

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 November 2017

Public Authority: NHS South Worcestershire
Clinical Commissioning Group

Address: The Coach House
John Comyn Drive
Worcester WR3 7NS

Decision (including any steps ordered)

1. In four requests, the complainant has requested information from NHS South Worcestershire Clinical Commissioning Group ('the CCG') about its Lymphoedema service. The CCG approached the complainant's requests as questions and queries and answered them accordingly.
2. The Commissioner's decision is that the CCG breached section 1(1)(a) of the FOIA with regard to the four requests as it did not clearly confirm whether it does or does not hold recorded information within the scope of these requests. As a result of her investigation, the Commissioner is prepared to accept that the CCG does not hold, in recorded form, the information the complainant has requested.
3. The Commissioner also finds that the CCG breached section 10(1) of the FOIA as it did not communicate to the complainant, within 20 working days, that it holds no relevant information.
4. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

5. On 11 March 2017, the complainant wrote to the CCG and requested information in the following terms:

"1. Does the CCG require the Trust's nurse-led specialist Lymphedema Clinic to be subject to any patient waiting time criteria? If so, what are those criteria? If so, how frequently does the CCG monitor the waiting times to ensure adherence to its requirements?"

2. Does the CCG require the Trust's nurse-led specialist Lymphoedema Clinic to be subject to lymphoedema specialist qualified expert clinical oversight? If so, does the Trust fulfil this requirement? How is 'treatment that is clinically appropriate' [question 2 CCG answer] known to conform to accepted lymphoedema treatment norms?"

3. What measures has the CCG required to be in place to ensure that the Trust's nurse-led specialist Lymphoedema Clinic provides clinically correct, appropriate and timely treatments that conform to recognised lymphoedema protocols? If so, does the Trust fulfil this requirement?"

4. Does the CCG require the Trust's Lymphoedema Clinic to be subject to lymphoedema specialist qualified expert audit and evaluation? If so, how often is this carried out and by whom?"

I wish you to continue with the FOI requests as detailed above."

6. The Trust responded on 1 June 2017 and provided narrative answers to the above requests. In paragraph 3 of its response, the CCG confirmed that "... reports are reported internally..." The complainant considered that such reports would fall within the scope of requests 3 and 4.
7. The complainant requested an internal review on 5 June 2017 and asked two further questions regarding the CCG's responses to requests 3 and 4 above.
8. The CCG provided an internal review on 20 June 2016. It answered the two questions the complainant had asked on 5 June 2017 and responded to other of his outstanding queries and concerns.

Scope of the case

9. The complainant contacted the Commissioner on 30 June 2017 to complain about the way his request for information had been handled.

10. The Commissioner's investigation has focussed on whether, on the balance of probabilities, the CCG holds information within the scope of the complainant's four requests and has complied with its obligations under section 1(1) and section 10(1) of the FOIA.

Reasons for decision

Section 1 – general right of access to recorded information

11. 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.
12. NHS South Worcestershire Clinical Commissioning Group commissions services from a number of providers including Worcestershire Health and Care NHS Trust. The Commissioner understands the CCG's and complainant's references to 'the Trust' are to the Worcestershire Health and Care NHS Trust.
13. The CCG has provided a submission to the Commissioner. With regard to request 1, the CCG has explained that it does not require the Trust's nurse-led service to be subject to specific waiting time criteria other than to respond to patients in the timeliest way.
14. The CCG says that waiting times that fall within the NHS Constitution are submitted to formal committees for review and escalated to a Contract Management Board. As the Lymphoedema service is not a consultant-led service there is no formal requirement to provide initial treatment within 18 weeks. Therefore waiting times for this specific service are not reported to a committee of the CCGs (a number of CCGs and healthcare organisations operate in the Worcestershire area).
15. It has confirmed that the CCGs – including South Worcestershire CCG the Commissioner must assume – do not therefore hold any records regarding waiting times for the Lymphoedema service that the Trust provides.
16. With regard to request 2, the CCG has told the Commissioner that it requires the Trust to comply with the NHS Contract; that is to run its services in line with recognised good practice, including a requirement to comply with national standards for quality care. The CCG would expect this to include clinical oversight from a clinician with an appropriate level of expertise, to include relevant specialist qualifications. It says that the CCG does not require the Trust to detail the clinical expertise available for each specific team and service that it operates and

therefore the CCGs do not hold records on the details of how the Trust fulfils this requirement. The CCG says it would expect that the Trust determines whether treatment conforms to accepted norms of treatment by maintaining records for the effectiveness of treatment including treatment outcomes and audits.

