

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 October 2018

Public Authority: South Warwickshire Clinical Commissioning Group

Address: Westgate House
Market Street
Warwick CV34 4DE

Decision (including any steps ordered)

1. In two requests, the complainant has requested information concerning NHS Continuing Healthcare (CHC). South Warwickshire Clinical Commissioning Group (CCG) categorised both requests as vexatious under section 14(1) of the FOIA. During the course of the Commissioner's investigation the CCG withdrew its reliance on section 14(1) in respect of request 2 and confirmed it would release this to the complainant.
2. The Commissioner's decision is as follows:
 - Request 1 of 2 January 2018 cannot be categorised as vexatious under section 14(1) of the FOIA and the CCG is obliged to comply with it.
 - The CCG breached section 10(1) with regard to request 2 of 2 January 2018 as it has not released the requested information to the complainant within 20 working days.
3. The Commissioner requires the CCG to take the following step to ensure compliance with the legislation:

- Issue the complainant with a response to request 1 that does not rely on section 14(1).
 - Release to the complainant the information that he requested in request 2.
4. The CCG must take this step 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 4 December 2017 the complainant had written to the CCG and requested information in the following terms:

*"What dates does SWCCG's Financial Year run from and to?
What is the budget for CHC in the current financial year?
What was the budget for CHC in the two previous financial years and how much was actually expended in them?
How many patients were in receipt of CHC on the following dates?"*

6. The CCG provided a response (its reference 15575) and the complainant submitted a further request on 8 December 2017, as follows:

*"What dates does SWCCG's Financial Year run from and to?
What is the budget for CHC in the current financial year?
What was the budget for CHC in the two previous financial years and how much was actually expended in them?
Please could you sub-divide the figures from FOI request Ref 15575 below
Please could you give figures for the total cost of CHC assessment and review in the financial years 2015-16 and 2016 -17?"*

7. The CCG provided a response to this request on 22 December 2017 (its reference 15611). It released some information and applied the exemption under section 43(2) of the FOIA to other information (commercially sensitive information).

8. The complainant submitted two further requests on 2 January 2018, as follows:

"[1] For completeness, could you now give the number of patients in receipt of CHC on 31 December 2017 both fast track and non-fast track please?"

In relation to 15611, the complainant asked:

"[2] Can I also ask you to think again about your exemption claim please? I cannot see a sustainable defence for withholding global figures about expenditure in any area of activity."

9. It is the above two requests that are the focus of this notice. The CCG responded to both requests on 18 January 2018 (its reference 16658). It appeared to categorise both requests as vexatious under section 14(1) of the FOIA.
10. The CCG explained that it considered the requests to be vexatious because of the historical and continuing, disproportionate and unjustified burden on the CCG. It also said that it believed that it could provide no further information of value or real purpose.
11. The CCG noted that this was the sixth request received from the complainant in what it said was a series of frequent and overlapping requests regarding the CHC subject matter and the CCG's contract with ExamWorks; the first request being received 9 May 2017. It said that on several occasions subsequent requests were received from the complainant immediately following its preceding response.
12. The CCG also noted that the complainant had a formal complaint and appeal in progress regarding the CHC process. It said that it is not a large organisation (employing circa 40 staff members) and it made the complainant aware that his six FOI requests, two letters of complaint and a further letter of complaint and appeal had (and continued to be) predominately handled by the same small team of individuals and ultimately by the Chief Nurse.
13. This meant, according to the CCG, that to ensure due diligence, to uphold the complainant's rights and in the spirit of the Act regarding transparency, those individuals had spent a large amount of their time and focus over the past eight months on these important matters for the complainant and continued to do so. Ultimately this had taken focus away from the CCG's other daily work and the patients for whom it works.
14. The CCG said that on one occasion it offered to discuss his request for information relating to the contract and appointment of ExamWorks outside of the FOIA regime due to the overlap with his formal complaint. The Chief Nurse had spent time on the telephone talking the complainant through the arrangements for CHC assessments and advised the CCG's response to his formal complaint regarding ExamWorks would further cover these. The complainant subsequently received a response to that complaint and a further complaint made

regarding an assessment scheduled for 31 October 2017. The content of a third letter (complaint and appeal) was being reviewed at that time.

15. The CCG closed by saying that in subsequent FOI requests the complainant had been provided with financial and statistical information relating to the CHC process and the CCG's contracts with third parties; including links to public statistical information produced by NHS England.

Scope of the case

16. The complainant first contacted the Commissioner on 12 March 2018 to complain about the way his requests for information had been handled.
17. In his correspondence to the Commissioner, the complainant indicated that he was also dissatisfied because the CCG did not address a question that he put to it about re-using information it had released to him. The CCG has advised the Commissioner that it responded to this query on 3 January 2018 and it provided the Commissioner with a copy of that response. It is reproduced in the Appendix to this notice.
18. The CCG has also told the Commissioner that, as a result of this complaint, it will revisit the template it uses to respond to FOI requests to make sure it as clear as it can be.
19. The Commissioner's investigation has focussed on the timeliness of aspects of the CCG's response and whether the CCG is correct to categorise the complainant's requests of 2 January 2018 as vexatious under section 14(1) of the FOIA.

