Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 October 2020

Public Authority: West London NHS Trust
Address: Trust Headquarters
1 Armstrong Way
Southall
UB2 4SD

Decision (including any steps ordered)

1. The complainant has requested from West London NHS Trust (the "Trust") information about aspects of its mental health treatment services. The Trust refused to provide the requested information, citing section 12(1) of the FOIA – that the cost of complying would exceed the appropriate limit for compliance.

2. The Commissioner's decision is that the Trust has correctly cited section 12(1) and provided advice and assistance to the complainant at internal review stage in line with its duty under section 16(1) of the FOIA, as far as it was reasonable to expect the public authority to do so.

3. The Commissioner does not require the public authority to take any further steps.

Request and response

4. On 16 April 2020, the complainant made a request for information under the FOIA. Due to its length the request can be found in an annex at the end of this decision notice.

5. The Trust responded on 23 April 2020 and refused to provide the requested information citing section 12 of the FOIA.

6. The complainant made a request for review on 24 April 2020.

7. The Trust provided an internal review on 26 May 2020 in which it maintained its original position that section 12 applied.

Scope of the case

8. The complainant contacted the Commissioner on 28 May 2020 to complain about the way her request for information had been handled.

9. The Commissioner considers the scope of this case to be the Trust's citing of section 12(1) and whether advice and assistance had been offered to the complainant.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

10. Section 12(1) of the FOIA states that:

> *"(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."*

11. The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations'). The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour. This means that in practical terms there is a time limit of 18 hours in respect of the Trust. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) of the Fees Regulations states that an authority can only take into account the costs it reasonably expects to incur during the following processes:

- determining whether it holds the information;
- locating the information, or a document containing it;
- retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

12. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/2007/0004, the Commissioner considers that any estimate must be 'sensible, realistic and supported by cogent evidence'.[1]

The complainant's view

13. The complainant considers that if the requested information is not being gathered there is a problem. She questions whether the Trust thinks these issues are important and whether it wishes to work collaboratively. The complainant believes that the requested information would be useful at this time and that the information should already have been collected, in which case the cost would be minimal. She also stated that the Trust had provided the information last year, though it is the Commissioner's understanding from the Trust that previous requests were narrower.

The Trust's view

14. The Trust responded to the Commissioner's questions by explaining that part of its internal review consisted of informing the Trust Board Secretary and the relevant directors about the request and receiving their independent feedback as to whether the use of the section 12 exemption was valid.

15. The Trust Board Secretary and the relevant directors agreed that the exemption was valid, in this case due to the comprehensive nature of the questions posed and the significant amount of time that would be required in locating the information, verifying its validity and auditing it for completeness.

16. The Trust then informed the complainant that a number of systems would require examination and there would be the need to engage with various stakeholders, during a time where a number of competing priorities existed arising from the COVID-19 global pandemic. The Trust believed that the work required to collate and finalise the response to this request would entail a costly administrative burden that would

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1 http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf (para 12)

exceed the fees limit. Accordingly, it suggested the complainant narrow her request.

17. After the Commissioner wrote to the Trust, it conducted another review of its original response as well as calculating the length of time it would take to answer this request. As a result it maintained its view that section 12 applied to the requested information.

18. The Trust carried out a sampling exercise on the 'serious incident' section of the request and provided a breakdown of how long it would take to complete these 22 questions of the 110 questions in the request. In other words, approximately a fifth of the total completion time that would be required. A spreadsheet was provided to the Commissioner with the calculation split across the permitted activities – determining, locating, retrieving and extracting the information. The spreadsheet also records some high level observations.

19. The longest time recorded on the spreadsheet provides an example of the difficulties of locating some of the requested information -

> *"How many patients have suffered complications during and after SERIOUS INCIDENT REPORTS and what were those complications?"*

To provide this, the Trust explained would require an individual review of each patient's medical records. It pointed out that section 40 was likely to apply and that it would need clarification, on what constitutes a *"complication".*

20. As a result of this sample, the Trust has estimated that it would take 3020 minutes or 50.3 hours of staff time to complete these 22 questions. Its breakdown did not include information that the Trust knew it did not hold or required clarification. This included questions 2, 9, 10, 11, 13, 14, 19, 20 and 21. If this was extrapolated across all five areas of the requester's questions it estimated that it would take 251.7 hours of staff time. The Commissioner notes that this alone represents 233 hours beyond the 18 hours allowed by the fees regulations in respect of the Trust.

