

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 04 September 2018

Public Authority: West Hampshire Clinical Commissioning Group

Address: Omega House
112 Southampton Road
Eastleigh
Hampshire
SO50 5PB

Decision (including any steps ordered)

1. The complainant has requested information about Continuing Healthcare. The West Hampshire Clinical Commissioning Group (the CCG) says it is not obliged to comply with the request under section 12(1) of the FOIA, as it would exceed the appropriate cost and time limit to do so. The Commissioner's decision is that the CCG is not obliged to comply with the request under section 12(1). However, it did not provide the complainant with appropriate advice and assistance in accordance with its obligations under section 16 FOIA.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - provide the complainant with advice and assistance in accordance with the CCG's obligations under section 16 FOIA.
3. 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

4. On 26 September 2017 the complainant made the following request for information under the FOIA:

'I write to you to request the following information from:

*NHS Continuing Healthcare and Funded Nursing Care Team,
Fareham Health Centre,
Osborn Rd.,
Fareham,
Hants., PO16-7ER.*

Please provide me with information about applications for NHS Continuing Healthcare that have been received by the NHS Continuing Healthcare and Funded Nursing Care team at West Hampshire Clinical Commissioning Group for the period 1 July 2016 to 30 September 2016.

Please provide details of applications where the Multi-Disciplinary Team (MDT) has recommended that the applicant receive funding for Continuing Healthcare following assessment using the Decision Support Tool (DST).

Please provide a breakdown of the assessments the MDTs made in Domain 2 (Cognition) of the DST, giving the numbers of applicants who were categorized in each of the five "levels of need" ("No needs", "Low", "Moderate", "High" and "Severe")

Please provide for me for each month (July, August and September 2016):

- 1. A breakdown of the "level of need" assessments in Domain 2 (Cognition) for the total number of applications that month where the Multi-Disciplinary Team has recommended that the applicant receive funding for Continuing Healthcare following assessment using the Decision Support Tool*
- 2. A breakdown of the "level of need" assessments in Domain 2 (Cognition) for the applications that month where the Multi-Disciplinary Team has recommended that the applicant receive funding for Continuing Healthcare following assessment using the Decision Support Tool, but where the initial verification process used by the NHS Continuing Healthcare and Funded Nursing Care team to ratify the recommendation of the Multi-Disciplinary Team disagrees with the recommendation of the Multi-Disciplinary Team, and the application has been referred to a Continuing HealthCare panel for a decision,*
- 3. A breakdown of the "level of need" assessments in Domain 2 (Cognition) for the applications described in the above paragraph 2 that were then subsequently approved for funding by the Continuing Healthcare panel.*

If it is not possible to provide the information requested due to the provision of the information exceeding the cost of compliance limits identified in Section 12 of the Freedom of Information Act (2000), please provide advice and assistance, under your Section 16 obligations,

as to how I can modify my request to be included in the scope of the Act.'

5. On 13 October 2017 the CCG confirmed that it holds the information but refused to provide the requested information citing Section 12 of FOIA as it estimated that the cost of determining whether it held the information would exceed the cost threshold of £450. The CCG advised that *'all cases are individual so a comparable of domains or specific areas of need are not items we collate'*.
6. On 7 November 2017 the complainant requested an internal review. He disputed the number of applications for the 3 months in 2016 (his previous request under the CCG reference FOI 22422 WH 11A disclosed that there were 222 records), the estimated amount of time to locate the records, the estimated time to interrogate the records and the estimated time to identify the relevant records. He also stated that he had not received any advice under section 16.
7. The request for an internal review was acknowledged by the CCG but the complainant only received a copy of the outcome of the internal review from the Commissioner on 17 May 2018. The outcome of the internal review upheld the CCG's original position.

Scope of the case

8. The complainant originally contacted the Information Commissioner on 19 January 2018 to complain about the way his request for information had been handled.
9. The Commissioner's investigation has focussed on whether the CCG correctly applied section 12 to the request. She has also considered whether the CCG met its obligation to offer advice and assistance, under section 16.

Reasons for decision

Section 12 – cost exceeds the appropriate limit

10. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to:
 - either comply with the request in its entirety, or
 - confirm or deny whether the requested information is held.

11. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to the CCG.
12. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
 - determining whether it holds the information;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.
13. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

Would the cost of compliance exceed the appropriate limit?