Reasons for decision

Section 10 – time for compliance

20. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled (a) to be told whether the authority holds the information and (b) to have the information communicated to him or her if it is held and is not subject to an exemption.
21. Section 10(1) says that a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.

22. From its internal review response to the complainant it appeared that the CCG had categorised both request 1 and request 2 as vexatious under section 14(1). With regard to the request 2, reference 15611, (which concerns the CCG's application of section 43(2) to particular information) in its submission to the Commissioner, the CCG says that it has reviewed the information being sought and, in view of the passage of time and the Continuing Healthcare market at this point, and following liaison with third party organisations, it is now able to release the information requested.
23. The CCG has therefore withdrawn its reliance on section 14(1) with regards to request 2 but it has breached section 10(1) as it has not released the requested information within the required timescale of 20 working days following the date of receipt of the request.

Section 14 – vexatious and repeat requests

24. Section 14(1) of the FOIA says that a public authority is not obliged to comply with a request under the FOIA if the request is vexatious.
25. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include:
 - Abusive or aggressive language
 - Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
26. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
27. The Commissioner's guidance goes on to suggest that, if a request is not patently vexatious, the key question the public authority must ask itself

is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.

28. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
29. The Commissioner has considered the CCG's response to request 1, to which the CCG has confirmed that it continues to apply section 14(1).
30. In its submission, the CCG has told the Commissioner that the above request for information dated 2 January 2018 was the sixth formal FOI request submitted the complainant on the same subject matter. At that point the CCG says it was also processing a second letter of complaint from the complainant regarding the same issue.
31. The CCG says that the complainant's formal FOI requests commenced in May 2017 and the first letter of complaint was received in July 2017. It says the complaints have continued to be processed beyond the date of response to the last FOI request and in many cases the FOI requests overlapped with the content of the complaints and appeal.
32. The CCG has told the Commissioner that the complainant's FOI requests, complaints and appeals were predominately handled by the same small team of individuals and ultimately by the Chief Nurse. The CCG has repeated to the Commissioner that it employs circa 40 members of staff and the processing of the complainant's FOI requests, complaints and appeals took many hours of the team's time and focus for the thirteen month period ie May 2017 to June 2018. (The Commissioner can only consider the eight month period from 9 May 2017 to the time of the request on 2 January 2018.)
33. The CCG has provided the Commissioner with a chronological log of its correspondence with the complainant and copies of the correspondence. In the CCG's view these demonstrate the disproportionate and extensive time, effort and public money utilised in handling the complainant's requests and complaints, as it had detailed in its response to the complainant of 18 January 2018. The Commissioner has reviewed the chronological log and correspondence. She does not intend to discuss it in detail in this notice, suffice to say that, prior to the requests of 2 January 2018, the complainant had submitted five previous requests; on 9 May 2017, 15 July 2017, 15 August 2017, 4 December 2017 and 8 December 2017.

34. Broadly, it appears to the Commissioner that the complainant was dissatisfied with a particular decision that has been made regarding Continuing Healthcare support. (Continuing Healthcare is a package of care for people who are assessed as having significant ongoing healthcare needs.) At the time of the requests in question, the complainant was pursuing a complaint against the CCG about this decision.
35. The Commissioner does not consider it unreasonable for the complainant to want to gather information that might support his complaint; as such she does not see evidence of a grudge against the CCG or a deliberate attempt to cause annoyance to the CCG. Nor does the Commissioner consider six requests for information over an eight month period to be excessive. On the whole, the requests are not wide ranging or multi-part requests. They concern the CHC process and request 1 of 2 January 2018 is quite specific. The Commissioner would also be surprised if the CCG did not record the information that has been requested - the number of patients in receipt of Continuing Healthcare at 31 December 2017 (fast track and non-fast track) and record it in such a way as it would be relatively straightforward to retrieve.
36. The Commissioner understands that dealing with the complainant's FOI requests and wider complaint may stretch the resources available to the CCG. However, even when considered cumulatively, the Commissioner does not consider that the burden of dealing with the current request would be so great that it would be disproportionate to the request's value, as the Commissioner considers that the request does have a degree of value. At this point, the Commissioner has not been persuaded that the complainant's request 1 of 2 January 2018 can be categorised as vexatious under section 14(1). That is not to say, however, that she would find that a future request from the complainant to the CCG was also not vexatious; the Commissioner considers complaints brought to her on a case by case basis.

Right of appeal

37. 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

38. 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.
39. 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

APPENDIX

"...**Sent:** 03 January 2018 10:39

...With reference to your request regarding re-use of information; I am sorry to hear that you have not yet received a response and can confirm that where the CCG has disclosed information as part of its "public task", i.e. its core role and functions, that information is available for re-use..."