

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 March 2020

Public Authority: NHS Redbridge Clinical Commissioning Group
Address: 6th Floor, North House,
St Edwards Way
Romford RM1 3AE

Decision (including any steps ordered)

1. The complainant requested information on the funding of Green Lodge. The NHS Redbridge Clinical Commissioning Group (the CCG) confirmed that it did not hold any information. The complainant considered that information must be held. The Commissioner's decision is that, on the balance of probabilities, it is likely that 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.

Request and response

2. On 26 October 2018 the complainant requested the following information:

'1. When, how and by whom was the decision to cease the block funding arrangement for respite at Green Lodge taken? Are there documents such as minutes and the like available?

2. What was the thinking behind the original provision of the block funding arrangement at Green Lodge? In what way did circumstances change in order to prompt the reversal?'
3. On 19 November 2018 the CCG responded that it did not hold the information for Q1 and Q2. Answering Q1, *'The decision was taken following a service review carried out by the Local Authority and a number of monitoring meetings between the Local Authority and Vibrance. London Borough of Redbridge was the lead commissioner for the service, which was originally commissioned by the Redbridge and*

Waltham Forest Learning Disability Partnership. The minutes and other documents regarding this meeting may be held by the Local Authority.'

4. The complainant requested an internal review. The CCG sent the outcome of its internal review on 21 February 2019 upholding its decision that it does not hold any information. It explained that *'the CCG did not themselves hold a contract with Green Lodge. It was commissioned by London Borough of Redbridge under a section 75 arrangement with the previous abolished Primary Care Trusts. The CCG has also conducted further searches of their drives.'*
5. On 19 December 2018 the complainant first wrote to the Commissioner and the case was accepted on 20 July 2019.

Background

6. In September 2011 the London Borough of Redbridge (the Council), the Redbridge Primary Care Trust (the PCT, the predecessor organisation of the Redbridge CCG) and the North East London NHS Foundation Trust agreed to *'the pooling of functions and funding in respect of Adults with a Learning Disability in the London Borough of Redbridge.'*
7. The CCG established some information through their searches and provided the following information as a background.
8. The CCG apologised that the *'additional narrative provided in the original FOI response, which was inadvertently misleading. This was not the CCG's intention and they offer their apologies for the confusion this caused.'* (see paragraph 3 above.) The CCG described the agreement as a *'Section 75 partnership'* for Learning Disability services. The CCG stated that the Council was the *'lead commissioner for the service, which was originally commissioned through the Redbridge and Waltham Forest Learning Disability Partnership. The CCG therefore expected the details of any joint meetings to be held by this organisation. This was the reasoning behind the CCG's original decision to direct the applicant to the Council.'*
9. Although out of scope of the request, the Commissioner was provided with 2 documents to help with the context of the arrangement. The first document was an unsigned copy of the Section 75 partnership agreement from 2011 where the Partners agreed that *'this Agreement... shall subsist for a period of five years'.*(Section 3)
10. The Commissioner was also provided with the schedule covering definitions and overarching objectives. Schedule 3 covered the contributions from the Council and the PCT to the Lead Commissioning

pooled fund. The CCG understands that it was by this section 75 arrangement that the CCG provided monies for services at Green Lodge.

	London Borough of Redbridge	Redbridge PCT
	Annual Budget	Annual Budget
	2011/2012	2011/2012
	£'000	£'000
Lead Commissioner Costs	(redacted)	(redacted)
Green Lodge		(redacted)

11. The Commissioner notes that this table is the only place where Green Lodge is mentioned in either of these documents.
12. The complainant made the same requests to the London Borough of Redbridge (the Council) and provided information from a letter from the Council dated 2018 as background:

'Before October 2016, the Clinical Commissioning Group (CCG), fully funded respite care at Green Lodge, regardless of whether the person's need was social care or healthcare, under a Section 75 (S75) agreement on behalf of the Learning Disability Partnership arrangements.

The S75 Learning Disability Partnership agreement ended on 31st October 2016, and the CCG subsequently only paid for respite which was assessed for Continuing Health Care (CHC). The CCG's decision to end the funding arrangement was not communicated to the Council at the time.'

13. In summary, the Commissioner understands that there was a five year agreement for Learning Disability services (including the facility at Green Lodge) from 2011 to October 2016. The complainant has requested information from both the Council and the CCG and both have responded that they do not hold any information within the scope of the request i.e. the decision to end the block funding arrangement in 2016 and the thinking behind the original provision of this arrangement.

14. The other complaint to the Commissioner about the Council has been considered in a separate case which was resolved without issuing a decision notice.

Scope of the case

15. The Commissioner has considered that the scope of the case is whether the CCG has complied with Section 1 of the FOIA.

Reasons for decision

Section 1 of the FOIA – Information held/ not held

16. 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.
17. 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.
18. 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).
19. 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.
20. In response to the Commissioner's questions about the location of the information, the CCG confirmed that it did not hold any further recorded information falling within the scope of the request.

