

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 September 2019

Public Authority: NHS Improvement
Address: Wellington House
133-155 Waterloo Road
London SE1 8UG

Decision (including any steps ordered)

1. The complainant has requested information relating to the 'Single Oversight Framework'.
2. The Commissioner's decision is that, on the balance of probabilities, NHS Improvement¹ (NHSI) does not hold the information requested.
3. The Commissioner does not require NHSI to take any steps.

¹ NHS Improvement is the operational name for the organisation that brings together Monitor, NHS Trust Development Authority, Patient Safety, the National Reporting and Learning System, the Advancing Change team and the Intensive Support Teams

Request and response

4. On 1 October 2018, the complainant wrote to NHSI and requested information in the following terms:

"Please provide, in digital form, all the original provider segmentation .csv files as provided to the provider segmentation page in connection with the Single Oversight Framework, from the first .csv file in 2016 up to (but not including) the presently available file which is named SOF_LatestSegmentScore.csv and which is dated 15:00 29.6.18. The latest file is only 40KB and the others should be similar in size, so they should all fit in one email."

5. The public authority responded on 27 November 2018 and stated that it did not hold the requested information.
6. Following an internal review NHSI wrote to the complainant on 5 December 2018. Although it maintained its position, NHSI created a spreadsheet and added the trust names against each identifying code for the complainant.

Scope of the case

7. The complainant contacted the Commissioner on 18 December 2018 to complain about the way his request for information had been handled. In particular, he stated:

"The disputed information consists of a spreadsheet placed on a specific page of the NHSI website in which provider segmentation scores from 1-4, with or without written comment, were allocated to the official names of NHS trusts which are designated by NHSI as 'providers'. This spreadsheet was revised on certain dates and it appears that the file on offer for download by the public was each time summarily changed to a newer version of the file with the same name, leaving no trace of the former version. I have 3 versions of this file: the first states a 'refresh date' of 15:00 29.6.18 and consists of 229 rows of data relating to 229 named NHS public bodies - all of the names contain the word 'Trust'. The second bears a 'refresh date' of 00:00 6.11.18 and contains 227 rows of data. The third is dated 16:30 17.12.18, contains 227 rows of data and is the file available at the time of writing. All of the trusts except 4 carry 'public comments'- the exceptions include Northern Lincolnshire and Goole NHSFT, a trust 'in special measures'. NHSI now claims to be completely unaware of all of the previous 'refresh dates', the number of times the file has been revised and re-presented on the page and the contents of the files. This policy certainly facilitates the modern fashion in which public figures claim to 'not recognise'

discomfiting information, but renders NHSI unable to challenge any file described as having been downloaded from the page, except the current version."

8. The scope of this case is to consider whether the requested information is held by NHSI.

Background

9. NHSI explained that the Single Oversight Framework ("SOF") is a performance monitoring and assessment framework used by NHS Improvement (as the healthcare sector regulator for NHS trusts and foundation trusts and independent providers of NHS services) to determine the type and level of support that are needed by healthcare providers.
10. The SOF was first published in September 2016.
11. NHS providers' support needs are assessed across five themes (quality of care, finance and use of resources, operational performance, strategic change, and leadership and improvement capability). NHSI monitors performance under these themes and consider what support is required, if any.
12. NHSI places providers in one of four categories, depending on the level of their support needs. For instance, if a trust is in category SOF1, no support needs are identified; if they are in category SOF4, this is often referred to as "special measures" where enhanced support is provided.
13. It is required to publish any regulatory action in relation to NHS foundation trusts (those trusts classified as being in SOF3 or SOF4) and these documents are published on its website under the trust's relevant entry in the Provider Directory. Whilst NHSI are not required to publish equivalent actions taken in respect of NHS trusts, since April 2019 the Provider Directory contains those details.
14. The segmentation of each trust is monitored and reviewed under NHSI's reporting and internal governance arrangements. Where trusts demonstrate improvement, they may be moved into a different segment. Conversely, if support needs are identified, they might be reclassified into another SOF segment.
15. More information on the SOF can be found here:
<https://improvement.nhs.uk/resources/single-oversight-framework/>

16. NHS Improvement explains the segmentation in more detail and publishes the SOF segmentation for all providers here:
<https://improvement.nhs.uk/resources/single-oversight-framework-segmentation/>
17. The Provider Segmentation document is a live spreadsheet and available on the above webpage.