17. The CCG has confirmed that it does not require the Trust to share all audits undertaken by every team and service and therefore does not hold any records regarding audits undertaken by this service.
18. With regard to request 3, the CCG has told the Commissioner that it holds a contract with the Trust that requires the Trust to have relevant protocols and policies in place in order to deliver care in line with recognised good standards of clinical practice. The Trust is required to inform the CCG of breaches of contract including where it is not able to deliver a service in line with good standards of practice.
19. The CCG has confirmed that it does not require the Trust to communicate the details of compliance with good practice individually for all teams and services and therefore the CCG does not hold specific records that detail whether the Lymphoedema service provides clinically correct care.
20. The CCG says it does require the Trust to report on areas that do not comply with good practice by exception. Records shared with the CCG, and therefore stored by the CCG, include all required reports requested via the Quality Schedule aligned to the NHS Contract. This includes Patient Safety and Patient Experience reports, and reports on the implementation of specific services where specifications have been reviewed.
21. As the Lymphoedema service specification has not been reviewed during the existence of the CCGs, the CCH says there are no specific reports held by the CCGs regarding the delivery of the Lymphoedema service. The CCG does hold records of exception reporting regarding services delivered by the Trust. These records are all submitted to the Clinical Quality Review meeting and held in a shared electronic folder. The CCG has confirmed that it searched all files stored under Clinical Quality Review folders for details regarding the Lymphoedema service and no reference to this service was located.
22. Finally, with regard to 4, the CCG says it responded to this question on 1 June 2017. It has told the Commissioner that, via the NHS Contract, it requires that all Trust services (including the Lymphoedema service) are subject to clinical audit as a method of evaluating their adherence to standards of practice (General Condition 15).

23. The CCG says it does not require audits to be carried out at a specified frequency and does not specify who should carry out these audits. The Trust is not required to report each service audit to the CCG and therefore the CCG does not hold records on the frequency or detail of audits for the Lymphoedema service.
24. The CCG has told the Commissioner that it requires the Trust to report on required national audits and a summary is provided to the CCGs at required frequencies and also contained within the Trust's Quality Account that is available to the public. It says there has not been the requirement for a national audit specific to Lymphoedema services and therefore the CCG does not hold a report that details the outcomes of any audits relating to Lymphoedema services.
25. The Commissioner has reviewed the CCG's response of 1 June 2017. While the CCG broadly addresses the complainant's requests in this correspondence, it does not confirm whether or not it holds recorded information relevant to request 4, or the other 3 requests.
26. During her investigation, the Commissioner reminded the CCG that the Commissioner's guidance on 'Receiving a Request' says that any correspondence to a public authority asking for information is a request for recorded information under the Act. An authority does not have to treat every enquiry formally as a request under the FOIA, but the provisions of the Act need to come into force when:
 - the authority can't provide the requested information straight away; or
 - when the requester makes it clear they expect a response under the FOIA.
27. Both these conditions were met in this case and so, in line with section 1(1)(a), the CCG had a duty to confirm to the complainant whether it did or did not hold information within the scope of his requests. Because the CCG did not do this, the Commissioner must find that it breached section 1(1)(a) on this occasion. She appreciates however, that in providing narrative responses to the complainant's requests, the CCG was endeavouring to be helpful.
28. The CCG has provided further information to the Commissioner to support its position that it does not hold the specific information the complainant has requested. With regard to the complainant's view at paragraph 6 of this notice, the CCG confirmed that in its response to the complainant of 1 June 2017, it says that: *'reports, including nurse metrics, are reported internally to the providers Clinical Governance meeting, at Delivery Unit level and to the Quality Committee. These*

reports are also shared with commissioners as part of the agreement outlined in the Quality Schedule'. The CCG has again explained that this refers to reports that relate to governance across a Delivery Unit, otherwise referred to as a Division or Directorate. These reports, shared with and therefore stored by the CCG in electronic format, contain exception details about how services have performed. The CCG has confirmed that on no occasion is reference specifically made to the Lymphoedema service within records held by the records the CCG has held since the CCGs were formed in 2013. It has searched Clinical Quality Review (CQR) folders using the search term 'lymphoedema' and the search returned 'No results'.

29. Searches included all CQR process folders. Emails that are related to aspects of service quality for the Trust are stored in CQR folders for networked laptops in order that they can be formally discussed and noted in the minutes of the next available monthly meeting, for audit purposes. No information relating to service providers are stored on personal computers and so the CCG says it was not necessary for it to search personal computers.
30. The CCG says it did, however, consult staff to determine if they ever recalled the Lymphoedema service being discussed at one of the monthly CQR meetings. No staff member who attends CQR, and who review papers submitted, recall the Lymphoedema service being discussed at any time.
31. Finally, the CCG says it has never deleted any information or reports shared as part of the Quality Schedule to the Clinical Quality Review meeting, or related shared electronic folders.
32. The CCG has acknowledged to the Commissioner that it has not previously explicitly stated whether or not it holds particular records but, through its submission to the Commissioner, has now done so.
33. Having considered the CCG's explanations and the searches it has undertaken, the Commissioner is prepared to accept on the balance of probabilities that the CCG does not hold the information the complainant has requested.

Section 10(1) – time for compliance

34. Section 10(1) says that a public authority must comply with section 1(1) as soon as possible and within 20 working days following the date of receipt of a request.
35. Although the CCG provided a response to the complainant within 20 working days, it was not a response that complied with section 1(1)(a) and the Commissioner must therefore find that the CCG breached section 10(1).

Right of appeal

36. 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

37. 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.
38. 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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