14. As is the practice in a case such as this, the Commissioner asked the CCG to confirm if the information is held, and if so, to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
15. In its submission to the Commissioner the CCG provided a detailed estimate of the time required based on 222 cases. (The figure previously provided to the complainant.)
16. The CCG explained that the files from July to September 2016 are not stored in a way that can easily be retrieved electronically: there was no central database and records were kept on a combination of paper, electronic files and a database. Therefore, in order to provide the information the CCG would have had to:

Task	WHCCG estimate of time required
Review archived paper files, electronic files and databases to produce a list of the 222 people made eligible	Estimate 2 hours

<p>Once complete:</p> <ul style="list-style-type: none"> for each of those 222 people make a list of all cases where the DST is archived, where it is on the database and where is it in an electronic file review the list of archived files to determine which box number the file is in (they are not archived chronologically or alphabetically, they are archived by the date sent to the archive) 	<p>Estimate 2 minute per person x 222 people - estimate 7.5 hours</p>
<p>Recall the files required from archive</p>	<p>Estimate 30 minutes</p>
<p>Locate the DST for each person from the files (paper, electronic or database)</p>	<p>Estimate 4 hours</p>
<p>Review each paper, electronic and database file to determine who was made eligible after CHC panel</p>	<p>Estimate 3 minutes per person x 222 people - estimate 11 hours</p>
<p>Review each DST to obtain the information requested and record this onto a separate spreadsheet</p> <p>In addition, to review applications where the MDT recommended CHC eligibility but the verifiers did not agree, and a panel review was required, WHCCG would need to review the record of each individual application received in June 2016-September 2016.</p>	<p>Clinician review - We have based this estimate on 30 minutes per case on the basis that reviewing a large number of cases may increase the speed with which results could be recorded - estimate 30 minutes x 222 cases = 111 hours (14 clinical sessions of 4 hours)</p> <p>The applicant indicated that they felt clinical review was not required however the CCG confirmed the view at the review stage that the recommendation for eligibility for NHS continuing healthcare should not be based upon an individual's specific condition or disease (e.g. stroke, cancer, Alzheimer's disease, dementia, etc.) but on the needs identified, and in order to answer fully, a full review of the case is required.</p>

17. The Commissioner notes that this is a total of 136 hours.

18. In response to the Commissioner's questions about whether a sampling exercise was undertaken, the CCG confirmed that a sampling was not undertaken at the time. The original estimate from the CCG team was based on their considerable experience of searching for and collating clinical information: *'the key challenge relates to the records requested being before the introduction of our computer database, and patient records being a mix of paper and electronic records.'*
19. Based on his experience the complainant made a number of suggestions for a more efficient search strategy including how to define the target population from a paper log or possibly from the Continuing Healthcare panel agendas and how the 'level of need' can be found on pages 24-26 of the Decision Support Tool (DST).
20. The CCG has explained above that a clinician review (estimated at 30 minutes per 222 cases = 111 hours) is required as an individual's need is not simply based on an individual's condition or disease and therefore *'a full review of the case is required.'*
21. The Commissioner notes that even if each file could be reviewed in half of the estimated time (15 minutes x 222 cases) it would still be over 55 hours.
22. In her assessment of whether the CCG has correctly relied upon section 12 of the FOIA, the Commissioner has considered all the submissions provided by both the complainant and the CCG.
23. Given the specific and detailed information requested, the Commissioner accepts that the CCG would take more than the 18 hour limit to respond to the request as phrased. She is therefore satisfied that the CCG is correct to apply section 12(1) to the request.

Section 16(1) – The duty to provide advice and assistance

24. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice (the "code")¹ in providing advice and assistance, it will have complied with section 16(1).

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

25. The Commissioner notes that the CCG advised the complainant in the internal review outcome that it would be willing to meet him to discuss his concerns and this offer was repeated in the submissions to the Commissioner. This request follows a previous request by the complainant where the CCG disclosed the overall number of files for the 3 months to the complainant as 222. The CCG has explained the difficulty in collating the detailed requested information but did not provide the complainant with specific advice and assistance on reducing or refining the scope of the request.
26. Therefore, the Commissioner is not satisfied that the CCG complied with section 16.

Right of appeal

27. If 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

28. 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.
29. 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
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF