

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 December 2019

Public Authority: Department of Health
Address: Castle Buildings
Stormont Estate
Belfast BT4 3SQ

Decision (including any steps ordered)

1. The complainant has requested information in relation to breast assessment services in Northern Ireland. The Department of Health (DoH) states that it does not hold recorded information within the scope of the complainant's request and has already published all the information it holds regarding breast assessment services.
2. The Commissioner's decision is that the DoH, on the balance of probabilities, holds no further information within the scope of the complainant's request. Therefore, the Commissioner requires no steps to be taken.

Request and response

3. On 11 May 2019, the complainant wrote to the DoH and requested information in the following terms:-

"This is an urgent request in response to the press release of Dr. McBride (Chief Medical Officer) 08 May 2019.

Specifically:

"If anyone has better evidence-based proposals about how to build the resilience of this service, maintaining it in the future and deliver a standard level of care across Northern Ireland we want to hear them."

With the foregoing in mind I request, under the terms of the Freedom of Information Act 2000, any information that would enable an evidence-based proposal to be put forward.

I note that some of this information is already in the public domain, such as waiting time target attainment monthly for the a 10 year period across all healthcare trusts. This gives us an evidence period of 10 years from Jun 2018.

Therefore, please release the following for that same period (April 2008 to Jun 2018):-

1. Monthly running costs for each trust unit for the same period

1.1 If possible broken down into administration costs, staff costs, clinical costs

2. Monthly summary of staffing to include:

2.1 Number of dedicated doctors and their qualification level - e.g. consultant, staff grade, etc

2.2 Number of shared doctors and their qualification level - e.g. consultant, staff grade, etc

2.3 Number of dedicated nursing staff or other clinical staff

2.4 Number of shared nursing staff or other clinical staff

2.5 Number of dedicated non-clinical staff

2.6 Number of shared non-clinical staff

2.7 Number of other staff associated with the running of the units.

2.8 Number of notice periods given, e.g. resignations retirements

2.9 Number of staff members on paternity or maternity leave

2.10 Number of locums hired / used

3. Number of clinics carried out

3.1 Number of these that were routine

3.2 Number of these that were additional / overtime clinics

3.3 Number of patients seen at these clinics

4. Monthly number of IR1 incidents for each trust unit

4.1 Where possible some indication of the reason for IR1 anonymised or redacted as appropriate.

5. Monthly summary of the number of patients seen from other trusts.

6. Any other information which may be gathered already or during the process of this request which would aide in the "evidence-base" for a proposal to build the resilience of the service.

I appreciate this request may take time, however, there is a public consultation deadline, therefore, I would appreciate if this request could be expedited to facilitate in a timely response. I hope you appreciate that this is in response to Dr McBride's explicit request."

4. The DoH responded on 17 May 2019, stating that it did not hold information within the scope of the complainant's request and directing him towards the individual Trusts which may hold the information he requested.

5. On 11 June 2019 the complainant wrote to the DoH stating the following:-

"In light of the recent release of "further information" for this consultation, I must reluctantly escalate your response below to a complaint. I draw your attention to my original request Point 6, "Any other information which may be gathered already or during the process of this request which would aide in the "evidence-base" for a proposal to build the resilience of the service.

The original consultation document states "Research carried out by independent experts commissioned by the Department indicates that services which have reorganised into larger centres, catering to greater numbers of patients, deliver more resilient and reliable services as they have greater numbers of personnel. There is evidence that small services have specific problems with insufficient key personnel and as a consequence often deliver poorer results than larger units."

The further information document states, "Up-to-date statistics for the Northern Ireland breast assessment service from 2014-18, showing performance against the national 14 day urgent waiting time target (Appendix 1). An analysis of the additional travel time to breast assessment clinics under the proposed 3-site service model (Appendix 2)."

Scope of the case

6. The complainant contacted the Commissioner on 17 June 2019 to complain about the way his request for information had been handled. The complainant has stated to the Commissioner that the above statements quoted in his letter to the DoH appear to contradict the DoH's assertion that it holds no information within the scope of his request. He states that it appears from the quoted consultation document that the DoH has held data and/or evidence that he requested.
7. The scope of this case is to consider whether further information within the scope of the request is held by the DoH.

Reasons for decision

8. Section 1(1) of the FOIA states that:

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.*

9. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.

The complainant's position

10. The complainant has stated to the Commissioner that the above statements quoted in his letter to the DoH appear to contradict the DoH's assertion that it holds no information within the scope of his request. He states that it appears from the quoted consultation document that the DoH has held data and/or evidence that he requested.

The DoH's position

11. The DoH states that, at the time of the complainant's request, it did not hold recorded information within the scope of that request. The DoH states that the reference to "research carried out by independent experts" in the Permanent Secretary's foreword to the consultation document (i.e. evidence supporting the consolidation of services on fewer sites with larger teams) is a general comment on the rationale for transformation across all areas of Health and Social Care. The evidence base for this is readily available in the public domain.
12. In contrast, the information sought by the complainant is specific to the evidence base for the proposed changes to breast assessment services, for which all available and relevant data held by the DoH was published at the time of the launch of the public consultation. This was in the form of the DoH's consultation paper, the Breast Assessment Project Board's draft report, and the DoH's memo in relation to its independent Project Assessment Review. In addition, cancer waiting time statistics (which informed the above consultation documentation) are routinely published on the DoH's website.
13. The additional statistical material referred to by the complainant in his letter of 11 June 2019, according to the DoH, did not exist at the time of his original request. It was produced by the DoH's Information and Analysis Directorate and Hospital Services Reform Directorate during May/June 2019 and published in a supplementary information document by the DoH on 10 June 2019. This was in response to numerous enquiries from the public and the media, including the complainant, which highlighted areas where further information would be helpful in enabling the public to engage meaningfully with the consultation process. The supplementary material comprised:-
 - 1) Up to date statistics on waiting times for breast assessment – these were extracted from data that is routinely published in quarterly cancer waiting time statistics, and tailored specifically to illustrate red-flag referrals for breast assessment waiting over 14 days;
 - 2) A detailed analysis on the impact on drive-times in a 3-site model vs the current 5-site model- this mapped travel times from small, local areas in relation to the existing service model and the proposed service model to show net impact across NI;
 - 3) Frequently asked questions (FAQs).
14. The DoH states that the complainant's request was considered by departmental staff who have been preparing and running the consultation exercise, and who are intimately aware of what information

is and is not held by the DoH, departmental statisticians who are intimately aware of the source material held and used by the DoH to prepare official statistics, and staff overseeing workforce policy. They all indicated that the DoH does not hold this type or range of operational information.

The Commissioner's view

15. The Commissioner's view is that the DoH does not hold further information within the scope of the complainant's request.
16. 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.
17. 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. In this case, she has decided that, on the balance of probabilities the DoH does not hold further information within the scope of the complainant's requests, for the reasons given by the DoH as outlined in paragraphs 11 to 14 above.
18. The Commissioner is also satisfied that the DoH has provided the appropriate advice and assistance to the complainant by directing him to the various Trusts which do hold the information he is seeking.

Right of appeal

19. 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

20. 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.
21. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
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