21. The CCG explained that

- The Section 75 agreement ended on 31 October 2016 by the agreement reaching its contracted expiry date. From this point onwards, the commissioning responsibility for placements at Green Lodge would have reverted back to the Local Authority and the CCG depending on their respective commissioning responsibilities. The CCG commissioning responsibility for individuals placed extended to those individuals who were assessed as eligible for NHS Continuing Healthcare (CHC). The CCG continued to fund packages of care for CHC patients, which in some cases included respite care.
- Patients who were not eligible for NHS CHC became the responsibility of the Local Authority following the termination of the Section 75 agreement. Whilst this may not have been explicitly communicated to some officers in the Council, this would have been the expected outcome following the expiry of the partnership agreement, which the three organisations, including the Council, were party to. However, the CCG cannot confirm what communications did or did not exist since the staff members involved have since left the organisation.
- The CCG would like to advise that at an operational level, there was a process in place between the Council and the CCG to review all placements and ensure that individuals in the home were not disadvantaged as a result of the partnership disaggregation.

22. The Commissioner asked the CCG a number of questions to establish what searches had been carried out for information falling within the scope of the request.

23. Referring to Q1 of the request, the CCG stated that the Agreement came to an end in October 2016 and at that point the CCG understands *'that funding responsibilities for health and social care elements will have reverted back to the respective lead organisations in line with their commissioning responsibilities'*.

24. The CCG stated that it had made the following searches:

'• An electronic search of migrated data on the MCB patient management system for documents of the period June 2014 – June 2015

• An electronic search in the Continuing Healthcare files for "Green Lodge" and "Learning Disability Partnership" for the period

- *An email search for "Green Lodge" and "Learning Disability Partnership" for staff employed in the Continuing Healthcare team at the time who may have been involved for the period*
- *Governance team committee decisions folder for "Green Lodge"*
- *Legal adviser email and documents for "Green Lodge"*
- *Conversations have been had with Previous Head of Service for Continuing Healthcare, Individualised Care Business Manager, CHS Clinical Lead, CHC Nurse Manager, Quality Assurance Team Leader, CCG's Legal and Governance Adviser, Director of Transformation and Delivery (Unplanned Care and Mental Health) and Director of Corporate Services*

All of the CCG computers are networked, and no data is held on individual machines. The CCG has also not been able to trace any record of this issue being discussed formally at a CCG decision making committee.'

25. In answer to Q2 of the request, the CCG explained that, the agreement was put in place by a predecessor organisation which ceased to exist on 01 April 2013. The CCG *'does not hold information relating to the dissolved organisations thinking in relation to the block funding'*.
26. The CCG stated that it had made the same searches for Q2 as it had for Q1. (see paragraph 24 above)
27. The CCG stated that it *'did invite the Council to further discuss this request in an attempt to provide further clarity around the Partnership agreement however they declined'*. The Commissioner queried this and the CCG clarified *'that this meeting was to discuss the FOI request and subsequent ICO complaint from this applicant and was not related to any agreements or meetings with regards to the service.'* The email from the Council (dated December 2019) declining the call was provided to the Commissioner.
28. Having reviewed the submissions from the CCG, the Commissioner made further queries to the CCG on 21 January 2020:
 - In the original agreement of 2011 there was a commitment to have annual reviews. Did the CCG search for the recent annual reviews for mention of what happens after the agreement ends in 2016?
29. The CCG responded that it had *'conducted further searches relating to these annual review meetings. The CCG has not been able to locate any notes or minutes from any annual review meetings of the Section 75*

partnership agreement with the London Borough of Redbridge and North East London NHS Foundation Trust (NELFT) for Learning Disability Services.'

30. In response to the Commissioner's request for clarity on 'decision making committees', the CCG advised that the decision-making committees in question would have been either committees of the CCG or the CCG's governing body, or the governance and steering group of the Section 75 partnership agreement with the London Borough of Redbridge and NELFT for Learning Disability services.
31. The CCG provided the Commissioner with a further email from 2015 between the CCG and the Council. Although it refers to Green Lodge funding the CCG considers that it is out of scope of the request as it does not relate to who made the decision or when/how the decision was made. The Commissioner agrees with the CCG that this email is out of scope of the request as it covers invoicing and payment processes only.
32. The Commissioner is satisfied that the CCG has made thorough searches. Having considered the CCG's responses to all of the Commissioner's investigations, the Commissioner is satisfied that, on the balance of probabilities, the CCG does not hold any recorded information within the scope of the request.
33. The Commissioner understands the reasons why the complainant considers further information may be held, but the Commissioner can only consider what is held. It is outside the Commissioner's remit to determine if it should be held, and even if it should be, she cannot require a public authority to create the information under the FOIA.
34. 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

35. 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>

36. 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.
37. 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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