Reasons for decision

Section 1 – information held by public authorities

18. Section 1 of FOIA states that:

"(1) Any person making a request for information to a public authority is entitled-

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

19. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information within the scope of the request (or was held at the time of the request).

The Complainant's position

20. In his request for review the complainant stated:

I have received this unsigned response to my FoI request dated 30.10.18. I refer NHSI to Section 16 (1) FOIA:

16.— (1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

21. The [Commissioner's 2016 statement](#) is also relevant.

22. He further stated:

"Unless NHSI is willing to state that it has no record of the provider segmentation scores contained within the various succeeding versions of

the Provider Segmentation spreadsheet as issued to the public website and the dates when they were placed on the website (the latest version is dated 6.11.18) then NHSI does hold the information and is simply being what it mistakenly believes to be clever. This is a flagrant 'dodge' aimed at delaying and frustrating a FoI request. If NHSI claims that each spreadsheet was simply a 'snapshot' of a more regularly revised provider segmentation spreadsheet, then I will accept an electronic Excel workbook (.xlsx) file with each sheet a 'snapshot' dated on or about the date of the corresponding file placed on the public website, omitting no such dates."

NHSI's position

23. NHSI referred to its internal review stating its response repeated that it does not hold the information in the form originally requested.
24. It further explained that the document is a live document automatically updated when new information is entered by various users. Local versions of the document are not stored.
25. However, whilst it did not consider that it was under an obligation to create new information in order to address the request, it was able to provide information taken from the metadata of its internal systems that are used to automatically update the segmentation spreadsheet. In its original form, this metadata does not make reference to the names of each trust (which are instead assigned codes). To assist the complainant, NHSI created a spreadsheet and added the trust names against each identifying code.
26. It considered that this was the most convenient way of providing the history of the SOF segmentation and noted that the complainant said he would accept an Excel file.
27. NHSI provided the Commissioner with a copy of the spreadsheet and explained, as an example, the entries for Cambridge University Hospitals NHS Foundation Trust, when its original SOF segmentation was assessed, the trust was in SOF4 (effective from 21 October 2016). As the trust improved and its support needs decreased, it was moved to SOF3 on 18 January 2017 and hence the spreadsheet was updated on 19 January 2017. Following further improvement, the trust was classified under SOF2 following a decision on 19 December 2017 (spreadsheet amended on 20 December 2017). This means the trust had targeted support needs. The spreadsheet was updated to include the type of support needs on 30 April 2018. The "effective date" for the SOF2 segmentation remained at 19 December 2017.
28. Therefore, any modifications to the spreadsheet are recorded and the SOF segmentation for each NHS trust and foundation trust can be read accordingly.

29. The segmentation spreadsheet is updated automatically pulling data from its internal systems. It does not manually update it with different spreadsheets.
30. NHSI explained that when the segmentation of an individual trust changes or if more information is added in terms of the trust's support needs, there are assigned people in its Regional teams who can enter the relevant information to update the document. This information is added through a separate programme (not through Excel). The live document is then automatically updated.
31. NHSI does not therefore hold or store copies of each "version" of the segmentation document.

The Commissioner's view

32. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
33. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
34. As this case relates to storage and retrieval of on-line data, rather than the more usual electronic or paper file storage, the Commissioner has sought advice from a colleague in her IT Service Team.
35. The Commissioner asked if it the representations from NHSI were reasonable i.e. it does not hold the information, but pulls it together from other areas when it has been updated.
36. In response, the Commissioner was advised that without knowing how NHSI's IT works or is setup it would be difficult to come to a firm determination however what they are saying is correct. It is possible to have information pulled from various different locations and then generate a report on that information, meaning there would be no previous version.
37. That is not to say the system does not store the generated file, it is possible to have a system set up either way.

38. As mentioned previously, the Commissioner is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities. She does not have the resources to be able to investigate NHSI's IT systems and therefore has no alternative but to accept that on the balance of probabilities, NHSI does not hold the information requested.

Right of appeal

39. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

40. 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.

41. 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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