21. The Trust explained that its estimate was based upon the quickest method of gathering the information and is a result of a number of factors which included –

- The Trust using various systems to record information.
- Systems being managed by different stakeholders.
- The Trust being less likely to hold significantly historic information.
- The significant number of questions posed which vary in subject matter.

- The time taken to search the relevant records, audit and approve the final response.

The Commissioner understands that "significantly historical information" refers to information from many years ago. The Trust was unsure of the timeframe for some of the questions, though 2019 was mentioned specifically in several of the questions.

22. Finally, the Trust added that some of the information would potentially reveal personal data, engaging section 40(2) of the FOIA.

The Commissioner's view

23. Firstly, the Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA. However, the legislation does not permit any consideration to be made of these circumstances.

24. Her view is based solely on the calculations of the permitted activities the Trust has set out on the spreadsheet it provided to the Commissioner. She acknowledges that, without clarification, some of these calculations will be imprecise. However, the sample of a fifth of the requested information is sufficient to take the request well beyond the fees limit and it is clear that complying with the whole request would take it significantly further beyond that. Therefore her decision is that the Trust was correct when it cited section 12.

Section 16 – duty to provide advice and assistance

25. Section 16 of the FOIA states:

"(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.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."

26. The Trust explained to the Commissioner that it had sent an email to the complainant on 26 May 2020 pointing out the comprehensive nature of the questions posed and making two recommendations in order

to narrow the scope of the request. It suggested that she focus on particular timeframes for the required data and particular service lines of the organisation.

27. The complainant expected the whole of her request to be responded to and did not consider that she was requesting anything beyond what the Trust should have been easily able to provide. The Trust did not provide advice and assistance in its refusal notice but it did provide advice and assistance to the complainant as far as it was reasonable to do so at the internal review stage. The Commissioner does not require it to do anything further.

Right of appeal

28. 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

29. 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.

30. 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

Annex

Information request – 16 April 2020

"Please provide ECT information under the FOI act to the following questions : -
1. Please supply patient's information ECT leaflet.
2. Please supply patient ECT consent form.
3. Please supply any ECT reports/investigations
4. How many ECT in 2019?
5. What proportion of patients were men/women?
6. How old were they? 7. What were the diagnoses and in what proportions?
8. What proportion of patients were classified BAME?
9. How many were receiving ECT for the first time?
10. How many patients consented to ECT?
11. How many ECT complaints were investigated outside the NHS and CCG?
12. How many patients died during or soon after ECT and what was the cause (whether or not ECT was considered the cause)?
13. How many patients died a few months after ECT and what was the cause (whether or not ECT was considered the cause)?
14. How many patients died by suicide within a few months of receiving ECT (whether or not ECT was considered the cause)?
15. How many patients have suffered complications during and after ECT and what were those complications?
16. Have there been any formal complaints from patients/relatives about ECT?
17. If so, what was their concerns?
18. How many patients report memory loss/loss of cognitive function?
19. What tests are used to assess memory loss/loss of cognitive function?
20. Have MRI or CT scans been used before and after ECT?
21. If so what was the conclusion?
22. How does the Trust plan to prevent ECT in the future?

Please provide SERIOUS INCIDENT information under the FOI act to the following questions: -
1. Please supply SERIOUS INCIDENT REPORTS patient's information leaflet.
2. Please supply patient SERIOUS INCIDENT REPORTS consent form.
3. Please supply any serious incident reports/investigations
4. How many SERIOUS INCIDENT REPORTS in 2019?
5. What proportion of patients were men/women?
6. How old were they?
7. What were the diagnoses and in what proportions?
8. What proportion of patients were classified BAME?
9. How many were receiving SERIOUS INCIDENT REPORTS for the first time?
10. How many patients consented to SERIOUS INCIDENT REPORTS?
11. How many SERIUOS INCIDENT REPORTS were investigated outside the NHS and CCG?

12. How many patients died during or soon after SERIOUS INCIDENT REPORTS and what was the cause (whether or not SERIOUS INCIDENT REPORTS was considered the cause)?
13. How many patients died a few months after SERIOUS INCIDENT REPORTS and what was the cause (whether or not SERIOUS INCIDENT REPORTS was considered the cause)?
14. How many patients died by suicide within a few months of receiving SERIOUS INCIDENT REPORTS (whether or not SERIOUS INCIDENT REPORTS was considered the cause)?
15. How many patients have suffered complications during and after SERIOUS INCIDENT REPORTS and what were those complications?
16. Have there been any formal complaints from patients/relatives about SERIOUS INCIDENT REPORTS?
17. If so, what was their concerns?
18. How many patients report memory loss/loss of cognitive function? 19. What tests are used to assess memory loss/loss of cognitive function?
20. Have MRI or CT scans been used before and after SERIOUS INCIDENT REPORTS?
21. If so what was the conclusion?
22. How does the Trust plan to prevent SERIOUS INCIDENTS in the future?

