or 2015, as specified under part d of the request.
31. The CQC has confirmed that its position remains as stated in the request response and the internal review reply to the complainant. This position is that, on the balance of probabilities, it does not hold the information being sought and any information that was held after each inspection will have now been destroyed in line with its retention policy.
32. The Commissioner wrote to the complainant on the 7 September 2017 outlining the CQC's response and provided a preliminary conclusion that

it does not hold any further information within the scope of her FOIA request. The complainant responded to the Commissioner highlighting five points regarding the CQC's response. The Commissioner therefore followed up the complainants points with the CQC.

33. The first point highlighted by the complainant is that she specifically asked for details about the problems of the locking of ward trolleys and a search was not included for "trolley keys" and "trolley locking".
34. In response to this point, the CQC has explained that its searches of electronic records in response to the original request were conducted as a two-stage process. It went onto explain that firstly, members of the team that inspected Queen's Hospital, Romford reviewed the relevant inspection reports and electronic records to identify whether the CQC held information within the scope of the request. In doing this, the members of the team relied upon their knowledge of the Trust, the CQC's inspection processes and the matters reviewed, rather than performing an automated search. The CQC stated that the keyword search that was conducted was a follow-up to this exercise. It confirmed that colleagues searched the meta-data of the CQC's electronic records relating to the service using a range of key words. The CQC clarified that those key words were selected with the intention of being most likely to identify relevant information without being so generic as to produce very large numbers of non-relevant hits. However, the CQC have re-run the latter search using the keywords "trolley", "drug key" and "lock". It confirmed that this search identified no further records relevant to the request.
35. The second point highlighted by the complainant is that she specifically asked for details about the problems of the locking of ward trolleys. The complainant explained that she has sent the Commissioner evidence that there has been a problem in this area and that the CQC was working with the Trust through 2014-2017, so she knows that this information exists.
36. In response to this point, the CQC explained that the complainant first contacted the CQC about the problems relating to the locking of ward trolleys in 2014. It went onto explain that these matters were considered by the CQC at the time and the concerns raised by the complainant were used to inform its regulation and inspection of the Trust. The CQC stated that it advised the complainant that it was unable to provide individual resolution of complaints. The CQC has explained that the complainant has continued to communicate with it since this time. The CQC went on to explain that the complainant has previously been advised in correspondence that it has continued to review medicine management in the wards that it has subsequently visited. However, it clarified that this is part of its standard approach to monitoring the



quality and safety of registered services. This has been a general review of the overall management of medicines rather than a specific follow-up on the complainant's concerns about unlocked drug trolleys. The CQC has stated that it identified and acted upon failings in medicines management at the Trust. It went on to explain that these issues were part of, but not the only reason for, the decision to place the Trust in special measures. Its findings and actions have been published in the CQC's inspection reports over this period. The CQC has explained that the complainant is of the view that these issues specifically relate to the matter of drugs trolleys at Queen's Hospital which she raised in 2014, and therefore the CQC will hold specific information in relation to this subject. However, the CQC has confirmed that this is not the case.

37. The third point highlighted by the complainant is that she specifically asked for details about the problems of the locking of ward trolleys. She explained that where there had been problems, and the Trust was in special measures, such records would be retained for at least six months after emerging from special measures. The complainant stated that the Trust was subject to this action and is concerned that the CQC may have breached its own regulation to retain information for six months after the enforcement is lifted.
38. In response to this point, the CQC has confirmed that it is not subject to a 'regulation' as to how long it is required to retain records, but it does have a retention schedule. The CQC has stated that it is its policy to retain inspection records for six months following publication of the relevant report, unless enforcement action is ongoing. The CQC has explained that once the Trust was placed into special measures, it would consider the 'action' to be complete. It would not retain all records relating to that Trust until after special measures have been lifted. The CQC has confirmed that it has not retained notes from its October 2013 and March 2015 inspections. However, it has confirmed that those notes had been disposed of prior to receipt of the complainant's FOIA request. The CQC has stated that its inspectors created handwritten notes in the course of its inspection of September and October 2016 that were used to produce the report published in March 2017. It has explained that key information from these notes was recorded onto its electronic systems, where it says it also holds other information and evidence relevant to the inspection (for example correspondence and data received from the Trust and other sources). The CQC has stated that the electronic records were used as the starting point for the search, with inspectors using these to pinpoint whether and where within the handwritten notes any relevant information would be. The CQC has confirmed that there was no relevant information identified in the notes. The CQC has clarified that most of the handwritten notes have now been disposed of in accordance with its retention schedules. As previously stated, the inspectors reviewed the inspection reports and electronic records and

identified that the specific issues relating to drug trolleys were not a factor considered at the 2016 inspection.

39. The fourth point highlighted by the complainant is that as part of the special measures / enforcement, she understood that the CQC required the Trust to work with the Virginia Mason Institute in the United States to improve care. However, she is concerned that the CQC has not searched for these records.
40. In response to this point the CQC confirmed that it did not require the Trust to work with the Virginia Mason Institute. It understands that this partnership was part of an initiative led by NHS Improvement to support a number of Trusts to develop a 'lean' culture of continuous improvement (<https://improvement.nhs.uk/resources/virginia-mason-institute/>). The CQC has stated that if it had held any information relating to this work, it would have been included within the scope of its search, but it is of the view that it seems unlikely that this initiative would have included specific recording of information regarding locking drug trolleys.
41. The fifth point highlighted by the complainant is that although the Trust has come out of special enforcement measures, she understands that the CQC still considers the Trust to be inadequate in many ways and therefore records would be retained on their progress and the Trust would be closely monitored to ensure improvements are sustained. The complainant has stated that she believes it to be inconceivable that no records exist.
42. In response to this point, the CQC has clarified that it does, of course, continue to monitor the Trust and it holds records relating to this work. It publishes information on the data it collects and used to monitor hospital trusts on its website (<http://www.cqc.org.uk/what-we-do/how-we-use-information/monitoring-nhs-acute-hospitals>). The CQC has confirmed that, as with all providers, it also engages and interacts with Trusts as and when specific issues or concerns arise. The CQC has explained that if these records (which it says it holds electronically) held information within the scope of the request, it considers that they would have been identified in its search.
43. The CQC has explained that the complainant is continuing to pursue matters that she raised with the CQC in 2014. It says that it understands why she is continuing with this, but the matters that she raised were considered by the CQC at the time and have not remained a specific factor in its later interactions with the Trust. It says that the complainant is therefore trying to find records which, as it has already advised her, the CQC no longer holds or has never held. The CQC therefore considers that it conducted a proper and proportionate search

but that, on the balance of probabilities, it does not hold the information the complainant is seeking.

## **Conclusion**

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44. The Commissioner understands the reasons why the complainant considers that additional information should be held. However, she can only consider what information is actually held at the time the request is received. Having considered the responses from the CQC, it is the Commissioner's view that, on the balance of probabilities, the CQC does not hold any additional information relevant to the request.

## Right of appeal

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45. 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)

46. 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.
47. 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**  
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