

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 October 2019

Public Authority: West Hampshire Clinical Commissioning Group
Address: Omega House
112 Southampton Road
Eastleigh
Hampshire
SO50 5BP

Decision (including any steps ordered)

1. The complainant requested information on a continuing care review report. The West Hampshire Clinical Commissioning Group (the CCG) disclosed information during the Commissioner's investigation and confirmed that it did not hold any further information. The complainant considered that more information must be held. The Commissioner's decision is that, on the balance of probabilities, the CCG does not hold any further information within the scope of the request. The Commissioner does not require the CCG to take any steps.

Summary of the request and correspondence

2. On 6 December 2018 the complainant requested the following information:

'Thank you for your diligence in notifying me of upcoming board meetings of the CCG and that the papers are available on the website. Although I haven't attended a board meeting for a while I retain a strong interest in the work of the CCG.'

Of particular personal interest is the collaborative commissioning work around Continuing Healthcare and the work being carried out to overhaul the system. Whilst the periodic reports of progress are informative they are somewhat out of context for me as I have been unable to find the report of the March 2016 review that initiated this work.'

Could you please help me by directing me to where I may find this document on your website'

3. On 16 January 2019 the CCG responded and refused to provide the information citing section 36 (inhibit the free and frank provision of advice and the exchange of views for the purposes of deliberation). However, the CCG provided a copy of the *'updated action plan at Appendix B to this letter as I believe that this will provide the context for the progress reports that you have noted in our Board papers'*.
4. The complainant requested an internal review on 8 February 2019 as the *'partial information released does not meet my interest. I specifically wish to understand the failings and issues that the published action plan is seeking to address.'*
5. The CCG sent him the outcome of its internal review on 20 March 2019 and upheld the decision to apply section 36(2)(b)(i) and 36(2)(b)(ii).

Scope of the case

6. On 5 April 2019 the complainant contacted the Commissioner and on 26 April 2019 both parties were informed that the case had been accepted for investigation.
7. On 29 May 2019 the CCG informed the Commissioner that it had reviewed the application of the exemptions at section 36(2)(b)(i) and (ii) and had agreed that the exemptions were no longer applicable and the information requested had been sent to the requester.
8. On 16 July 2019 the Commissioner wrote to the complainant as she understood that the requested information had been disclosed and sought to resolve the case informally.
9. On 21 July the complainant informed the Commissioner that he disagreed that the requested information had been disclosed. He considered there to be a difference between the requested information for the CHC review report which he understood to have been published in March 2016 and the disclosed report which he considered to have been something prepared for a meeting in May 2016 (Service Review April 2016 - CHC Performance and Governance Meeting 31 May 2016.)
10. On 29 July the Commissioner spoke to the CCG who confirmed that it had not intended to withhold anything and considered that it had disclosed the requested information.
11. With his permission the Commissioner forwarded the complainant's email of 21 July to the CCG to help the CCG fully understand and

possibly explain/resolve the apparent difference with the complainant directly.

12. On 8 August the CCG disclosed further information including the report written by the external contractor: 'CLIN16-051b NHS Continuing Healthcare - report to Clinical Governance March 2016' (with the names of the authors redacted).
13. On 17 September 2019 the Commissioner again wrote to the complainant seeking an informal resolution as it appeared that the outstanding withheld information had been disclosed.
14. On 27 September 2019 the complainant disputed that he had received the requested information. *'I do not see that the comments in my email of the 21st July 2019 have been fully addressed. I believe I provided in that email a very strong case to prove the existence the document I requested as being different to the document released. Rather than addressing my comments I have simply been bombarded with a mass of largely irrelevant information.'*
15. On 2 October 2019 the Commissioner spoke to the CCG who assured her that it had disclosed everything that it held within the scope of the request and has not applied any exemptions to withhold any information. It confirmed which document is the relevant report as 'CLIN16-051b NHS Continuing Healthcare - report to Clinical Governance March 2016'.
16. The Commissioner has considered that the scope of the case is whether the CCG handled the request in accordance with the FOIA. In particular, with regard to section 1(1) of the FOIA, whether or not the CCG holds additional, relevant information that it has not disclosed to the complainant.

Reasons for decision

Section 1 of the FOIA – Information held/ not held

17. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
18. 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, applies the civil standard of the balance of probabilities.

19. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
20. As is the practice in a case such as this, the Commissioner asked the CCG a number of questions to confirm/establish if further information is held.
21. The Commissioner asked the CCG a number of questions about the location of the information and to establish what searches had been carried out for information falling within the scope of the request.
22. The CCG confirmed that it did not hold any further recorded information falling within the scope of the request. It explained that
 - CHC Project staff, Governance staff and senior managers were requested to trawl their emails and personal drives for the information and the Corporate drives were reviewed. These were the people and places the document was most likely to be stored and was successful in retrieving the data requested.
 - The information was held on the corporate shared drive, but staff who would have been involved in the project and senior managers were asked to review all data held on personal drives including laptops including emails.
 - It was held as an electronic record, but Committee members would have received paper copies of the documents as part of their meeting papers.
 - The search terms were CHC review, CHC project, the report author's name, Clinical Governance Committee papers, March 2016.
23. The complainant continues to believe that the CCG is withholding information and argued that:
 - In its initial response the CCG claim that the requested document dated March 2016 was subject to review and it was decided that its release would be prejudicial to its ability to get third party contractors to carry such work in the future. In a later response it claims that it cannot find the March 2016 document requested.
 - When it released the document it claims is the one requested it also released a native MS Word copy of the document. The file properties of this document show the original author to be [name redacted] who at the time, May 2016, was the Nursing Director of the CCG.

24. The Commissioner notes that the disclosed document 'CLIN16-051b NHS Continuing Healthcare - report to Clinical Governance March 2016' was signed at the bottom by the report author and that the sponsoring director was the Director of Quality and Nursing. (Board Nurse)
25. The complainant also suggested that the Commissioner request '*evidence of a contract or order placed on the third party author who it is alleged carried out this work together with an invoice for the work done*'. However, these documents are not within the scope of the FOIA request for the report and the Commissioner has not requested them.
26. The CCG stated that '*the report to the Clinical Governance Committee he received in August 2019 is the report he requested. There is no other documentation that we can provide*'.
27. In answer to the Commissioner's questions on whether any recorded information ever held relevant to the scope of the request had been destroyed, the CCG answered that it had not. The CCG stated that its searches had retrieved all the information pertinent to the request and it had all been disclosed.
28. The Commissioner also asked if recorded information was held but is no longer held, when did the CCG cease to retain this information. The CCG answered that it had released the information.
29. The Commissioner asked about the CCG's formal records management policy on the retention and destruction of records of this type. The CCG answered:
 - Yes the CCG has a Board approved Records Management Policy which states we retain records in accordance with the Department of Health The Records Management: NHS code of Practice – as in this case the report was to a decision making Committee it would be kept for 20 years.
 - All NHS records (including email and electronic documents) are public records under the terms of the Public Records Act 1958 sections 3(1)-(2), and must be kept in accordance with statutory and NHS guidelines.
30. Having considered the complainant's comments and the CCG's responses to the Commissioner's questions, the Commissioner is satisfied that, on the balance of probabilities, the CCG does not hold any further recorded information within the scope of the request.
31. As the Commissioner's decision is that the information is not held, the Commissioner does not require the CCG to take any steps.

Right of appeal

32. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

33. 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.
34. 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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