Please provide restraints information under the FOI act to the following questions: -
1. Please supply RESTRAINTS patient's information leaflet.
2. Please supply patient RESTRAINTS consent form.
3. Please supply any Restraints/investigations
4. How many RESTRAINTS in 2019?
5. What proportion of patients were men/women?
6. How old were they?
7. What were the diagnoses and in what proportions?
8. What proportion of patients were classified BAME?
9. How many were receiving RESTRAINTS for the first time?
10. How many patients consented to RESTRAINTS?
11. How many RESTRAINTS were investigated outside the NHS and CCG ?
12. How many patients died during or soon after RESTRAINTS and what was the cause (whether or not RESTRAINTS was considered the cause)?
13. How many patients died a few months after RESTRAINTS and what was the cause (whether or not RESTRAINTS was considered the cause)?
14. How many patients died by suicide within a few months of receiving RESTRAINTS (whether or not RESTRAINTS was considered the cause)? 15. How many patients have suffered complications during and after RESTRAINTS and what were those complications?
16. Have there been any formal complaints from patients/relatives about RESTRAINTS?
17. If so, what was their concerns?
18. How many patients report memory loss/loss of cognitive function?
19. What tests are used to assess memory loss/loss of cognitive function?
20. Have MRI or CT scans been used before and after RESTRAINTS?
21. If so what was the conclusion?

22. How does the Trust plan to reduce restraints in the future?

Please provide SECLUSION information under the FOI act to the following questions: -
1. Please supply patient's information SECLUSION leaflet.
2. Please supply patient SECLUSION consent form.
3. Please supply any SECLUSION reports/investigations
4. How many SECLUSION in 2019?
5. What proportion of patients were men/women?
6. How old were they?
7. What were the diagnoses and in what proportions?
8. What proportion of patients were classified BAME?
9. How many were receiving SECLUSION for the first time?
10. How many patients consented to SECLUSION? 11. How many SECLUSIONS were investigated outside the NHS and CCG ?
12. How many patients died during or soon after SECLUSION and what was the cause (whether or not SECLUSION was considered the cause)?
13. How many patients died a few months after SECLUSION and what was the cause (whether or not SECLUSION was considered the cause)?
14. How many patients died by suicide within a few months of receiving SECLUSION (whether or not SECLUSION was considered the cause)?
15. How many patients have suffered complications during and after SECLUSION and what were those complications?
16. Have there been any formal complaints from patients/relatives about SECLUSION?
17. If so, what was their concerns?
18. How many patients report memory loss/loss of cognitive function?
19. What tests are used to assess memory loss/loss of cognitive function?
20. Have MRI or CT scans been used before and after SECLUSION?
21. If so what was the conclusion?
22. How does the Trust plan to prevent SECLUSION in the future?

Please provide MEDICATION ERRORS information under the FOI act to the following questions: -
1. Please supply patient's information MEDICATION ERRORS leaflet.
2. Please supply patient MEDICATION ERRORS consent form.
3. Please supply any MEDICATION ERRORS reports/investigations
4. How many MEDICATION ERRORS in 2019?
5. What proportion of patients were men/women? 6. How old were they?
7. What were the diagnoses and in what proportions?
8. What proportion of patients were classified BAME?
9. How many were receiving MEDICATION ERRORS for the first time?
10. How many patients consented to MEDICATION ERRORS?
11. How many MEDICATION ERRORS S were investigated outside the NHS and CCG?
12. How many patients died during or soon after MEDICATION ERRORS and what was the cause (whether or not MEDICATION ERRORS was considered the cause)?

13. How many patients died a few months after MEDICATION ERRORS and what was the cause (whether or not MEDICATION ERRORS was considered the cause)?
14. How many patients died by suicide within a few months of receiving MEDICATION ERRORS (whether or not MEDICATION ERRORS was considered the cause)?
15. How many patients have suffered complications during and after MEDICATION ERRORS and what were those complications?
16. Have there been any formal complaints from patients/relatives about MEDICATION ERRORS?
17. If so, what was their concerns?
18. How many patients report memory loss/loss of cognitive function?
19. What tests are used to assess memory loss/loss of cognitive function?
20. Have MRI or CT scans been used before and after MEDICATION ERRORS?
21. If so what was the conclusion?
22. How does the Trust plan to prevent MEDICATION ERRORS in the future"